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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

13517 attached to 13520

Gasoline Allocation: A Chaotic Program In Need Of Overhaul

The 1979 gasoline shortage was another reminder of the continued U.S. dependence on foreign oil supplies and the ever-present threat of supply disruptions. It also underscored our lack of preparedness to minimize the impacts of such disruptions.

This report examines why the Department of Energy's allocation program was ineffective in managing the shortage and makes recommendations for improving the program.

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APRIL 23, 1980

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 principal problems in the Department of Energy's administration of its gasoline allocation program. It contains recommendations for improving the program as well as for enhancing the Department's overall energy emergency response capability.

We made this review pursuant to the individual requests of 13 Senators and Representatives. However, because of the broad interest in this program, we are issuing the report to the Congress as a whole.

We are sending copies of this report to the Director, Office of Management and Budget, and to the Secretary of Energy.

Comptroller General
of the United States

AGC000912

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

GASOLINE ALLOCATION: A CHAOTIC PROGRAM IN NEED OF OVERHAUL

D I G E S T

The gasoline allocation program is the only program which can be used to manage the distribution of supplies when shortfalls are under 20 percent.

Yet, during the 1979 gasoline shortage the program failed to meet its intended objectives and is so seriously flawed that a major overhaul will be needed before better results can be expected.

Following the Arab oil embargo of 1973, the Congress provided legislative authority to deal with energy shortages and to assure sufficient supplies to priority users and equitable distribution of supplies nationwide. This authority will expire by October 1981 unless extended by the Congress. The Department of Energy (DOE) is responsible for satisfying these legislative objectives through its petroleum allocation program. Individual States play a key role in the program's implementation.

Under the Energy Emergency Conservation Act of 1979, rationing can be used only if the shortage is 20 percent or more, unless the President considers a lesser shortage to be a danger to national security.

CONCLUSIONS

When the supply shortage began in early 1979,

--emergency response planning was incomplete and outdated and

--Federal and State Governments were ill-prepared to deal with their supply management role.

period, although the purchasers are not obligated to buy the volumes offered them. The amounts purchased during the base period (base period volumes) are used to determine the quantity to which purchasers are entitled. Certain national defense, agricultural, and other uses are given priority in receiving gasoline. The remainder is allocated to nonpriority purchasers as a fraction of the base period volume.

Each prime supplier (a refiner or wholesaler who first transports gasoline into a State) generally must use a uniform allocation fraction nationwide in distributing the gasoline, unless DOE directs or approves the use of a different fraction for a particular region. In addition, a "set-aside" program permits States to direct the distribution of a portion of the gasoline to meet hardship and emergency requirements within the State. Each prime supplier must set aside 5 percent of the supplies for this purpose.

Firms can request an exemption from the regulations or appeal a decision of DOE through DOE's Office of Hearings and Appeals. (See pp. 9-11).

WORKLOAD REDUCTION AND MANAGEMENT PROBLEMS

DOE found itself in a ground swell of activity for which it had not planned or prepared. Its allocation program, prepared 5 years earlier and found by GAO and others to be seriously deficient, had not been revised or updated. Further, DOE had not defined how it would implement the program. (See p. 8.)

The day-to-day operations were poorly managed. The work pressures and the sheer volume of requests, coupled with staffing shortages, fueled a crisis atmosphere and the program floundered. (See p. 26.)

In the five DOE regional offices GAO visited there were large processing backlogs,

were switched from their normal audit and enforcement activities to augment the Office of Petroleum Operations field staff. (See p. 40.)

The Office of Special Counsel for Compliance did not begin its allocation audit of major domestic refiners until May and did not complete 14 audits, even though in some instances there was preliminary evidence of potential violations that needed further investigation. It suspended the audits to meet the deadline for completing its primary mission, but it plans to complete 9 of the audits in 1980 through the use of a contractor. (See p. 42.)

DOE needs to develop a staffing plan which would allow a quick scale-up of its audit and enforcement program at the onset of a gasoline shortage, using fully developed audit programs. Likewise, there should be public awareness that there is a reasonable chance that violators will be identified, and that DOE will take whatever enforcement actions are necessary to remedy the violations, including assessing adequate penalties to encourage compliance. (See p. 78.)

STATE SET-ASIDE PROGRAM PROBLEMS

DOE had not provided the States the program guidance and review necessary to promote more effective administration of the set-aside program. There were wide variations among the States' definitions of emergencies and hardships and the criteria for allocating set-aside supplies. Uniform and consistent administration of the State set-aside program is a critical prerequisite to an effective petroleum allocation program.

