BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Improvements Needed In The Enforcement Of Crude Oil Reseller Price Controls

The Department of Energy needs to strengthen its enforcement procedures and practices covering crude oil resellers' compliance with crude oil price controls. The Department should

--develop written procedures for handling criminal cases which will assure (1) timely and meaningful involvement by the Justice Department in key decisions affecting the scope and approach taken in special investigations and (2) the referral to Justice of suspected criminal violations;

--give adequate priority to pricing audits and commit enough audit staff to ensure the quality of individual audits and the adequacy of overall audit coverage; and

--develop a specific plan for promptly resolving all regulatory issues with particular attention to ensuring the resolution of those issues impeding enforcement audits and investigative efforts.

The Attorney General should review opportunities to expand informal coordination channels to include regional level discussions of cases before formal referral of the case to him.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the Department of Energy's past methods of handling crude oil reseller cases involving violations of Federal pricing regulations. It also discusses the efforts the Department of Energy has made to improve their handling of these cases.

We undertook this review at the request of Senator John A. Durkin on August 25, 1978. Because of the significance of this report, we are issuing it to the Congress.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending this report today to Senator John A. Durkin. We are also sending copies of this report to the Director, Office of Management and Budget; the Secretary of Energy; and the Attorney General.

Elmer B. Staats

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

IMPROVEMENTS NEEDED IN THE ENFORCEMENT OF CRUDE OIL RESELLER PRICE CONTROLS

D I G E S T

At the request of Senator John A. Durkin, GAO reviewed the Government's handling of crude oil reseller cases involving probable violations of Federal price control regulations.

GAO found that the Department of Energy and its predecessor agencies have not adequately enforced crude oil resellers' compliance with the requirements established in the Emergency Petroleum Allocation Act of 1973. Energy

--despite recent improvements in coordination with the Department of Justice in handling criminal cases, still (1) does not draw on Justice's expertise to the extent desirable and possible at key decision points during investigations and (2) needs to put its operating arrangements with Justice in writing;

--has not given adequate priority to pricing audits, and does not appear to be committing adequate resources to ensure the quality of individual audits and the adequacy of overall audit coverage; and

--had, until recently, been unable to effectively audit crude oil resellers for compliance with the pricing regulations because key issues involving the interpretation and application of such regulations had not been resolved in an effective and timely manner.

Energy's written procedures for handling criminal investigations require its auditors and investigators to pursue determinations of willfulness of violations further than necessary before referring suspected criminal violations to Justice.

Energy's procedures are essentially the same as those followed by the Federal Energy Administration, whose preoccupation with establishing the willfulness of violations adversely affected its own reseller audit program, and contributed to significant delays in referring cases to Justice. Since the beginning of the crude oil price control program in 1973, until September 1978, only 20 crude oil reseller audits had been completed and 9 were referred to Justice. (See p. 11.)

The limited audit coverage was caused, in part, by auditors and investigators spending too much time establishing the willfulness of violations and going beyond the point at which the cases could have been referred to Justice. Because Energy's procedures continue to require that a determination of willfulness be made before referral to Justice, GAO is concerned that Energy will spend too much time and resources establishing the willfulness of a few violations at the expense of adequate audit coverage of all crude oil resellers. (See p. 16.)

Lengthy delays in making referrals to Justice could jeopardize Federal prosecution of some violations because Government prosecutions are generally prevented after 5 years from the date of the violation.

Energy and Justice officials told GAO that their coordination of criminal investigations had recently improved and that they were satisfied with the current informal procedures. However, written referral procedures are still needed that clearly delineate the responsibilities of the two agencies in the handling of criminal cases. (See p. 13.)

GAO and others have repeatedly recommended that the Government give high priority to

audits of crude oil sales. The public record of the crude oil program shows it to be replete with promises that have yet to be fulfilled; and it remains to be seen if the actions Energy only recently began will prove adequate. As of September 1978, Energy had identified 592 crude oil resellers but had only 54 audits started or planned. (See p. 27.)

Energy's audit workplan calls for increased reseller audit activity during fiscal years 1979 and 1980. Although the resources committed to reseller audits have increased, GAO questions Energy's ability (1) to ensure the quality of individual audits and the adequacy of overall audit coverage considering the extensive reseller staff resources budgeted for special investigations (50 percent in 1979 and 38 percent in 1980), and (2) to conduct pricing as well as certification audits. (See p. 30.)

Despite repeated recommendations by GAO and others over the past several years that regulatory issues affecting pricing audits should be promptly resolved, such issues had neither been promptly nor adequately resolved.

Because of prolonged unresolved issues, Energy has conducted few pricing audits and has been primarily limited to audits to determine if lower priced "old oil" 1/ is certified as required by Federal regulations. These unresolved issues have also contributed to the suspension of assessments of overcharges against crude oil resellers, estimated by the Federal Energy Adminstration at over $20 million. (See p. 35.)

1/"Old oil" is basically defined as the same volume of oil produced from the same domestic property during the same month of 1972.

RECOMMENDATIONS

GAO recommends that the Secretary of Energy:

--Enter into a memorandum of understanding with the Attorney General to establish written procedures for referring criminal cases to the Department of Justice which assure that Energy's and Justice's responsibilities are clearly delineated. Among other things, the procedures should provide for timely and meaningful involvement by Justice in key decisions affecting the scope of, and approach to, criminal investigations. (See p. 25.)

--Review staff assignments for ongoing audits to ensure that an adequate number of qualified auditors have been assigned to satisfactorily complete these audits in a timely manner. (See p. 34.)

--Provide the audit resources necessary to adequately fulfill all aspects enuniciated in the revised February 26, 1979, workplan for fiscal years 1979-80, including pricing audits. (See p. 34.)

--Monitor the results of the planned audits and increase the audit coverage if the results show a high incidence of violation. (See p. 34.)

--Develop a specific plan to ensure the prompt resolution of all regulatory issues, and, pursuant to section 236 of the Legislative Reorganization Act of 1970, report to the Congress on the details of the plan and status of its implementation.

Furthermore, GAO recommends that the Attorney General review opportunities to expand informal coordination channels with Energy to include regional level discussions of cases before formal referral. (See p. 26.)

AGENCY COMMENTS

The Department of Energy: expressed strong disagreement with the factual contents and proposals made in a draft of this report. GAO has revised the report on the basis of agency comments and information furnished. Nevertheless, GAO believes the findings and recommendations in this report are based on facts which unquestionably support the need for additional improvements in the crude oil reseller enforcement program. Furthermore, although Energy has acted in recent months to make some program improvements, it was too early for GAO to review actual practices, and the effectiveness of these improvements remains to be seen. (See p. 46.)

The Department of Justice: said that the draft report did not fairly or accurately reflect its relationship with Energy. Justice sees no need for a memorandum of understanding to establish procedures for criminal referral. GAO does not agree. There is no assurance that the operating practices we are told are in place are consistent with agency positions and will continue regardless of personnel changes. The implementation of Justice's informal procedures, like Energy's, are only recent and their effectiveness remains to be seen. (See p. 48.)

Contents

ABBREVIATIONS

DOE	Department of Energy
DOJ	Department of Justice JAGC 00037
FBI	Federal Bureau of Investigation
FEA	Federal Energy Adminstration
GAO	General Accounting Office
IRS	Internal Revenue Service

CHAPTER 1

INTRODUCTION

In late 1973 and early 1974, the Organization of Petroleum Exporting Countries dramatically increased the price of their crude oil exports. Consequently, the Congress attempted to minimize adverse repercussions by passing the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 751 et seq.). Primarily to assure equitable allocation of supplies and to prevent price gouging or discrimination, which otherwise might have occurred, the act required the President to establish regulations for controlling the allocation and selling price of crude oil and refined petroleum products.

The authority and responsibility given to the President to establish these regulations were delegated to the Department of Energy (DOE) and its predecessor agencies:

--Federal Energy Office on December 27, 1973.
--Federal Energy Administration (FEA) on June 27, 1974.
--Department of Energy on October 1, 1977.

Agency references used throughout the report are consistent with delegations in effect for the periods noted above. It should be noted, however, that several top level officials responsible for the activities discussed in this report (see appendix III) held positions in both DOE and its predecessor agencies, and that there has been a significant carryover of policies and program practices from FEA to DOE. To that extent, DOE should not be viewed as totally separate and distinct from its predecessor agencies.

THE CRUDE OIL PRICE CONTROL REGULATIONS

Regulations were adopted from the Cost of Living Council on January 15, 1974, which provided for a dollar-for-dollar pass-through of net increases in the cost of crude oil. The regulations prohibited a crude oil reseller from charging a price exceeding a determined maximum allowable price. In addition, they prohibited a purchaser from knowingly paying a price for crude oil exceeding this allowable price.

These crude oil reseller rules were contained in Subpart F of the regulations and, according to FEA, had raised interpretive questions. Consequently, effective January 1, 1978, DOE issued new regulations, (Subpart L) applicable to crude oil resellers, which permitted resellers to charge any price as long as the average markup for all sales in

a month did not exceed a historical average markup, and provided that the reseller did not unreasonably discriminate among purchasers. DOE stated in the preamble to the regulations that even with the adoption of the new rules for application after January 1, 1978, considerable confusion continued to exist as to the appropriate application of the rules of Subpart F to sales prior to January 1, 1978.

Suppliers and purchasers were required to deal with each other according to normal business practices in effect during 1972 (the base period) and were prohibited from modifying such practices to circumvent any provision of the regulations. The regulations governing the first time crude oil was sold in the United States were different from those governing subsequent sales.

Price controls on the first sale of crude oil

The 1974 regulations established price controls for "old" domestic crude oil. However, "new" domestic crude oil, imported crude oil, and certain other classifications were exempt from price control on their first sale into U.S. commerce. Effective February 1, 1976, "new" oil was also subject to a ceiling price which was substantially above that for "old" oil.

The term "old oil" generally refers to the same volume of oil produced and sold from the same domestic property during the same month of 1972 (base production control level). The term "new oil" generally refers to (1) the volume of crude oil produced from the same domestic property above the base production control level or (2) oil produced from new domestic property. Effective February 1, 1976, the base production control level was determined by the producer as either 1972 or 1975 old oil production.

The 1974 regulations prohibited a producer from charging more than $1.35 per barrel over the highest price paid for the same grade of old oil on May 15, 1973. Because there is a major difference in the price of old and new oil, 1/ all such oil must be certified in writing as to its classification before a seller can sell it or a purchaser can buy it. This certification must include the number of barrels and the price per barrel for all old or new oil.

1/As of May 1979, the average ceiling price of old oil was $5.86 per barrel and $13.06 for new oil.

Price controls on subsequent sales

Any firm that made a sale of crude oil after the first time it was sold into U.S. commerce was considered a reseller and was prohibited from charging a price which exceeded his selling price of crude oil on May 15, 1973, plus the increase in product costs. This price control applies to all resellers and included old, new, and imported oil. Sales after January 1, 1978, were governed by the new Subpart L rules for crude oil sales.

If a reseller was not in business on May 15, 1973, or he sold the crude oil in a new market, the base period selling price was the oil's selling price at the nearest comparable outlet at the time it was first sold. In computing the increased product cost, resellers are required to use as their base the cost of the item the first time they offered it for sale.

This price control regulation limited the reseller to his gross profit margin on May 15, 1973. If the reseller entered the market after May 15, 1973, it limited him to the profit margin when he entered the market. Sales after January 1, 1978, were governed by Subpart L, which limited the reseller to a DOE determined average markup. In addition to the requirement that all old and new crude oil sold must be certified as such, the reseller must also certify that the price is no greater than the maximum permitted under the regulations.

Violations

A violation of the regulations is any practice which constitutes a means to (1) obtain a price higher than the regulations permit or (2) impose terms or conditions not customarily imposed. Such violative practices included, but were not limited to: making use of inducements, commissions, kickbacks, retroactive increases, transportation arrangements, premiums, discounts, special privileges, tie-in agreements, trade understandings, falsification of records, substitution of inferior commodities, or failure to provide the same service and equipment previously provided.

The penalties for violating the regulations are based on whether the violation is willful. The penalty for violating the regulations is a fine of up to $20,000 for each violation. A willful violation (which is a criminal offense) carries a penalty of imprisonment for up to 1 year and/or a fine of up to $40,000 for each violation. In addition, pursuant to section 210 of the Economic Stabilization Act, any firm which violates the regulations is subject to civil

suit to recover up to three times the amount of any overcharges.

SIZE OF THE PROBLEM IS SIGNIFICANT

In its first referral of a crude oil reseller case to Justice in February 1978, DOE stated that the referral was significant because it highlighted for the first time what apparently is a relatively widespread practice--the conversion of old, price-controlled crude oil to new, higher-priced crude oil--somewhere in the distribution chain between the wellhead and the refinery.

The conversion of old oil to new oil was known to FEA in 1974. In a public statement of the Federal Energy Administrator on December 11, 1974, FEA reported that it had evidence of this activity.

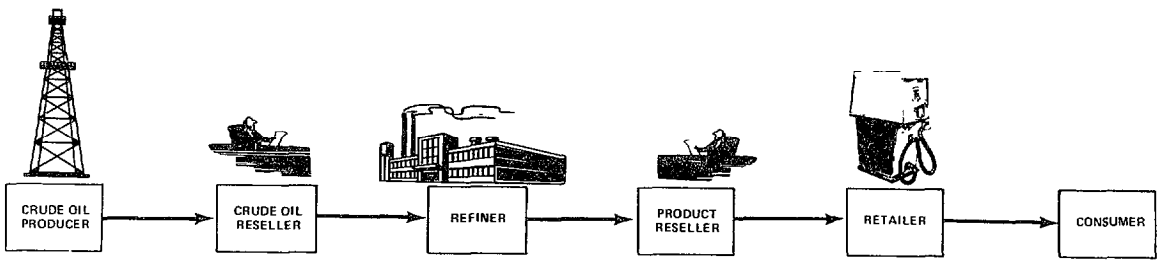
DOE further stated, in its 1978 referral to Justice, that the temptation for oil resellers to cheat was enormous since the difference between prices for old and new oil exceeded $6 per barrel, and had in the past approached $8 per barrel. FEA statistics, collected at the wellhead and then at the refinery, indicated that over 330,000 barrels per day of old crude were converted to new crude during the month of March 1977. As of September 1977, the rate declined to over 139,000 barrels per day. At the lower September 1977 rate, DOE stated that over $800,000 per day was being unlawfully taken from consumers. At the $8 per barrel difference, the March 1977 conversion rate indicates over $2.6 million per day may have been taken. DOE officials told us that present estimates of violations are related to actual case experience.

COMPARISON OF TYPICAL FLOW OF OIL WITH "DAISY CHAIN FLOW"

Crude oil resellers are in the marketing flow between the producer and the refiner. A producer, however, is not required to use a reseller and thus may sell the crude oil directly to the refiner.

The refiner may sell the refined products to a reseller who in turn sells it to a retailer, or the refiner may sell directly to a retailer. The typical flow of crude oil and its refined products is illustrated in the following chart.

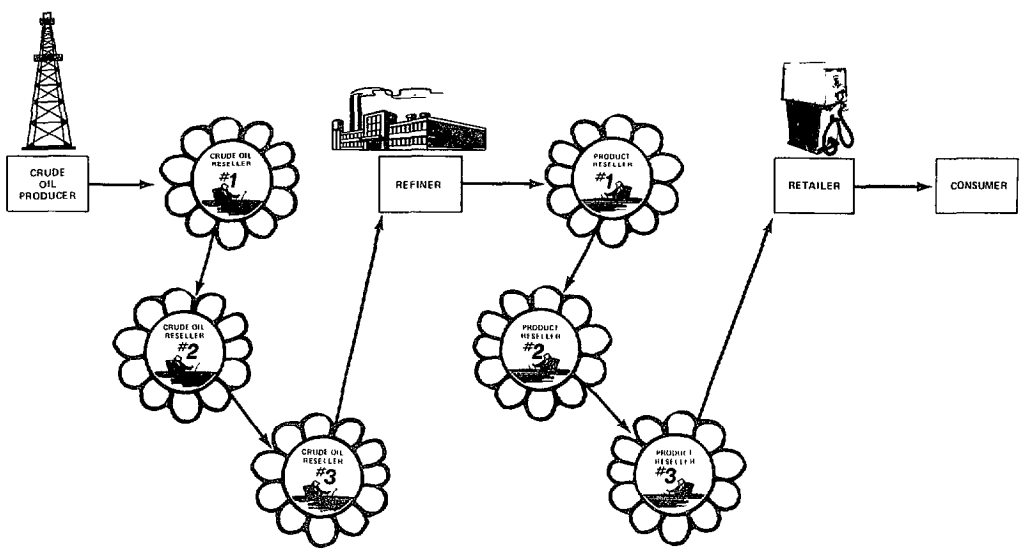
TYPICAL FLOW OF OIL



The so called "daisy chain" increases the number of crude or product resellers, and it can be established either before or after the crude oil has been refined. Increasing the number of resellers can increase the price paid for the crude oil or refined products because each reseller can add a profit without providing any necessary service. A daisy chain is illegal when it is used to (1) obtain a price higher than is permitted by the regulations or (2) circumvent the regulations through modification of the suppliers' normal business practice. Under the January 1, 1978, Subpart L rules, a firm which performs no service or other traditional reseller function in a sale may not charge a price in excess of the firm's cost of the crude oil sold. However, no such rule was applicable to sales before 1978 which would prevent daisy chain sales from taking place.

The daisy chain chart that follows, in conjunction with the typical flow of oil chart, illustrates where the additional resellers are inserted into the marketing flow.

DAISY CHAIN FLOW OF OIL



DOE ENFORCEMENT RESPONSIBILITIES

DOE's Office of Enforcement enforces regulations by conducting compliance audits. The overall audit objective is to evaluate a firms's compliance with DOE regulations by (1) applying a common audit approach to all company operations subject to regulation and (2) correcting any violations by developing plans for refunds and/or recommendations for sanctions.

The Office of Enforcement has set priorites for auditing regulated programs and established guidelines for selecting companies for audit. However, due to the large number of firms covered by the regulations, and its limited resources, the Office of Enforcement is not able to audit every company. Therefore, the enforcement program depends to a certain extent, on voluntary compliance.

Enforcement organization

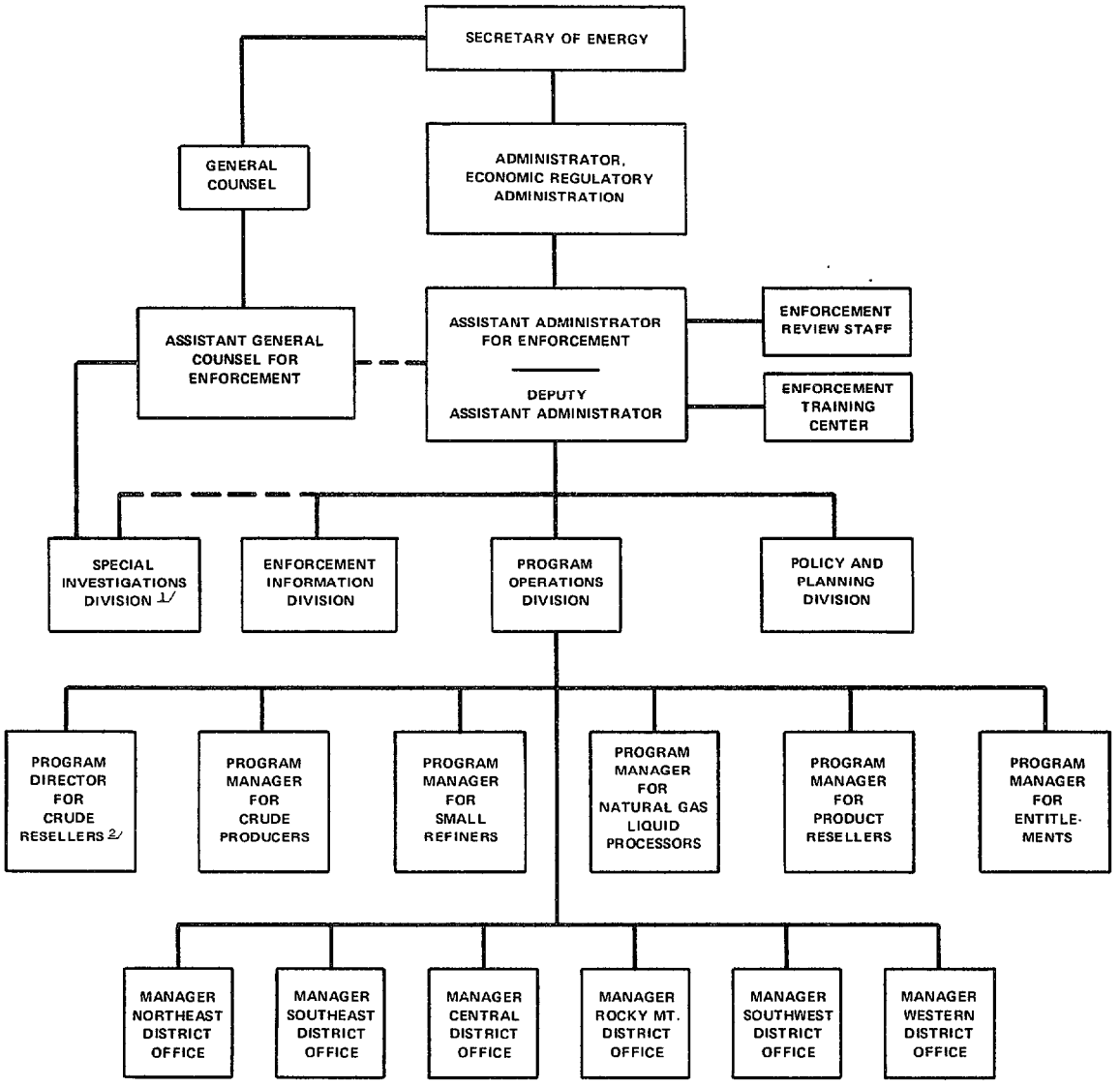
The Secretary of Energy gave the Administrator, Economic Regulatory Administration, the authority and responsibility to establish regulations limiting the price of crude oil and refined petroleum products. As head of the Office of Enforcement, the Assistant Administrator for Enforcement is responsible for enforcing the pricing, allocation, and import rules and regulations. Effective December 1977, enforcement responsibility for the 34 major refiners was transferred to the Office of Special Counsel. The crude reseller audit group is responsible for enforcing the rules, regulations, and orders controlling the price of crude oil. The organization chart on page 7 shows the general relationship of the Assistant Administrator for Enforcement to other offices in DOE, and the organization of the Office of Enforcement as of January 1979.

DOE established an enforcement organization in 1974 which remained relatively unchanged until 1977. During 1977 and 1978, DOE reorganized and altered its enforcement operations a number of times:

--On July 1, 1977, the Regional Counsel was placed under the direct supervision of the General Counsel.

--On August 10, 1977, the Regional Directors (formerly the Regional Directors of Compliance) at the 10 field offices were designated as the senior regional enforcement officials. They were placed under the direct authority of the Deputy Assistant Administrator for Enforcement.

ORGANIZATION OF THE OFFICE OF ENFORCEMENT



1/ The Director of Special Investigations, who is assigned to the Office of General Counsel, is responsible for the management and execution of all Special Investigations

2/ The Director of the Crude Resellers Program has direct line authority over audit teams which may be redelegated through intermediate control points

--On December 5, 1977, DOE established the Division of Crude Oil. This made one division within the Office of Enforcement responsible for enforcing crude oil pricing regulations.

--On January 27, 1978, DOE established the Office of Special Investigations under the Office of Enforcement to manage criminal investigations which center on possible willful violations of the regulations. Such violations are criminal offenses, and the cases must be referred to the Department of Justice for prosecution.

--On October 24, 1978, DOE: (1) transferred the Office of Special Investigations from the Office of Enforcement to the Office of General Counsel, (2) consolidated its 10 regional offices into 6 district offices, and (3) created a crude reseller audit group.

Staffing of enforcement program

The Internal Revenue Service (IRS) started DOE's enforcement program in January 1974 because of an early need for trained investigators. IRS assigned 300 of its investigators and hired and trained about 550 more. On July 1, 1974, FEA assumed control of the compliance and enforcement program. At that time, IRS transferred about 850 of its investigators to FEA. The enforcement staff increased to 1,294 by the end of fiscal year 1978; however, DOE plans to reduce this staff to 864 by the end of fiscal year 1980. DOE's fiscal year 1980 budget request anticipates a phasing down of audits as it completes major segments of the compliance program. The estimated enforcement staff at the end of fiscal years 1978 and 1980 is as follows:

Estimated Audit Staff

	Fiscal year 1978	Fiscal year 1980
Major refiners (Office of Special Counsel)	612	612
All other firms:		
Headquarters	137	25
Field	545	227
Total	1,294	864

The reduction, according to DOE, is not expected to affect special investigations or crude oil reseller audits because DOE's highest audit priority is to provide support to special investigations, and its second highest priority is to conduct crude reseller audits.

SCOPE OF REVIEW

At the request of Senator John A. Durkin, we conducted a limited review of the Government's handling of crude oil reseller cases referred to the Department of Justice involving probable violations of Federal regulations. Based on his request, and subsequent agreements with his office, we examined four principal areas:

- --The adequacy of DOE's procedures for handling the specific crude oil reseller criminal cases referred to Justice.
- --The effectiveness of the Government's historical efforts to enforce price controls from a general management point of view as it relates to the crude reseller cases referred to Justice.
- --The significance of unresolved regulatory issues which had impeded the enforcement of the crude oil reseller regulations from a historical view.
- --The adequacy of DOE's current program to ensure compliance with the price control legislation as it applies to crude oil resellers.

In keeping with the scope of work requested by Senator Durkin, we did not evaluate

- --DOE's practices for determining that a case involved a criminal violation,
- --the effectiveness of Justice's performance in handling criminal cases,
- --individual company audits, or
- --the magnitude of the impact of unresolved regulatory issues.

Also, our review of crude oil reseller cases referred to the Department of Justice was limited to those referred by DOE as of March 1979. The audit and investigative work on

those cases was essentially completed by FEA in 1976, and does not represent any of the audit and investigative work by DOE since its establishment.

Our audit work was conducted primarily at DOE's headquarters in Washington, D.C., and DOE's regional offices in Dallas and Houston, Texas. Furthermore, we conducted limited audit work at DOE's regional offices in Philadelphia and Pittsburgh, Pennsylvania, and Atlanta, Georgia. We also interviewed Department of Justice officials located in Washington, D.C., and the U.S. Attorney in Houston, Texas.

During the course of our examination, we interviewed DOE officials at its headquarters and regional offices. We also examined laws relating to DOE and reviewed DOE's records, policies, procedures, reports, and other documentation pertaining to crude oil resellers.

CHAPTER 2

DOE PROCEDURES FOR HANDLING CRIMINAL CASES NEED IMPROVEMENT

DOE written procedures do not provide for Department of Justice participation in the decisions affecting the scope of and approach to investigations to determine that violations are willful and subject to criminal penalties. Furthermore, DOE's written procedures require its investigators to go further than necessary before DOE refers the case to the Department of Justice.

These procedures are essentially the same as those which existed during FEA's administration of the program, and which served as the basis for investigative work related to all of the crude oil reseller cases which DOE referred to the Department of Justice as of March 1979. FEA's preoccupation with establishing the willfulness of the violations impeded the timeliness of Federal prosecutions. In addition, FEA's expanded investigative role had diverted scarce staff resources away from the agency's primary responsibility of ensuring that crude oil resellers comply with price control regulations.

The Department of Energy has made organizational changes and, we are told, developed informal procedures to improve the referral of cases to the Department of Justice. The fact remains, however, that the Department's written procedures regarding referral of crude oil resellers have not changed; and the risks of these procedures producing the same adverse effects as FEA experienced are very real. Also, there is no assurance that the operating practices we were told are in place are consistent with Department positions and will continue regardless of personnel changes. Because no new crude oil reseller cases have been referred to the Department of Justice under this new system, we were not able to determine its effectiveness.

We believe written procedures are needed which clearly delineate the responsibilities of the two agencies in the handling of DOE criminal cases. We believe these procedures should provide for timely and meaningful involvement by the Department of Justice in DOE's special investigations.

DOE PROCEDURES SHOULD PROVIDE FOR EARLY JUSTICE INVOLVEMENT IN ITS SPECIAL INVESTIGATIONS

DOE's enforcement manual requires its auditors and investigators involved in criminal cases to establish the willfulness of a violation. This determination of willfulness is a legal determination which is made by the DOE Regional Administrator. Under DOE procedures, DOE regional offices are strictly prohibited from either formally or informally consulting with the Department of Justice or with the U.S. Attorney and the Federal Bureau of Investigation (FBI). Only DOE's Office of General Counsel is authorized to consult with Justice on criminal investigations.

On the other hand, our discussions with the Deputy Assistant Attorney General, and reviews of Attorney General opinions, clearly establish that a Federal agency need only have credible information that criminal activity may have occurred before referring a case to Justice for criminal investigation and possible prosecution. Furthermore, Justice officials told us that Justice expects early involvement in a criminal investigation and does not expect to wait until such time as DOE determines the willfulness of a violation.

In this connection, the Attorney General, in a long-standing opinion, stated:

> "Whether or not an act constitutes a crime is a question that in but rare instances can arise except in the Department of Justice. If there is reason to suppose that acts coming to the attention of another Department are criminal in their nature, it is the duty of of that Department to report these acts to to the proper officials of the Department of Justice. It becomes the duty of this Department to consider whether or not the matter should be brought to the attention of the courts."

As the Federal Government's chief law enforcement agency, Justice should be in a position to have a major influence on the direction of criminal investigations and should make all decisions as to whether a case merits prosecution.

DOE procedures for handling criminal cases

According to DOE written procedures, when a willful violation of the regulations is first suspected, the audit staff prepares a report to the Regional Director for Enforcement with a copy to the National Office of Special Investigations. The distinction between criminal and noncriminal investigations, according to DOE's enforcement manual, is centered on the "willfulness" of the suspected violation. An attorney and a special investigator from the Regional office are then assigned to the case, and they, in coordination with the regional audit staff, determine whether credible evidence of a willful violation exists to warrant a special investigation. If so, an investigative plan is developed which contains the specific elements of proof needed and the facts anticipated to provide those elements of proof.

The investigative plan is forwarded by the Regional Administrator to the National Office of Special Investigations with a recommendation that the special investigation proceed. Unless vetoed by the National Office, the investigation plan is implemented. As indicated earlier, the procedures do not provide for any Justice input, although it would seem to us that this plan could have a crucial effect on the outcome of the investigation and the success of Federal prosecution by Justice.

As the investigation progresses, the investigator is required to submit a written report every 30 days to the National Office of Special Investigations until all leads have been explored. Upon completion of the investigation, the entire case file is forwarded to the Regional Counsel.

The Regional Counsel then decides whether to recommend the case for criminal referral, civil referral, administrative resolution, or a combination of these options. A recommendation to refer a case to Justice is forwarded to the National Office of Special Investigations who, if satisfied, sends it through the Assistant General Counsel for Compliance to the Office of General Counsel, who either refers it to Justice or sends it back to the region for further development. Here again, DOE written procedures do not provide for coordination or involvement of any kind with Justice prior to formal referral of the case to Justice.

DOE officials told us that the National Office now informally discusses with Justice those cases that are under investigation by DOE's Office of Special Investigations and furnishes them with copies of the 30-day investigative progress reports prepared by DOE regional offices. Also, Justice officials in the criminal division told us that they believe a good working relationship currently exists between the two Departments.

The Justice Department's interest in promoting closer coordination with DOE is demonstrated by actions the Deputy Attorney General took in November 1978. At that time, the Deputy Attorney General sent a letter to the DOE General Counsel outlining two principal areas that needed to be addressed because of the referrals made by DOE. These two areas were (1) obtaining resources to adequately investigate and prosecute referrals, and (2) establishing an effective mechanism for agency coordination.

The Deputy Attorney General stated that Justice decided to create specialized units, within the appropriate judicial districts, to focus exclusively on energy matters. These units, under the supervision of the U.S. Attorneys, will be composed of two Assistant U.S. Attorneys and two Criminal Division attorneys. The Federal Bureau of Investigation will assign agents to each of the units. According to the letter, Justice will require DOE auditor support for the Houston unit and also for other units.

In an effort to establish an effective coordination mechanism with DOE, Justice created an energy unit within the Fraud Section of the Criminal Division to receive referrals from DOE and forward them to the appropriate U.S. Attorney for development. The Criminal Division energy unit is to maintain effective liaison with all U.S. Attorneys handling such cases and keep DOE apprised of the status of the cases.

We believe the above actions are on target, and provide an appropriate framework for more closely coordinating criminal investigations and for making referrals on a more timely basis. But they still do not take the place of written procedures and they do not go far enough. Specifically, we believe that:

--Although the informal communiations channel has improved, it is still limited to the National level, and merits study for expansion to provide for direct discussions between U.S. Attorneys and DOE offices at the regional level, where the cases are investigated and prosecuted.

--The energy unit that Justice has established within the Fraud section of the Criminal Division is the appropriate place for DOE to coordinate its investigative plans for potential criminal cases so that Justice can provide advice on (1) the merits and scope by the plan, (2) the approach to conducting the investigation, and (3) the DOE audit/investigative support needed. Also at this time, Justice could comment on the desirability of DOE's continuing with its investigation or formally referring the case.

PRIORITY GIVEN TO SPECIAL INVESTIGATIONS COULD LIMIT CRUDE RESELLER AUDIT COVERAGE

Reviews of FEA's crude oil reseller enforcement efforts and the histories of cases referred to Justice portray a program of inadequate audit coverage and long delays in completing the relatively few special investigations that were pursued. Given its overall enforcement responsibilities and scarce staff resources, FEA assigned low priority to audit coverage of crude oil resellers. Furthermore, to the extent audits were made and criminal violations suspected, FEA auditors and investigators consumed much of their time attempting to establish the willfulness of the violation when, in fact, they could have referred the cases to Justice earlier and converted savings in staff time to increased audit coverage.

As indicated earlier, DOE's procedures remain the same as those of FEA's in that they require that a determination of willfulness be made before referral to the Department of Justice. Also, DOE plans to give high priority to special investigations and, in fiscal year 1979, to use as much as 50 percent of the crude reseller program resources to support special investigations.

Because of the similarities between FEA's procedures and practices and DOE's procedures and plans, we are concerned that DOE, like FEA, will spend an inordinate amount of time and resources establishing the willfulness

of a few violations to the detriment of audit coverage to detect civil violations of crude oil resellers.

Earlier referrals would have freed FEA staff to start new audits

The use of audit personnel to pursue criminal investigations further than necessary before referring them to Justice caused FEA to tie up personnel that could have been used to start new audits. According to DOE, from the beginning of the price control program in 1973 until September 1978, only 11 crude oil reseller audits had been completed, and 9 others had been referred to Justice. The actual audit time on these nine cases averaged less than 2 months, but it took from 1 to 3 years from the time they were classified as special investigations until they were referred to Justice.

It was not possible for us to determine exactly when the investigations should have been terminated and the cases referred to Justice. However, it was apparent from our detailed review of several case histories (see examples which follow) that FEA auditors and investigators pursued the determination of the willfulness of the violations far beyond the point at which the cases could have been referred to Justice. Also, in this connection, an FEA Task Force 1/ reported that in cases involving potential willful violations, all work on the civil aspects of the case was brought to a halt. The task force objected to this and pointed out that at any time during the investigation or civil action, the matter should have been referred to Justice where appropriate.

Examples of FEA's handling of criminal cases

The following two cases, taken from FEA files, illustrate the delays in referring the cases to or discussing them with Justice even after factual information showed criminal activity may have occurred. Also, the description of the first case shows how FEA auditors were required to spend considerable time developing substantial evidence of the willfulness of a violation before the Office of General Counsel would refer the case to or discuss it with the Justice Department.

1/Task Force on Compliance and Enforcement, July 13, 1977, (The Sporkin Task Force).

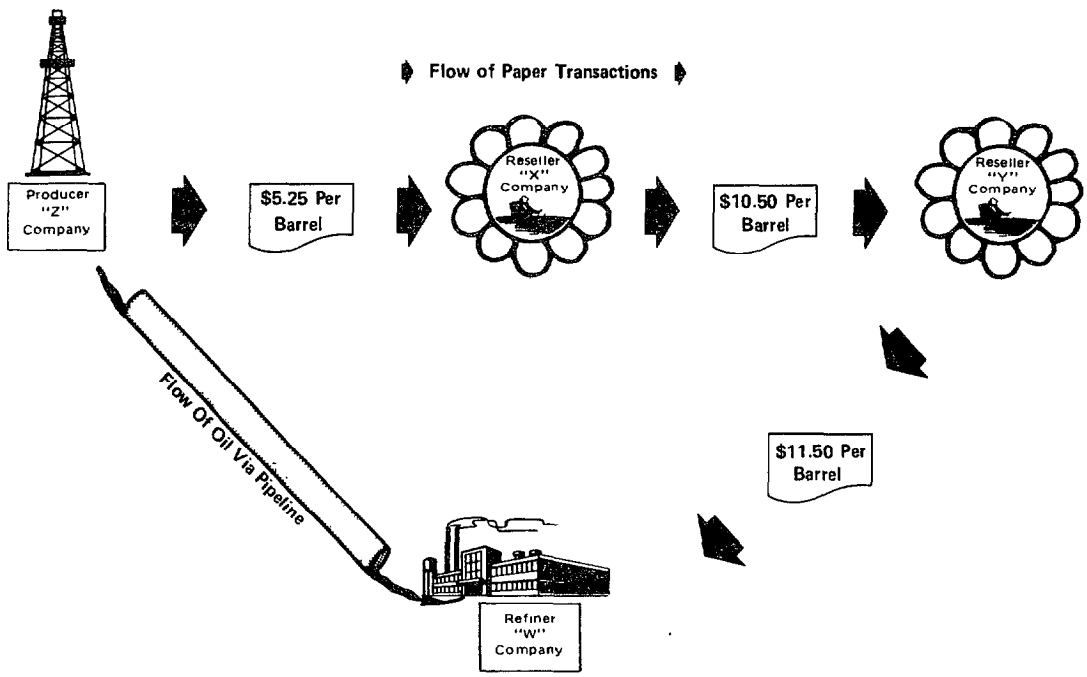
The common company case

In January 1976 FEA auditors reported that a possible conspiracy existed among four firms to increase the price of crude oil in excess of that allowed by FEA regulations. However, this case was not referred to Justice until November 1978 because FEA required its auditors to develop evidence of the intent and willfulness of the parties. The case was sent back and forth between FEA headquarters and the regional office for nearly 3 years before being referred to the Department of Justice because each time the case was sent to headquarters from the regional office, the Office of General Counsel decided the case was not ready for prosecution and additional work was needed to prove the willfulness and intent of the parties. Many of the transactions among these four companies took place in early 1974, and the statute of limitations could prevent Government prosecution of those violations after early 1979. We believe that FEA should have referred this case to Justice during 1976 when it had information of possible criminal activity. The delay in referring this case may result in the statute of limitations barring Government prosecution of these possible violations. In any event, criminal prosecution is generally more difficult the older a case becomes. Some of the details of this case are discussed below.

Beginning in February 1974, the "Z" Producer Company sold all of its old crude oil to the "X Reseller Company for about $5.25 per barrel. The "X" Reseller Company then sold this same crude oil to the "Y" Reseller Company for about $10.50 per barrel. The "Y" Reseller Company then sold the oil to the "W" Refining Company for about $11.50 per barrel.

All of the above transactions took place on paper only, as the oil never passed through the hands of the resellers. In fact, storage tanks at each of the "Z" Producer Company oil wells were connected directly to the "W" Refining Company by pipelines which carried all of the oil produced by the "Z" Producer Company. In addition, all of these companies were either owned or managed by the same individuals. The following illustration shows how this arrangement worked.

ILLUSTRATION OF COMMON COMPANY TRANSACTIONS



The "X" Reseller Company, which bought all of the oil produced by the "Z" Producer Company owned no storage, transportation, or gathering facilities and performed none of these functions. The "X" Reseller Company maintained no inventory, and no risk was involved because on the same day a purchase of crude oil was made from the "Z" Producer Company, a sale was made to the "Y" Reseller Company for the same number of barrels. Although the "X" Reseller Company provided no gathering, storage, or transportation services, nor incurred a risk, it nonetheless added more than $5 per barrel to the price of the crude oil it "sold" to the "Y" Reseller Company.

The majority of the crude oil that the "X" Reseller Company purchased from the "Z" Producer Company was price-controlled "old oil." However, all of the sales to the "Y" Reseller Company were at the uncontrolled free market price. According to the regulations:

> "* * * any practice which constituted a means to obtain a price higher than permitted by the regulations, * * * is a violation of the regulations. Such practices include, but are not limited to devices making use of inducements, commissions, kickbacks, * * * tie-in agreements, trade understandings, falsification of records, * * *."

The above details about the case were contained in an auditor's report of January 20, 1976. Subsequently, the case was handled as follows:

--On February 5, 1976, the FEA Regional Director referred this case to the Regional Counsel. In his referral memorandum, the Regional Director stated that "* * * based on the evidence gathered, Region VI Compliance believes a willful violation of FEA's pricing regulations has occurred."

--On April 2, 1976, the Regional Counsel returned this case to the Regional Director for additional audit work to "* * *further develop any evidence of collusion or conspiracy existing here." The Regional Counsel stated:

"It is my opinion that this investigation should now be considered as a criminal investigation. The possibility of criminal violations is strongest in the actions by the 'X' Reseller Company and further criminal investigations should be initiated. The case against the 'Z' Producer Company does not appear to be as strong. More substantial evidence of criminal conduct would have to be uncovered before this case would warrant prosecution."

--On May 14, 1976, this case was referred back to the Area Manager with instructions to select a skilled auditor capable of conducting interviews and interrogations to determine whether the violations of the "Z" Producer Company were willful.

--On July 7, 1976, the Area Manager referred the case back to the Regional Director stating:

"* * * the case files should at this time be forwarded through apropriate channels to the Department of Justice for their input before any further work is done. We agree that evidence is sufficient at this point to demonstrate that willful violations of FEA regulations (certification and pricing) have occurred."

--On August 27, 1976, the Regional Counsel referred the case to the FEA National Office of General Counsel stating: "* * * we believe that sufficient information has been developed to justify referral to the Department of Justice with the recommendation of criminal prosecution."

--On October 5, 1976, the General Counsel's Office requested "* * *further support for the request." The General Counsel's office stated "* * * we cannot reasonably consider your request until we receive the additional supporting data."

--On October 7, 1976, the Regional Counsel provided additional support and stated "It is our opinion that this matter should be referred to the Department of Justice."

--On January 5, 1977, the Assistant General Counsel for Compliance referred the case back to the region stating:

"We have determined that further factual development is required before any referral is made * * * it must be emphasized that the additional elements necessary to prove a violation (agreement, intent, and knowledge) are not sufficiently established to support a criminal prosecution."

--On June 8, 1977, additional factual information was provided to the General Counsel's office.

--On November 14, 1977, the case was returned to the region for "* * * additional investigation and further consideration and refinement of the factual and legal theories."

--On February 2, 1978, the Office of General Counsel inquired of the region as to the status of the case. The Regional Counsel said that since the auditor who developed the case was no longer with DOE, another person would need to be assigned. This other person was currently working on higher priority work and upon assignment, should be able to complete the investigation in about 3 to 4 months.

--On November 3, 1978, the case was referred to the Department of Justice.

The export--import case

During the Arab oil embargo, Producer Company "B", and its affiliates, allegedly violated a $5.10 per barrel ceiling price on its "old" domestic oil by selling it for $13 to $14 per barrel for refinement in the Bahamas and then selling it back in the United States at unregulated market prices as imported oil products.

This oil was produced and the refined products used exclusively in the United States. It was only shipped to the Bahamas for refinement and, moreover, it was controlled by American companies from the time it was produced until it was sold to American consumers. Under the regulations, exported crude oil and refined products were not subject to price controls. In addition, the export of domestic crude oil is generally prohibited by the Trans-Alaska Pipeline Act of 1973 and the Emergency Petroleum Allocation Act.

This case was opened as a criminal investigation by FEA in May 1975. FEA had information as early as April 1974 that this scheme might violate the intent of the price control regulations and that there was possibly a willful intent to do just that. However, FEA continued with its investigation until finally, on June 30, 1978, DOE referred the case to the Department of Justice for prosecution.

FEA task force questioned the quality of FEA investigations

In July 1977, the Sporkin Task Force reported serious deficiencies in FEA's ability to conduct criminal investigations. The Task Force reported that FEA had little or no capacity to handle the flagrant or willful violations of its regulations. The report said that the agency had virtually no attorneys involved in the day-to-day investigation of violative conduct, and its fraud investigators were few in number. The report stated that very few persons within the agency appeared to possess the expertise to conduct an investigation which may ultimately involve criminal prosecutions. The Task Force noted that although it is almost essential in cases such as these to subpoena documents and record testimony under oath, these investigative techniques were almost never employed.

Such deficiencies could at least partially explain why some investigations, such as the above example, had to be repeatedly reopened to obtain additional information to support the willfulness of the violation. Such investigations may have been completed more effectively and timely under the supervision of an expert criminal investigator.

Based on its findings, the task force recommended the creation of a unit staffed with specialists in investigating possible willful violations. Accordingly, DOE established its Office of Special Investigations.

Effectiveness of the Office of Special Investigations requires further examination

In DOE's current organization, the Office of Special Investigations is under the Office of General Counsel, not the Office of Enforcement. As described earlier, when a case is determined to involve possible criminal activity, it is classified as a special investigation, and regional staff from the special investigations unit are assigned to the case to work with the regional enforcement auditors in developing the willfulness of violations.

We examined all nine of the crude oil reseller cases referred to the Department of Justice as of March 1979. The Assistant Administrator, Office of Enforcement, told us that all of these cases were completed during 1976 and that none had been investigated by the Office of Special Investigations. Such office, did, however, prepare the referral documents and coordinate the referrals with Justice.

Because no cases involving crude oil resellers had been investigated by the Office of Special Investigations and referred to Justice, we were unable to evaluate the effectiveness of its operations and its coordination and referral procedures. Further, because of the nature of ongoing criminal investigations, we did not evaluate the adequacy of current investigative efforts since that would have required us to discuss the cases with officials of companies under investigation and review documents and records of these companies which might have interfered with subsequent grand jury proceedings and legal activities. Consequently, we are making no recommendations concerning organizational or other changes to the Office of Special Investigations at this time; however, this matter will be the subject of a follow-on review at a later date.

Statute of limitations could prevent prosecutions

Delays in referring cases to Justice could jeopardize successful prosecution of some crude oil resellers because of the statute of limitations. In a criminal proceeding,

Federal law (18 U.S.C. 3282) requires that an indictment by a Federal grand jury generally must be returned within 5 years of the date of the crime. In several of the crude oil reseller cases referred to Justice, potential criminal acts may be barred from prosecution during early 1979.

Although most of these cases involve continuing violations, the statute of limitations would generally bar prosecution of any violation which occurred beyond the 5-year limit. For example, if a violation occurred continuously from December 1973 through December 1975, beginning in January 1979, the reseller could not be prosecuted for violations occurring in December 1973, but could be prosecuted for violations occurring after January 1, 1974.

On February 16, 1978, at the request of the National Office, the Dallas regional counsel issued a memorandum to the General Counsel's office concerning the impact of the statute of limitations on special investigation cases being worked at that time in the region. The memorandum identified 10 special investigation cases, of which 7 involved crude oil resellers. The following table, based on the regional counsel's memorandum, shows the date identified as the date of first violation, the date the statute of limitations will begin to prevent prosecution, the date of the latest known violation, and the latest date the statute of limitations applies concerning the seven crude oil resellers.

IMPACT OF THE STATUTE OF LIMITATIONS ON CRUDE OIL RESELLER CASES REPORTED BY THE DOE DALLAS OFFICE

COMPANY IDENTIFICATION	DATE OF FIRST VIOLATION	DATE STATUTE OF LIMITATIONS APPLIES	DATE OF LATEST KNOWN VIOLATION	DATE STATUTE OF LIMITATIONS APPLIES
A	DEC. 10, 1975	DEC. 10, 1980	AUG. 21, 1976	AUG. 21, 1981
B	DEC. 1, 1973	DEC. 1, 1978	APRIL 9, 1976	APRIL 9, 1981
C	SEPT. 14, 1974	SEPT. 14, 1979	JUNE 30, 1976	JUNE 30, 1981
D	MAY 10, 1974	MAY 10, 1979	MAR. 29, 1976	MAR. 29, 1981
E	JUNE 30, 1974	JUNE 30, 1979	JUNE 30, 1976	JUNE 30, 1981
F	JUNE 30, 1974	JUNE 30, 1979	JUNE 30, 1976	JUNE 30, 1981
G	JAN. 31, 1974	JAN. 31, 1979	SEPT. 30, 1975	SEPT. 30, 1980

AS OF MARCH 1979, ALL OF THESE CASES HAD BEEN REFERRED BY DOE TO THE DEPARTMENT OF JUSTICE. HOWEVER, ONLY COMPANY A HAS BEEN INDICTED BY A FEDERAL GRAND JURY.

DOE is giving investigations a higher priority than audits

In fiscal year 1979, DOE will begin phasing down its reseller audit activity. In the meantime, DOE has assigned its highest priority to the investigation of suspected willful violations. In view of the past experiences of FEA, as previously discussed, and the fact that DOE is operating under essentially the same procedures as existed under FEA, we believe there is a high risk that DOE, like FEA, will spend too much time in determining the willfulness of violations to the detriment of its compliance program.

DOE's fiscal year 1980 budget request, anticipating an end to product controls, projects a phasing down of reseller audit activity by reducing the number of active audits and limiting new case openings. DOE plans to use personnel as follows:

--Highest priority--provide continuing full support to investigations of suspected willful violations.

--Second priority--complete crude reseller civil audits.

--Third priority--bring previously opened civil cases to resolution.

--Fourth priority--carry out new responsibilities such as the enforcement of the Fuel Utilization Act.

The budget figures show that support to special investigations by the end of fiscal year 1979 will account for 50 percent of the crude oil resellers staff positions. By the end of fiscal year 1980, DOE projects that 38 percent of its crude oil reseller staff will be used to support special investigations.

CONCLUSIONS

DOE written procedures do not provide for participation by Justice in decisions affecting the scope of and approach to investigations to determine that violations are willful and subject to criminal penalties. Moreover, these procedures require DOE investigations to go further than necessary before referring cases to Justice.

These procedures are essentially the same as those followed earlier by FEA, whose preoccupation with establishing the willfulness of violations adversely affected its overall reseller audit program and contributed to

delays in referrals to Justice. The similarities between FEA's procedures and practices and DOE's procedures and plans, which place greater emphasis on investigations than audits, causes great concern that DOE will spend too much time and resources establishing the willfulness of a relatively few violations at the expense of adequate audit coverage of all crude oil resellers and more timely case referrals to Justice.

The Department of Energy has made organizational changes and, we are told, developed informal procedures to improve the referral of cases to the Department of Justice. Also, Justice has taken steps, such as the establishment of an energy unit within the Fraud Section of the Criminal Division, to coordinate DOE referrals and to maintain effective liaison with U.S. Attorneys handling such cases.

The fact remains, however, that the Department's written procedures regarding referral of crude oil resellers have not changed; and the risks of these procedures producing the same adverse effects as FEA experienced are very real. Also, there is no assurance that the operating practices we were told are in place are consistent with agency positions and will continue regardless of personnel changes. Because no new crude oil reseller cases have been referred to the Department of Justice under this new system, we were not able to determine its effectiveness, and it remains to be seen whether the system will prove adequate.

We believe written procedures are needed which clearly delineate the responsibilities of the two agencies in the handling of DOE criminal cases. We believe these procedures should provide for timely and meaningful involvement by Justice in DOE's criminal investigations.

We also believe that the Justice Department should review existing practices that prohibit regional discussions of crude oil reseller cases prior to referral by DOE to see if there are opportunities to open channels of coordination at the regional level.

RECOMMENDATIONS TO THE SECRETARY OF ENERGY

To more effectively handle cases that involve possible criminal activity, we recommend that the Secretary enter into a memorandum of understanding with the Attorney General to clearly establish procedures for referring criminal cases to Justice. The memorandum should describe the responsibilities of DOE and Justice headquarters and regional offices,

and provide assurance that cases are coordinated with Justice as soon as information is developed that shows criminal activity may have occurred. As the initial contact point, we recommend that when DOE develops its investigative plans for potential criminal cases, DOE coordinate with Justice so that Justice can provide advice on (1) the merits and scope of the plan, (2) the approach to conducting the investigation, and (3) the DOE audit and investigative support needed. Also, at this time, Justice could comment on the desirability of DOE's continuing its investigation or formally referring the case.

RECOMMENDATION TO THE ATTORNEY GENERAL

We recommend that the Attorney General review opportunities to expand informal coordination channels with DOE to include regional level discussions of cases before formal referral.

CHAPTER 3

SOME PROGRESS MADE IN AUDIT COVERAGE OF CRUDE OIL RESELLERS BUT PROBLEMS CONTINUE

Several reviews of DOE's compliance and enforcement program during the past several years have consistently revealed a need for DOE and its predecessor agencies to increase audit coverage of crude oil sales. These agencies have repeatedly promised us and the Congress corrective actions to stengthen the crude oil audit program; these promises have yet to be fulfilled. DOE now seems to be making positive efforts to improve its audit coverage, but problems remain which will impede effective enforcement of price control regulations. DOE had not given adequate priority to pricing audits, and appears to be starting up large numbers of audits without committing the resources required to ensure the quality of those audits.

CRUDE RESELLER AUDITS GIVEN LOW PRIORITY IN THE PAST

Since the price control program began in January 1974, FEA and DOE had given low priority to crude oil reseller audits. At the close of the last fiscal year in September 1978, DOE had identified 592 crude oil resellers but completed audits of only 11, referred 9 other cases to Justice, and had 34 audits in progress or planned.

STATUS OF CRUDE OIL RESELLER AUDITS AT THE END OF FISCAL YEAR 1978

DOE REGION	TOTAL[a] RESELLERS	REFERRALS TO JUSTICE	AUDITS COMPLETED	AUDITS OPEN	AUDITS TO START
BOSTON	0	0	0	0	0
NEW YORK	7	0	0	0	0
PHILADELPHIA	7	0	0	0	0
ATLANTA	24	1	0	0	1
CHICAGO	46	0	0	0	0
DALLAS	354	8	9	17	7
KANSAS CITY	33	0	1	1	0
DENVER	55	0	0	1	2
SAN FRANCISCO	63	0	1	2	3
SEATTLE	3	0	0	0	0
TOTAL	592	9	11	21	13

[a] TOTALS ARE BASED ON DOE ESTIMATES. THE ACTUAL NUMBER OF RESELLERS IS UNKNOWN

This total of 54 represents nationwide coverage over a 5-year period of about 9 percent of all crude oil resellers. Furthermore, compared with other audit activities, DOE's priority ranking of crude oil reseller audits has placed them at or near the bottom. In the first year of the price control program in 1974, audit staff allocation did not even include crude oil reseller audits and, as of September 1978, represented only 7 percent of DOE's audit effort.

Prior studies recommended improved audit coverage of crude oil sales

A review of the public record leaves no doubt that FEA and DOE were fully apprised of the shortcomings of their audit activities and that they agreed corrective actions were needed and would be taken. In December 1974 and November 1977, we issued reports showing that FEA had given low priority to audits of crude oil sales. Similar criticisms were made during this period by a FEA Task Force, and the DOE Inspector General.

In a December 6, 1974, report, we stated that FEA would have to substantially strengthen its compliance and enforcement program to ensure that firms are in substantial compliance with pricing regulations. We specifically called attention to the need for increased audits of producers and wholesalers in view of the potential impact of pricing violations at each of those levels. The Federal Energy Administrator agreed with our report and its findings and told us "we now have underway a major program of auditing the prices paid for domestic crude oil."

While this report did not deal specifically with crude oil resellers, we believe that if an effective program of auditing the prices paid for domestic crude oil had been implemented, the scope of the reseller problem would have been known early in the price control program and a higher priority placed on this area long before 1979. Further, our report was directed to the issue of crude oil sales, which includes both producers and crude oil resellers, and for which an inadequate level of audit emphasis was being placed.

On June 19, 1975, we testified before the Senate Judiciary Committee 1/ on FEA follow-up efforts and said

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1/Hearings of the Subcommittee on Administrative Practices, Senate Committee on the Judiciary, June 19, 1975.

that FEA had responded by attempting some redirection of its compliance and enforcement activities, but in general, the problems remained.

In a November 7, 1977, report 1/ we stated that FEA had problems in resolving cases because of low priority on compliance activities, inadequate review procedures, untimely resolution of regulatory issues, and insufficient staffing. We stated that compliance activities had generally been given a low priority because of top management's belief that price controls would be removed in the near future. Once again, FEA officials said they were taking action to improve compliance efforts.

The Sporkin Task Force on Compliance and Enforcement reported, in July 1977, that audit efforts in the crude oil reseller program were not as substantial as they should have been. This was particularly true, according to the report, considering that available information indicated that a significant number of crude oil resellers were not in business on May 15, 1973, and thus may deserve special scrutiny. The Sporkin Task Force recommended that, consistent with the major refinery audit strategy, FEA should provide high priority to audits of major independent crude producers and crude oil resellers.

Although DOE reported to the Senate Committee on Energy and Natural Resources in March and May 1978 that it had satisfied the intent of the Task Force recommendation, a DOE Inspector General's report issued September 14, 1978, stated that DOE's actions were inadequate and had not satisfied the intent of the recommendation.

Efforts improved but problems remain

DOE's attention to crude oil reseller audits has been continually changing and evolving over the past few months which we believe was, at least in part, in response to increased visibility and attention created by various congressional reviews (including GAO's), court action, and media coverage. DOE has indicated it will significantly increase its reseller audit activity over the next 2 years before phasing down that activity in fiscal year 1980.

1/"FEA's Compliance Program in the New England Area" (EMD-77-71).

Although the resources committed to reseller audits are substantial, we believe DOE's historic and recent actions raise questions concerning its ability to (1) conduct pricing as well as certification audits and (2) ensure that audit quality is not diminished by starting up more audits than committed resources can adequately handle, particularly in view of the extensive reseller staff resources budgeted for special investigations (see p. 24).

We also believe that if ongoing audit efforts show a high incidence of violations, DOE should provide adequate resources to increase the audit coverage of crude oil resellers.

PRICING AUDITS ARE NEEDED TO ASSURE FULL COMPLIANCE WITH LEGISLATION

The proper certification of crude oil does not ensure that it will be sold at the proper price. DOE audits have disclosed that oil properly certified as "old" has been improperly sold at new oil prices. Consequently, pricing audits as well as certification audits are needed to ensure that crude oil resellers' selling prices are within the maximum legal selling prices.

The certification requirement was established by FEA as a tool to assist it in enforcing the maximum legal selling price of crude oil. It was assumed that a buyer would not pay the higher "new" oil prices for crude oil certified as old.

As discussed in chapter 4 (see p. 35), because of unresolved issues, DOE had limited audits primarily to reviewing compliance with certification requirements and had been forced to suspend pricing audits. In February 1978 and again in August 1978, DOE instructed its auditors not to routinely conduct pricing audits of resellers until pricing issues were resolved. In responding to the September 14, 1978, DOE Inspector General's finding that crude oil resellers had not been given adequate audit priority, the Assistant Administrator for Enforcement stated that the lack of clarification of the pricing regulations had hampered the pricing audit activities, and that the audit of crude oil certification by resellers had received a high priority.

When first issued in November 1978, DOE's audit workplan stated that audits would be limited to evaluating compliance with the certification regulation. The revised workplan, issued February 26, 1979, suggests a change in this position--at least in principle. The workplan states:

"Audits will continue to be directed at the pursuit of all significant violations within our regulatory authority including, but not necessarily limited to, allocation, pricing, certification, and change of business practice."

Because of planned staffing commitments, however, it is questionable whether DOE will be able to carry out both certification and pricing audits in an effective manner and cover an adequate number of crude oil resellers.

CONCERNS RAISED AS TO AUDIT EFFORT

Earlier in this report we expressed concern that DOE's emphasis on special investigations (see p. 16) and certification audits (see p. 30) may adversely affect the audit coverage of crude oil resellers. Another concern discussed in this section is that DOE may not be devoting sufficient staff resources to complete audits of crude oil resellers in a timely manner. Our statistical review of open and closed cases indicate that many audits had been closed prematurely because of staffing constraints and shifting priorities, and new audits started may not be adequately staffed. We are concerned that DOE, in responding to the perceived need for audits of crude oil resellers, may be starting up many audits before adequate staffing is available. We believe there is cause for concern that many of these open audits may terminate before completion for the same reasons many of the closed audits were terminated before completion.

After completion of our field work, DOE provided us statistics indicating an upward surge in the number of new starts. Specifically, 39 audits were started between September 1978 and March 1979, compared with a total of 41 audits initiated during the history of the program to September 1978. Although time constraints did not permit a detailed review of the adequacy of staffing support for these audits, we did compare staff time spent on each assignment, as shown by DOE's records, with the number of available work days. The resulting statistical analysis provides some perspective of resource commitment to individual assignments.

Closed cases show questionable results

Our statistical analysis of the 28 FEA/DOE audits of crude oil resellers which were closed during the 5-year period ended March 22, 1979, showed that only 14 audits were completed, and the other 14 audits appear to have been closed prematurely.

Audit terminations occurred for many reasons, including manpower constraints, shifting priorities, and jurisdictional transfers. DOE provided us an explanation to justify the closings of 12 of the 14 audits. However, in the absence of further evidence to support these explanations, our concern remains that these cases may have been prematurely closed. For example, in its explanation for 6 of the 12 cases, DOE said that it would have been unproductive to continue with the audits. In another example, DOE said that it appeared that additional effort to collect on a violation notice which was outstanding against a company would have been unproductive because the company went out of business.

FEA/DOE auditors identified no violations in 12 of the 14 completed audits, and identified possible violations in the remaining 2 audits. We found that DOE auditors spent little or no staff time in conducting 3 of the 12 completed audits with no violations.

We believe the actual results of crude oil reseller audits over the past 5 years represent a limited and ineffective effort by DOE. We particularly question a determination that no violation existed when little or no staff time was spent on an audit.

Low level of effort shown for current audits

We analyzed DOE furnished statistics of staff days charged to each of the 39 crude reseller audits DOE started during the first 6 months of fiscal year 1979, which were still open as of our cut-off date of March 31, 1979, to determine the level of effort DOE is devoting to these ongoing audits. We compared the actual staff days expended with the actual staff days available up to our cut-off date. In computing the level of effort, we defined 1 staff day of effort as one person working 1 day on an audit. More than one person working on the assignment results in more staff days spent than working days available. It should be noted that the available statistics in themselves do not explain the reasons why the auditors are not spending full time on the cases, and some of the gaps in time could be accounted for by such reasons as access to records problems and normal start up requirements. Furthermore, the statistical information did not indicate the experience of the staff auditors or the effectiveness of their efforts.

The following table illustrates the range of staff effort applied to all 39 crude reseller audits we analyzed.

Audit Effort Applied to Audits

Number of audits	Audit effort applied to available staff days
	(percent)
9	less than 10
8	10 to 25
7	26 to 50
9	51 to 99
6	more than 99

Our analysis showed that DOE assigned the equivalent of one auditor on a part-time basis to 33 of the 39 audits. On only 6 of the 39 audits did we find that DOE had assigned at least the equivalent of one full-time auditor to the assignment. The assigned auditors in 24 of the 33 audits spent less than 50 percent of their available time on the assignment; in 17 of the 24 audits, the auditor spent less than 25 percent of his available time on the assignment, i.e., 1 of every 4 working days. In commenting on our staff effort analysis, DOE stated that field work was complete in 17 of the 39 cases. Specifically with regard to the nine cases where less than 10-percent audit effort was applied, DOE said that field work had been completed in eight of the nine cases and offered explanations for four. One case involved only an update, and three involved less than 10 transactions. While these explanations are plausible, the evidence is not sufficent to dispel our concerns. Furthermore, the fact that eight of the nine audits were completed with minimal investment of time reinforces our concerns expressed earlier regarding the closing of audits.

CONCLUSIONS

Historically, FEA/DOE had not provided sufficient audit coverage of crude oil resellers. This fact was recognized, but until recently, we have seen little indication of improvements. During the past several months, DOE has indicated it will significantly increase its reseller audit activity during fiscal years 1979 and 1980. However, merely scheduling an increased number of audits will not accomplish the objectives. DOE must commit the necessary experienced resources to get the job done. Also, if ongoing audits show a high incidence of violations, audit coverage should be increased.

While we have no basis to question the quality of DOE auditors committed to crude oil reseller audits, we are concerned that DOE may be spreading its resources too thin and starting audits without the ability to complete them. Evidence of this exists in the 14 audits which were terminated before completion, as well as the minimal resources devoted to recent audit starts. Also, many of the audits completed to date appear to have been limited to evaluating compliance with certification requirements. This approach misses a significant part of DOE's compliance and enforcement program, and is not adequate to ensure that oil is sold at the proper price. We believe that the audits should also include an evaluation of compliance with price regulations. In addition, as discussed earlier in this report, we expressed concern that DOE's emphasis on special investigations may adversely affect reseller audit coverage (see p. 16).

RECOMMENDATIONS TO THE SECRETARY OF ENERGY

In order for DOE to successfully carry out its responsibilities under the Emergency Petroleum Allocation Act of 1973, we recommend that the Secretary of Energy:

--Review staff assignments for the ongoing audits to ensure that an adequate number of qualified auditors has been assigned to satisfactorily complete them in a timely manner.

--Provide the audit resources necessary to adequately fulfill all aspects enunciated in the revised February 26, 1979, workplan for fiscal years 1979-80, including pricing audits.

--Monitor the results of the planned audits and increase the audit coverage if the results show a high incidence of violations.

CHAPTER 4

UNRESOLVED REGULATORY ISSUES IMPEDED EFFECTIVE ENFORCEMENT OF PRICE REGULATIONS

DOE had been unable to effectively audit crude oil resellers for compliance with pricing regulations because key issues involving the interpretation and application of certain regulations had not been resolved despite repeated findings of this by us and others over the last several years.

DOE National Office officials had acknowledged, until recently, the existence of unresolved regulatory issues. The November 1978 crude oil reseller workplan for fiscal years 1979-80 stated that significant pricing and certification issues were impeding case resolution. This workplan was revised in February 1979 and continued to refer to issues impeding audits, saying that they had been referred to the Office of General Counsel for technical assistance.

In March 1979, the Assistant Administrator for Enforcement told us that there were no unresolved regulatory issues impeding audits of crude oil resellers. However, the documentation provided causes us to question whether the resolution of certain regulatory issues was handled in an effective and timely manner.

Because of unresolved issues, DOE limited its audit work primarily to reviews of compliance with certification requirements and suspended pricing audits. Also, unresolved issues had contributed to the suspension of the assessment of overcharges, estimated by FEA regional auditors to total in excess of $20 million.

MAJOR ISSUES THAT HAVE IMPEDED AUDITS

Two major issues were identified by FEA regional officials as having impeded pricing audits, namely

--the computation of the legal selling price of crude oil where multiple inventories make up the base period cost from which allowable cost increases are measured and

--the determination of the legal selling price of crude oil for resellers with no base period cost because they were not in business during the May 1973 base period.

These issues were not new. The first issue was raised initially in August 1975 and the second issue in May 1976. Furthermore, such issues were highlighted as needing early resolution in reports issued by us and the DOE Inspector General. As of March 1979, these issues had apparently been resolved to DOE's satisfaction. Neither issue, however, was resolved in a timely manner, and we question whether DOE effectively handled the first issue. Furthermore, it was not until during our audit in December 1978 that the National Office provided its auditors written guidance on how to handle the second issue.

The following are brief descriptions of these issues and their status as of March 1979.

How should multi-inventory costs be treated in determining crude oil selling prices?

Resellers, under Subpart F of the regulations, are required to determine their selling prices on the basis of the weighted average unit cost of that product in inventory on May 15, 1973. The regulations (10 CFR 212.93) require that:

> "A seller may not charge a price for an item subject to this subpart which exceeds the weighted average price at which the item was lawfully priced by the seller in transactions with the class of purchaser concerned on May 15, 1973, plus an amount which reflects, on a dollar-for-dollar basis, the increased product costs concerned."

The calculation of "increased product costs" is defined in the regulations as "* * * the difference between the weighted average unit cost of a product in inventory and the weighted average unit cost of that product in inventory on May 15, 1973." FEA had initially interpreted the reseller price rules to require a single firmwide calculation of "increased costs" for each product, based on the weighted average unit cost of product in that firm's total inventory, even though the term "product in inventory" was not defined in the regulations.

To apply this regulation, the base period cost of the product must be identified in order to determine the current maximum allowable selling price. The increases in product costs cannot be determined unless the seller knows the base period cost of the product.

On August 29, 1975, the LP-Gas Association filed an application with FEA to permit propane resellers to calculate increased costs on the basis of separate inventory costs rather than on a firmwide basis. This issue applies equally to crude oil resellers. The lack of timely resolution impeded pricing audits of crude oil resellers having multiple inventories.

The chronology of events pertaining to this issue illustrate the problems which plagued its resolution.

The Association's application was denied by FEA on December 15, 1975, and appealed on February 13, 1976. FEA dismissed the appeal on the basis that the issue would be the subject of a class exception proceeding in the near future.

On May 10, 1976, FEA issued an amendment to the regulations, which would allow the use of multiple-inventory cost computations for firms which had historically applied such pricing methods. However, this regulation was not made retroactive to the beginning of the price control program as several parties had requested. The amendment notice stated that FEA did not have adequate information on which to base a retroactive decision. Consequently, FEA planned to institute a class exception proceeding applicable to resellers to obtain information as to whether retroactive application was warranted.

On June 29, 1976, the FEA Office of Exceptions and Appeals held a public hearing to determine if the multi-inventory amendment would be made retroactive to the beginning of the price control program. On September 24, 1976, a Decision and Order was issued which denied the retroactive use of multiple inventories by resellers on a class basis in determining their maximum legal selling prices.

This decision was based on a number of conclusions reached by the hearing officials:

--A reading of the regulation which refers to the "average unit cost of product in inventory" leads to the conclusion that a single inventory calculation had been required prior to recent regulatory amendments.

--All resellers have been subject to the same regulatory requirements, and no showing has been made that any given firm was subject to a disadvantageous competitive situation.

--The approval of retroactive application would not only sanction the violation of FEA regulatory requirements over a relatively long period of time but would also adversely affect persons entitled to refunds for overcharges which their suppliers levied in violation of Federal regulatory requirements.

--The regulatory requirements were not so ambiguous as to warrant retroactive application to every reseller in the country.

--Retroactive application of regulations tend to ratify noncompliance with FEA regulations and could well encourage violations of these regulatory requirements, which would frustrate the effectuation of the objectives specified in the Emergency Petroleum Allocation Act of 1973.

--FEA is entitled to place a premium on obedience in order to create an incentive to learn the law.

However, the decision did not preclude individual applications for relief by resellers which customarily maintained multiple inventories.

FEA actions following the hearing resolution of this issue opened the question again. Such actions were prompted, in part, by several companies which challenged the single inventory concept.

FEA had originally advised its regional offices on May 26, 1976, that further action on cases involving multiple inventories should be held in abeyance until the issue was resolved. However, following the September 24, 1976, decision to deny retroactive application on a class basis, FEA, on September 29, 1976, instructed the regional offices to continue to hold such cases in abeyance until further notice because FEA expected a number of individual resellers to apply for exception relief. However, only the LP-Gas Association filed such an appeal, which was denied except for small propane resellers.

The "further notice" was issued 2 years later on September 25, 1978, when the Assistant Administrator for Enforcement issued instructions to the regional offices that "increased cost" provisions are not required to be computed on a single firmwide inventory basis for transactions occurring before May 1, 1976. These instructions were not publicly known until almost 6 months later--March 23, 1979--when DOE

published a notice in the Federal Register confirming its enforcement policy on this issue.

According to the guidelines, all resellers were being treated as though the multiple inventory amendment was effective from the beginning of the price control program. This position was based on (1) DOE's belief that resellers should be audited on the basis of their historical accounting practices and (2) DOE's conclusion that the original regulation did not clearly require a single inventory--although FEA's initial interpretation did--and that such interpretation would not be enforceable in the courts because notice of the interpretation was not given before its implementation.

In our opinion, DOE's handling of this issue was neither effective nor timely. We believe that if DOE revises a regulatory interpretation that was validated in a formal hearing process, it should change the regulation in an equally formal manner, and then promptly and formally communicate this regulatory change to all concerned parties so they clearly understand what standards are to be complied with.

How should the selling price of crude oil be determined for new crude oil resellers?

FEA's Houston office advised the headquarters on May 27, 1976, and again on July 15, 1977, that it was difficult to determine the legal selling price for firms that came into existence after May 15, 1973. This was no small concern, considering that most crude oil resellers did not exist on May 15, 1973. DOE had not provided written guidance on how to handle this problem until during our review in December 1978.

New resellers are defined as firms coming into business after May 15, 1973. Hence, they do not have base period transactions on which to calculate cost increases to determine their allowable selling prices of crude oil. Under the regulations, the seller is required to use the selling price of the item at the nearest comparable outlet on the day the seller first offered the crude oil for sale. For purposes of computing the "increased costs," the cost of the crude oil first offered for sale was to be used, rather than the May 15, 1973, cost.

The issue of interpreting the "nearest comparable outlet" rule had impeded compliance audits of crude oil resellers. FEA's Houston office notified the National Office,

in a May 27, 1976, memorandum that the application of the comparable outlet provision was difficult with regard to crude oil resellers. The regional office identified problems such as comparability in volume, location and firms, differences in oil, and amounts of additional allowable costs included in selling prices at the time of comparison.

In a July 15, 1977, memorandum the FEA Houston office cited examples of problems it was having in applying the regulations to new crude oil resellers that entered the market after May 15, 1973. The regional audit staff found that none of the resellers had any documentation to support their compliance with the "comparable outlet" provision of the regulations.

The auditors found that three of the four resellers under audit did not gather or transport crude oil. The resellers took title to the oil, but performed no service other than acting as a broker. The auditors found that because of this, these reseller firms were not comparable to any firm in existence in May 1973, hence, there was no comparable outlet.

According to the FEA Houston office:

> "* * * since most crude oil resellers did not exist on May 15, 1973, and perform no service other than acting as a broker, it appears they have merely been inserted into a line of distribution which has resulted in higher prices to downstream marketers."

The regional auditors also found that in the majority of the transactions, these firms made no attempt to obtain certifications from their suppliers. In most of their sales, these resellers either did not certify the crude oil or certified it as "new" oil. The prices they received generally were "new" oil prices or the highest price the market would bear. However, the regional office said the inability to determine the "nearest comparable outlet" and the "increased product cost" prevented the auditors from determining the maximum allowable selling prices and thus quantifying the monetary effects of improper certification.

According to the FEA Houston office, "* * * the certification problem cannot be resolved until FEA has resolved the pricing problem." On July 15, 1977, the Houston office recommended the suspension of all crude oil reseller audits until the issues were resolved. It said that the civil

audit of these cases could not be completed due to the issues raised. It was not until our audit during December 1978 that the National Office provided written guidance to the regional auditors on this issue.

HISTORY OF FAILURE TO RESOLVE REGULATORY ISSUES

DOE and FEA had failed to promptly resolve regulatory issues so that an adequate compliance and enforcement effort could be conducted. Despite repeated findings of this by us and others over the last several years, issues remained unresolved for several years. Clarification of existing regulations had received a low priority because, according to Office of General Counsel officials, their staff had been overburdened with requirements for developing new regulations.

GAO reports and testimonies

Between December 6, 1974, and November 7, 1977, we issued a series of seven reports calling attention to DOE's and FEA's failure to promptly resolve regulatory issues so that an effective compliance and enforcement effort could be conducted. On three occasions during this period, we testified before congressional committees on the same problems.

FEA said on several occasions, pursuant to our repeated recommendations, that corrective action would be taken. However, unresolved issues continued to impede the effective enforcement of reseller price regulations until recently. Two of the most significant unresolved issues discussed in our previous reports are the same two issues discussed earlier in this chapter.

A particularly important point was made in our most recent report, issued on November 7, 1977, to the Chairman, Subcommittee on Government Regulation and Small Business Advocacy, Senate Select Committee on Small Business (EMD-77-71). We said that delays in resolving cases occurred because regulatory issues requiring legal interpretation were not being promptly resolved, and that, until the regulations were clarified and written in a manner to eliminate ambiguity, compliance case resolution would continue to be impeded by unresolved regulatory issues. We concluded that DOE's compliance program could not be effective until the agency revises its regulations so that they can be enforced. This has particular relevance to the issue previously discussed concerning multi-inventory costs.

DOE reports

On March 8, 1977, an FEA Consultant's study 1/ reported that clarification and interpretation of the regulations had been slow, seriously hampering timely compliance and enforcement activities. The study further stated that in many cases, even where alternative clarifications had been developed, it was difficult to obtain top management commitment to a single approach as the formal agency position.

On July 13, 1977, the Sporkin Task Force stated that one of its major tasks was to identify the causes of delay in completing open audits. It concluded that:

> "Clearly a major cause of delay in the compliance and enforcement program has been, and is, the failure to attain timely resolution of disputed issues in the interpretation and application of FEA regulations."

According to the Sporkin report, some of the regions complained about the enormous amount of time the National Office took to respond to the requests for resolution of issues. The report stated that some of the regions indicated that on occasions, the National Office of Compliance and the Office of General Counsel did not even respond to telephone calls from lawyers or compliance personnel attempting to follow up requests. The Task Force reported extensive periods of time, amounting in some cases to many months or even years, between the time when the matter was sent up for resolution and when the response was received.

The Sporkin Task Force recommended the development of a system which would require the regional or National Office to respond to requests for issue clarification or interpretation on an expedited basis, with a specific turnaround time built in, and with a specific person being given the responsibility for resolving the issue.

In a September 15, 1977, letter to the Chairman, Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce, FEA stated that it had implemented procedures to expedite the resolution of regulatory issues. FEA stated that, in April 1977, it had established a policy for resolving issues impeding resolution of compliance

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1/"The FEA Petroleum Price Regulation Program: Status Assessment and Recommendations," Prepared for the Office of the Administrator, Federal Energy Administration, March 8, 1977.

cases. However, we found that a July 1977 request of the Houston office for interpretation of the pricing regulations applicable to new resellers was under this new procedure; but it was not until December 1978 that a written response was provided by the DOE National Office.

ADVERSE EFFECTS OF PROLONGED UNRESOLVED ISSUES

The most significant adverse effects caused by unresolved regulatory issues are that they

- --forced DOE to suspend pricing audits and limit its audit activities to reviews for compliance with certification requirements,
- --contributed to the suspension of assessments of possible overcharges against crude oil resellers, and
- --caused delays in completing audits which might ultimately jeopardize the prosecution of some violations because of the 5-year statute of limitations.

Suspension of pricing audits

As discussed in chapter 3, pricing audits are needed to assure full compliance with reseller regulations. DOE, however, had to instruct its auditors in February 1978, and again in August 1978, not to routinely conduct pricing audits of resellers, but rather to concentrate on certification audits until pricing issues were resolved. In responding to the September 14, 1978, report of the DOE Inspector General, the Assistant Administrator for Enforcement said that the lack of clarification of the pricing regulations has hampered the pricing audit activities in crude resellers.

By limiting the scope of its audits to compliance with certification requirements, DOE cannot ensure that the crude oil was sold at the proper price. Although DOE audit instructions no longer limit the type of audits, it is questionable that pricing audits will be performed, given its limited staffing. (See chapter 3.)

Overcharges have not been assessed against resellers

In the 5 years since the price control program became effective, the Government has issued only two violation

notices to crude oil resellers totaling about $100,000. In addition, one consent order for $10,000 was signed by a crude oil reseller on July 27, 1977. Other probable violations, however, estimated by FEA, at over $20 million, had not been pursued partially because of unresolved pricing issues.

As of March 1979, four cases with probable violations in excess of $2 million had been held in suspense by the National Office since May 1977.

In June 1976, the FEA Houston office reported on the status of crude oil cases being audited at that time. The office reported, in one case, possible civil violations on 51 sales of crude oil totaled about $15.8 million. In two other cases, possible overcharges totaling about $4.5 million were found. As of March 1979, none of these overcharges had yet been assessed against these crude oil resellers. Justice and DOE officials told us that the reason these overcharges are not currently being pursued is because of ongoing grand jury investigations involving these same companies. However, this does not explain why FEA did not assess these overcharges in 1976, 2 years before the cases were referred to Justice.

Delays could jeopardize criminal prosecutions of resellers' violations

As discussed in chapter 2, delays in referring criminal cases to the Department of Justice could jeopardize the prosecution of some violations because of the applicable 5-year statute of limitations. One of the contributing factors to delays in completing cases for referral to Justice was unresolved pricing issues.

A criminal violation is defined as a willful circumvention of the regulations. Without adequate interpretation of the regulations, it is difficult to establish that a violation occurred and more difficult to establish that it was willful. Because of unresolved regulatory issues, DOE and FEA were unable to quickly identify pricing violations which may involve criminal activity warranting referral to Justice. This resulted in lengthy delays in referring cases to the Department of Justice.

CONCLUSIONS

Neither FEA nor DOE had taken effective and timely action to resolve the regulatory issues that had impeded the enforcement of crude oil reseller price regulations. All regulatory issues need to be promptly resolved so that

resellers can be effectively audited before the statute of limitations bars legal prosecutions. This would help assure that the intent of the Congress to control the selling price of crude oil is adequately implemented.

RECOMMENDATIONS TO THE SECRETARY OF ENERGY

We recommend that the Secretary:

--Require the Assistant Administrator for Enforcement, in coordination with the Associate General Counsel for Enforcement, to develop a specific plan to ensure that all regulatory issues affecting enforcement of crude oil reseller regulations are promptly resolved. Such a plan should pinpoint responsibility and accountability for timely consideration and resolution of issues raised, including the establishment of timeframes for taking action and designation of officials responsible for resolving the issues.

--Include in his written statement on actions taken on our recommendations, to the House and Senate Committees on Appropriations and Operations, pursuant to section 236 of the Legislative Reorganization Act of 1970 the details of the plan he has approved for resolving regulatory issues, and the status of its implementation.

CHAPTER 5

AGENCIES' COMMENTS AND OUR EVALUATION

Comments on this report were received from the Departments of Energy and Justice. DOE's summary comments on chapter 2 of the report are included as appendix I. Summary comments on the remainder of the report were received too late for inclusion in the report. DOE also provided detailed comments on all chapters of the draft report. Although too voluminous for publication, the comments were considered in preparing the final report. Justice's comments were requested and received only for chapter 2, and are included as appendix II. In addition to the comments discussed in this section, agency positions are included in the text of the individual chapters to the extent practical and appropriate. Because of revisions made to the report on the basis of agency comments and information furnished, some of the agency comments were no longer relevant.

DEPARTMENT OF ENERGY

The Department's response indicated that the draft report was based on erroneous factual findings and believed the draft proposals were equally in error and should not be implemented.

With respect to our discussion in chapter 2 concerning the handling of criminal cases DOE said that the draft's misunderstandings of the nature of special investigations has led to recommendations which, if implemented, could seriously impede the progress of important inquiries.

DOE stressed the importance of maintaining its Office of Special Investigations, which was established in response to the Sporkin Task Force report (see p. 22). Also, DOE said that referral of cases to Justice at a very early stage in an audit, prior to any investigation and before a review of books and records had indicated a violation, could result in serious legal complications concerning DOE's continued gathering of information. DOE said that after referral, Justice could and most likely would be precluded from using DOE administrative subpoenas to obtain information and would be limited solely to grand jury subpoenas.

Furthermore, DOE said that Justice is "very satisfied" with DOE's current coordination and referral procedures, and that "Justice neither has the resources nor the expertise to perform the functions presently performed by DOE's Special Investigation Division."

We believe DOE's strong disagreement with chapter 2 was based on a misunderstanding of our concerns and the action we advocate.

As the Federal Government's chief law enforcement agency, Justice should be in a position to have a major influence on the direction of criminal investigations and should make all decisions as to whether a case merits prosecution.

DOE written procedures do not provide for participation by Justice in decisions affecting the scope of and approach to investigations to determine that violations are willful and subject to criminal penalties. Moreover, these procedures require DOE investigations to go further than necessary before referring cases to Justice. We were told that informal procedures and personal relationships between DOE and Justice have improved the coordination and the referral process. While these actions are on target, they do not substitute for written procedures and do not go far enough.

There is no assurance that the existing level of coordination will continue with personnel changes, and there is a need to institutionalize such procedures. The public record of the crude oil program shows it to be replete with promises to do better. However, these promises have yet to be fulfilled, and it remains to be seen if recent DOE actions will prove adequate. Also, as discussed in chapter 2, special investigations are, in effect, criminal investigations and should involve Justice much earlier than written and informal procedures now call for.

Our position and recommendations allow for some level of investigative work by DOE and would not, in themselves, lead to premature referral to Justice of cases for which no evidence of criminal violation has been detected. Also, our recommendation for early involvement by Justice should not be confused with advocating a transfer of leadership to Justice during the early stages of a special investigation. DOE could appropriately lead the investigation with the guidance of Justice.

As a means of ensuring coordination between the investigative and audit personnel involved in enforcement activities, we proposed in a draft of this report that DOE abolish

the Office of Special Investigations and shift the investigative staff to the Office of Enforcement. DOE took strong exception, to this proposal and argued that effectiveness of the offices operations warranted continuance of the existing organizational structure.

Because no cases involving crude oil resellers had been investigated by the Office of Special Investigations and referred to Justice, we were unable to evaluate the effectiveness of its operations and coordination and referral procedures. Further, because of the nature of ongoing criminal investigations, we did not evaluate the adequacy of current investigative efforts since that would have required us to discuss the cases with officials of companies under investigation and review documents and records of these companies which might have interfered with subsequent grand jury proceedings and legal activities. Consequently, we are making no recommendations concerning organizational or other changes to the Office of Special Investigations at this time; however, this matter will be the subject of a follow-on review at a later date.

DEPARTMENT OF JUSTICE

The Department said that chapter 2 of the draft report did not reflect DOE's and Justice's relationship fairly or accurately. Justice said that there is no conflict between DOE's present referral procedures and Justice's requirements and sees no need for a memorandum of understanding to establish procedures for criminal referral. Also, Justice (1) did not support informal communication between DOE regional offices and local U.S. attorneys, prior to DOE referral, and (2) believed that existing procedures were sufficient to avert instances of cases being jeopardized by the statute of limitations.

For the same reasons discussed above, we believe it essential for DOE and Justice to agree to a memorandum of understanding which provides for the degree of involvement by Justice as recommended in this report.

We continue to believe that an opportunity exists to improve the investigatory process through opening coordination channels at the regional level. However, time did not permit us to adequately test Justice's representation that the present practice:

"* * * obtains maximum enforcement value, avoids duplication of effort and uses DOJ resources to best advantage."

Consequently, we have modified our proposal to recommend further study by the Attorney General.

DEPARTMENT OF ENERGY SUMMARY

COMMENTS ON SPECIAL INVESTIGATIONS 1/

The GAO draft recommends that cases should be referred to DOJ at a very early stage in DOE audit/investigations, that DOE procedures conflict with DOJ and that the Special Investigation Division should be eliminated as an office. For the following specific reasons, DOE strongly disagrees with each of these proposals.

1. Investigations into possible willful violations of the regulations usually require extensive audit analysis and review before a determination can be made as to whether any violation occured.

   The draft misapprehends the nature of white collar criminal investigations in general and energy related investigations in paticular. It totally ignores the need in these matters to thoroughly review complex and technical transactions before there can be any determination as to (1) whether any violation of the regulations took place and then (2) whether any such violation was willful.

   Special investigative personnel may become a part of the team evaluating a particular case at any point in the audit procedure. At times, an indication of willfulness may occur early in the audit and thus a special investigation will be opened long before any determination has been made as to whether a violation did occur. 1/ The special investigative staff will then work along with the audit staff to assist in expediting the primary determination of what, if any, violations occurred and then the determination of willfulness. This necessary review, analysis and coordination requires special investigative personnel skilled in audit, investigative and legal disciplines working along with the regular Enforcement audit team.

   The draft fails to distinguish between phases of investigation in these complex matters. It suggests that cases should be referred to Justice when "information is developed that shows criminal activity may have occurred" (pages 34-35). Clearly this misapprehends reality. At that time, many months of work by DOE may be necessary before a determination can be made as to whether there is even a violation of the regulations. Justice could not direct DOE auditors or use DOE process to obtain information because such activity could well create claims of parallel proceedings or obtaining evidence for purely criminal investigations under the guise of civil inquiry. Justice would open a grand jury even though

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1. For example, an auditor may see general invoices which are out of sequence and otherwise irregular leading to the indication that they may have been "created" for certain Pricing benefits.

1/Comments furnished by the Director, Office of Special Investigations and the Assistant Administrator, Office of Enforcement Department of Energy, May 1979.

[See GAO note, p. 55.]

the government does not even know whether anyone unintentionlly let alone willfully violated the regulations.

In sum, the draft's misunderstanding of the nature of these investigations has led to recommendations which, if implemented, could seriously impede the progress of these important inquiries.

II. The proposed "elimination" of the Special Investigations Division is in direct contradiction to the recommendations of the Sporkin Task Force.

Based on the draft's preceived problem in the crude reseller program, GAO ignores all the accomplishments of a highly structured organization which deals in investigating various segments of the oil industry and suggests that the entire organization be eliminated.

In its final report, the Sporkin Task Force made the following recommendation, which was first among 31: "The Task Force recommends that (for Special Investigations):

(1) The FEA must immediately establish a unit within the National Office of Compliance to investigate and prosecute the complex and willful violations of its regulations. This unit should consist of attorneys and investigative auditors with the appropriate experience needed to do the job."

Final Report, Task Force on Compliance and Enforcement, July 13, 1977, Section III Summary of Recommendations on Pending Cases, pages III-3.

The Task Force also recommended that the unit be staffed with personnel trained in "complex and willful cases" and that the National Office control such cases. Report, page III-4.

DOE has followed these recommendations. It has established a structured organization pursuant to these guidelines in order to address the problems pointed out in the Task Force Report. (See Special Investigation Organization section of this response). Specific guidance has been given to field units on policy, procedure and relevant legal issues (see attached documents).

APPENDIX I

Now that DOE has accomplished this task and cases are being referred on a regular basis (39 referral since October 1977), the draft recommends that DOE should:

> "Eliminate the Office of Special Investigations and reassign its personnel to the Office of Enforcement to assist auditors in developing investigative plans and providing assistance to Justice upon request." page 35

If DOE follows this recommendation, (1) the entire structure now in place which is working so well would be eliminated, (2) the Sporkin recommendations would be ignored and (3) procedures which prompted the Sporkin investigation would be reinstituted.

III. Implementation of the draft's recommendations would result in significant complications in proceeding with investigations (parallel proceeding problems).*

As previously noted, the draft recommendations would result, in most cases, in referral to DOJ at a very early stage in an audit, prior to any investigation, long before a review of books and records has indicated whether any violation has occurred.

Implementation of this recommendation could result in serious legal complications concerning DOE's continued gathering of information for either a civil or possible criminal purpose.

After referral to DOJ for criminal investigation, administrative subpoenas may be subject to a claim that the agency is improperly using its administrative subpoena power solely to obtain evidence for a criminal prosecution. In order to avoid this claim, the agency can (1) segregate and isolate all "civil" personnel and information obtained in determining whether a violation has taken place from those looking into the possibility of willfulness and (2) provide full statements regarding the nature of the matter which has been referred to DOJ with all subsequent information requests. Clearly, this alternative at an early stage of an investigation presents substantial administrative and practical impediments causing possibilities of severe duplication of effort and lengthy delays.

* Legal questions which may arise when civil and criminal proceedings are conducted at the same time.

Additionally, courts have held that, where the sole objective of the investigation is to obtain evidence for use in a criminal prosecution, the purpose is not a legitimate one and enforcement of an administrative subpoena should be denied. The American Criminal Law Review, Vol. 14, pages 670-672 (1977). Therefore, after referral, DOJ could and most likely would be precluded from using DOE administrative subpoenas to obtain information and would be limited solely to grand jury subpoenas. Thus, in order to continue to evaluate any DOE case, DOJ would be required to open a grand jury investigation without regard to the stage of the inquiry or the quality of the information concerning possible criminal conduct. Additionally, DOJ would, if for no other reason because of grand jury secrecy rules, be forced to utilize manpower totally separate from the DOE auditors working the case to determine if a violation occurred.

In sum, rather than allowing for expedition, the draft's suggested referral process would give rise to legal complications causing serious delays and duplication of effort with regard to concluding investigations.

IV. Implementation of the draft's recommendations would result at best in a reversion to conditions which prevailed prior to the Sporkin Task Force Report.

In recommending the elimination of the Special Investigations Division, the draft manages to place itself in opposition to the Sporkin Task Force and the U.S. Department of Justice. The record speaks for itself. Prior to the establishment of the present Special Investigations Division, only one major case was referred to DOJ for criminal investigation. In the 19 months since, 39 have been so referred.

DOE has already referred more cases to DOJ in FY '79 (21) than it did throughout FY '78 (18). In light of this fact, it is not surprising that most of the draft's specific criticisms relate to historical events occurring long before the establishment of the Special Investigations Division as it is presently constituted. In

fact, the bulk of such criticism is nothing more than a reiteration of the findings of the Sporkin Task Force which have been addressed through the creation of the Special Investigations Division. To the very limited extent that the report alleges the mishandling of cases by the present Special Investigations Division, the allegations are demonstrably false and misleading. For example, the report is highly critical of the handling of a so-called "export-import case," yet fails to disclose that this particular case was referred to and promptly declined by, the Department of Justice. Similarly, allegations that prosecution of several cases has been or shortly will be barred by the statute of limitations is patently false. The report fails to disclose that those cases involve conspiracies and overt acts extending well into the late 1970's and therefore any possible bar could not even begin until some time in the 1980's in these matters. Finally the draft's review of cases claimed to be illustrative of overinvestigation by DOE is obviously suspect since it deals exclusively with cases in which the majority of audit and investigative work was done prior to the creation of the Special Investigations Division.

Based upon the above factual errors, the draft then makes recommendations which if implemented would, at best, result in conditions which existed prior to the Sporkin Report. First, the proposal to eliminate Special Investigations as it now exists would create the lack of control and supervision over cases that the Sporkin Report found so problematic. Second, the amorphous proposal that investigations be performed by an admixture of DOE and DOJ personnel will give rise to insurmountable legal problems, most notably the doctrine of "parallel proceedings," which may well render certain criminal prosecutions impossible. Third, civil actions for overcharges will be seriously jeopardized by time delays and the questionable propriety of utilizing evidence for civil purposes which had been obtained by a grand jury or the FBI in a strictly criminal investigation. In this respect, the draft fails to recognize that special investigations have both civil and criminal aspects which often are of equal significance to the public interest. Finally, DOJ neither has the resources nor the expertise to perform the functions presently performed by the Special Investigations Division.

In the final analysis, adoption of the recommendations of this draft may cripple both civil and criminal enforcement of the Nation's energy laws and regulations.

V. DOE's referral procedures do not conflict with DOJ requirements

The Justice Department has stated on prior occasions and, again on May 7, at the joint GAO, DOJ, DOE meeting concerning this draft that it is very satisfied with the present DOE-DOJ coordination and referral procedures. DOE believes that the DOJ does not desire that any change be made in the present structure. The system works. Additionally, DOE's Office of Special Counsel, the office charged with enforcement responsibilities as to the nation's 34 major refiners, maintains the same relationship with DOJ concerning referrals of cases under their responsibility. Therefore, it is difficult for DOE to understand why the draft maintains that "DOE referral procedures conflict with Justice Department requirements." Page 14

VI. The draft provides no reasons why DOE-DOJ relationships should be different from Justice relationships with other federal agencies.

Numerous federal agencies, most notably the Securities and Exchange Commission and the Internal Revenue Service, routinely conduct lengthy investigations into matters which may result in criminal prosecutions without either referring or notifying DOE. Since these investigations involve complex financial transactions, in which lengthy inquiry must take place before a determination can be made as to whether a violation has occurred, they are quite similar in nature to DOE investigations. The draft provides no explanation for its contention that DOE should stand alone in being stripped of its capability and statutory duty to conduct investigations which may lead to criminal referral and prosecution.

CONCLUSION

DOE believes that this draft is based upon erroneous factual findings. Therefore, the recommendations are equally in error and must not be implemented.

GAO note: Page references in this appendix refer to the draft report and do not necessarily agree with the page numbers in this final report.

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

MAY 22 1979

Mr. Allen R. Voss
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Voss:

This is in response to your request to the Attorney General for the comments of the Department of Justice (DOJ) on your draft report entitled "The Department of Energy Has Not Adequately Enforced Crude Oil Reseller Price Controls".

Essentially, the report states that the Department of Energy (DOE) has failed to enforce crude oil resellers' compliance with the Emergency Petroleum Allocation Act's pricing requirements, and that DOE continues too long in its criminal investigations before making referrals to the DOJ; has not given adequate audit priority to crude oil resellers; and has been unable to effectively audit crude oil resellers for compliance with the pricing regulations because key issues involving the interpretation and application of such regulations have not been resolved in an effective and timely manner. The report recommends that DOE should (1) establish new procedures, in coordination with the Attorney General, for referring criminal cases to the DOJ, (2) provide adequate audit coverage to crude oil resellers, and (3) develop a plan to ensure that regulatory issues are promptly resolved.

We have reviewed the section of the draft concerning DOE-DOJ relationships and state most emphatically that they do not reflect the present situation fairly or accurately.

Most of the comments that follow were communicated to the GAO representatives during interviews conducted in the DOJ in an effort to correct any misconceptions and place the matter of DOE-DOJ relationships in a proper perspective. Our comments are based upon first-hand working relations with DOE through the Energy Unit of our Criminal Fraud Section and our considerable experience in the handling of criminal enforcement matters for other departments and agencies of the government.

Chapter 2 is generally critical of DOE's practices and procedures for the referral of criminal cases to DOJ. The problems of undue delay in DOE's making criminal referrals did exist prior to 1977, but have been eliminated by a mutually agreed on procedure that works well and which we feel should be continued.

References hereinafter will be to the GAO report headings within Chapter 2.

1. DOE's Handling Of Criminal Cases Needs Improvement

DOE's current referral procedures meet DOJ's requirements. At the present time we are satisfied with the procedures, and the two departments have a clear understanding of one another's needs. In December 1977, DOE instituted a practice of conferring with us about matters with criminal potential prior to a "formal" criminal referral. This practice alerts us to the development of potential criminal cases and enables us to advise DOE whether and when the matter warrants referral for criminal consideration.

2. DOE Referral Procedures Conflict With Justice Department Requirements

No useful purpose would be served by referring matters for our criminal consideration at an earlier stage than is the present practice. To do so would necessitate the detailing of a large number of DOE auditors and investigators to our control, thus detracting from DOE's other compliance and enforcement responsibilities at a premature stage, and requiring the assignment of more Criminal Division

attorneys to direct these investigative efforts, when, in fact, many may ultimately have no prosecutive merit. Unlike the more common crimes, in DOE cases frequently a considerable amount of investigative time must be expended before a judgment can be made that a matter is criminal in nature. Numerous records and documents may have to be examined and interviews conducted in order to find the indicators of criminal conduct. Such factors as the complexity of the regulated industry, the ingeniousness of the schemes and the requirement of the necessary technical knowledge to conduct investigations add to the problem.

3. GAO Recommendation For The Expansion Of The Informal Communication Channel To Provide For Discussion Between U.S. Attorneys Offices And DOE Regional Offices

During the period of informal DOE-DOJ communication and up to referral of a matter to a specific U.S. Attorney for possible criminal prosecution, there is no informal communication between DOE regional offices and local U.S. Attorneys. DOJ specifically requested that there be none for the reasons stated below.

An Energy Unit was established within the Fraud Section of the Criminal Division to establish liaison with DOE at the national level and coordinate the handling of criminal referrals. This unit has the responsibility for evaluating all DOE criminal referrals and making the judgment as to the appropriate judicial district in which to institute prosecutive action. Centralization of this function was deemed advisable by DOJ in order to assure a uniform prosecutive policy in these complex matters. Moreover, since many of these matters have nationwide impact and the activities of the subject overlap more than one judicial district, we determined at the outset that the Criminal Division, rather than the DOE regional office or local U.S. Attorney, should make the decision as to the place to bring the prosecution. This procedure obtains maximum enforcement value, avoids duplication of effort and uses DOJ resources to best advantage. After a matter is referred to the U.S. Attorney or is retained by the Energy Unit for prosecution, communication with the DOE regional offices is encouraged and their assistance, if needed, is obtained.

4. GAO Conclusions

a. Statute of Limitations

Under the existing referral procedure and the early informal consultation procedure between DOE and DOJ, we believe we can avoid prosecutions being jeopardized by the Statute of Limitations. For example, should DOE uncover some indication of possible criminal conduct which occurred several years earlier, even though considerably more investigation may be required, the Criminal Division is promptly alerted and arrangements can be made for immediate referral to DOJ for expeditious handling.

b. Prosecutive decision-making

DOJ, and not DOE, is now making the decision as to whether a violator should be prosecuted.

5. Recommendations To The Secretary Of Energy

We see no need for a memorandum of understanding to establish procedures for criminal referral.

Sincerely,

Kevin D. Rooney
Assistant Attorney General
for Administration

OFFICIALS RESPONSIBLE FOR ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office From	To
DEPARTMENT OF ENERGY		
SECRETARY:		
James R. Schlesinger	Oct. 1977	Present
DEPUTY SECRETARY:		
John F. O'Leary	Oct. 1977	Present
ADMINISTRATOR, ECONOMIC REGULATORY ADMINISTRATION:		
David J. Bardin	Oct. 1977	Present
GENERAL COUNSEL:		
Lynn Coleman	May 1978	Present
Eric J. Fygi (Acting)	Oct. 1977	May 1978
DEPUTY SPECIAL COUNSEL:		
Avrom Landesman (Acting)	Dec. 1977	Present
ASSOCIATE GENERAL COUNSEL FOR ENFORCEMENT:		
Gaynell C. Methvin	July 1978	Present
Thomas P. Humphrey (Acting)	Oct. 1977	July 1978
ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT:		
Barton Isenberg	Jan. 1979	Present
Richard B. Herzog	Oct. 1977	Jan. 1979
DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT:		
Gordon Harvey	Oct. 1977	Present

	Tenure of office From	To
DIRECTOR, DIVISION OF SPECIAL INVESTIGATION:		
Jerome Weiner	Oct. 1977	Present
DIRECTOR, DIVISION OF ENFORCEMENT POLICY AND PLANNING:		
Barry Wagman	June 1978	Present
Gordon Harvey	Oct. 1977	Mar. 1978
DIRECTOR, DIVISION OF AUDIT AND ENFORCEMENT:		
Barton Isenberg	May 1978	Jan. 1979

FEDERAL ENERGY ADMINISTRATION

ADMINISTRATOR:		
John F. O'Leary	Feb. 1977	Sept. 1977
Frank G. Zarb	Dec. 1974	Jan. 1977
John C. Sawhill	June 1974	Dec. 1974
William E. Simon	Dec. 1973	June 1974
DEPUTY ADMINISTRATOR:		
David J. Bardin	Apr. 1977	Sept. 1977
Gorman C. Smith	June 1977	July 1977
John A. Hill	Apr. 1975	Nov. 1976
Eric R. Zaunner	Aug. 1975	July 1976
John C. Sawhill	Feb. 1974	June 1974
ASSISTANT ADMINISTRATOR, REGULATORY PROGRAM:		
Robert R. Nordhaus	June 1977	Sept. 1977
Gorman C. Smith	Apr. 1975	June 1977
John W. Weber	June 1974	Sept. 1974
GENERAL COUNSEL:		
Eric J. Fygi (Acting)	Feb. 1977	Sept. 1977
Michael F. Butler	Nov. 1975	Jan. 1977
Robert E. Montgomery	Aug. 1974	Nov. 1975
William N. Walker	Jan. 1974	June 1974

	Tenure of office From	To
ASSISTANT GENERAL COUNSEL FOR COMPLIANCE AND LITIGATION:		
Douglas Robinson	Sept. 1974	Aug. 1975
ASSISTANT GENERAL COUNSEL FOR COMPLIANCE:		
Avrom Landesman	Apr. 1975	Sept. 1977
ASSOCIATE/ASSISTANT ADMINISTRATOR, OFFICE OF COMPLIANCE AND ENFORCEMENT; DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF COMPLIANCE:		
Richard B. Herzog	May 1977	Sept. 1977
Avron Landesman	June 1974	Apr. 1975
Frederick Struckwisch	Jan. 1975	Nov. 1975
James Newman	Nov. 1975	May 1977
DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT:		
Gordon Harvey	Dec. 1976	Sept. 1977
Harold Butz	May 1974	July 1975
DIRECTOR, COMPLIANCE POLICY AND PLANNING:		
Gordon Harvey	July 1975	Sept. 1977
DIRECTOR, COMPLIANCE OPERATIONS:		
Glenn Bentler	Mar. 1976	Jan. 1977
Harold Butz	Mar. 1975	Mar. 1976

APPENDIX IV

GAO REPORTS AND TESTIMONIES ON DOE'S AND FEA'S ENFORCEMENT OF PETROLEUM PRICE CONTROLS

Report Title	Date issued
Report to the Chairman, Subcommittee on Government Regulation and Small Business Advocacy, Senate Select Committee on Small Business (EMD-77-71)	Nov. 7, 1977
Report on Transportation Charges for Imported Crude Oil--An Assessment of Company Practices and Government Regulations (EMD-78-105)	Oct. 27, 1977
Testimony Before the Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce	Apr. 6, 1977
Report to a Member of the House of Representatives (OSP-76-13)	Feb. 9, 1976
Report on the Federal Energy Administration's Efforts To Audit Domestic Crude Oil Producers (OSP-76-4)	Oct. 2, 1975
Report to the Federal Energy Administrator (OSP-76-2)	July 15, 1975
Testimony Before the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary	June 19, 1975
Testimony Before the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce	May 8, 1975
Report on Problems of Independent Refiners and Gasoline Retailers (OSP-75-11)	Apr. 4, 1975

APPENDIX IV

Report Title	Date issued
Testimony Before the Subcommittee on Reorganization, Research, and International Organizations, Senate Committee on Government Operations	Dec. 11, 1975
Report on Problems in the Federal Energy Administration's Compliance and Enforcement Effort (B-178205)	Dec. 6, 1974
Report on Problems in the Federal Energy Office's Implementation of Emergency Petroleum Allocation Programs at Regional and State Levels (B-178205)	July 23, 1974

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