State energy offices were unprepared to handle the significant increase in workload. As a result,

--there were wide variances among the States in granting set-aside supplies, and State releases of set-aside volumes were not distributed uniformly or equally,

RECOMMENDATIONS

GAO is recommending that the Secretary of Energy act immediately to revise the Mandatory Petroleum Allocation Regulations and to insure successful implementation of the regulations during shortage periods. GAO makes a number of specific recommendations for improving the program, and identifies several desirable characteristics to be used in revising the program. (See pp. 81-84.)

AGENCY COMMENTS

DOE agreed with GAO's findings regarding operational aspects of the allocation program, with the exception of the portion dealing with the Office of Hearings and Appeals. (See app. II.) Consequently, DOE endorsed GAO's recommendations for identifying means to improve the program monitoring, audit and enforcement activities, Federal/State relations, and program planning and direction.

DOE said it was conducting a comprehensive regional office review to improve case management and strengthen program monitoring. Also, DOE said, it is in the process of resolving issues relating to the State set-aside program, including proper guidance, and reviewing of the entire allocation system and continuing audit and enforcement activities. The final report on the regional office review, issued in late March 1980, confirms GAO's findings regarding DOE's operation of the program during 1979.

However, DOE disagreed with GAO's findings regarding

--the base period,

--the regulatory functions performed by DOE, and

--the Office of Hearings and Appeals response to the problems created by the gasoline shortage.

GAO's evaluation of DOE's comments is contained in chapter 6, beginning on page 85.

Tear Sheet

Contents

CHAPTER 1

INTRODUCTION:

AN ERA OF ENERGY EMERGENCIES

Energy emergencies are no longer a novelty in the United States. Since the New England power blackout in 1965 they have recurred with increasing frequency. They include the fuel and propane shortages in 1972, the Arab oil embargo in 1973-74, the coal strikes in 1974 and 1977-78, the natural gas shortage during the 1976-77 winter, and most recently, the 1978-79 winter cutoff in oil exports from Iran.

The interruption of Iranian exports created a shortfall in world and U.S. crude oil supplies. The American public suffered long lines at gasoline service stations and reduced hours of gasoline sales, and they worried about the adequacy of heating oil supplies for the winter months. The availability and price of energy supplies caused widespread concern in the Nation.

REPORT OBJECTIVES

In the aftermath of the Iranian cutoff, 13 U.S. Senators and Representatives requested that we examine various aspects of the Department of Energy (DOE) petroleum allocation program. (See app. I.) Pursuant to agreements reached with their offices, we made a broad-scale, nationwide review of the program, including analyses of DOE's management of the summer 1979 gasoline and diesel shortages and the potential problems if a home heating oil shortage developed which would require Government actions. We addressed (1) the adequacy of DOE's allocation information and (2) the ability of DOE and State energy office officials to act in critical supply shortage situations to allocate available supplies fairly and in accordance with priority needs.

Since 1974, we have issued 24 reports (see app. III.) evaluating DOE's and the States' abilities to react to and manage an energy supply shortage. Others have also reported on DOE's effectiveness in these matters, including the Task Force on Regulatory Review of Contingency Allocation Regulations, the Presidential Task Force on Reform of Federal Energy Administration (FEA) Regulations, FEA consultants, and DOE's Office of the Inspector General. These many reports found and recommended correcting deficiencies in

--contingency planning for energy emergencies,

DOE's program operations were plagued by inadequate management and staffing, relentless demands for services, poor or totally lacking information systems, and unclear guidance and direction. Even under the best of conditions, the workload would have been formidable; in this instance, it was overwhelming. (See pp. 8 and 26.)

DOE's problems were mirrored in the States' set-aside program operations. Like DOE they had not prepared to deal with the sudden workload, and also were handicapped by the absence of clear, definitive guidance. (See p. 51.)

DOE's audit activities were belated and of mixed success. These audits and the work GAO performed encountered a high incidence of possible violations of allocation program regulations. (See p. 40.)

The United States will continue to risk shortages as long as it depends, in substantial part, on imported energy. Furthermore, in a product-short situation, industry decisions and practices, based as they are on profit motivations, may not satisfy public interests or needs and will warrant Government intervention.

Consequently, despite its shortcomings as presently designed and implemented, GAO favors efforts to make the allocation program an effective tool. The program has not yet had a "fair" test. After it was established in 1974 it was not significantly revised until the midst of the 1979 gas shortage; and even those revisions were "quick fix" remedies. (See p. 71.)

HOW THE PROGRAM IS SUPPOSED TO WORK

The regulations affect the entire gasoline distribution system, from the refiner to wholesalers to retail stations and bulk end-users. Basically, gasoline allocations are determined by reference to a historical base period. Suppliers must sell to the same purchasers who bought during the base

regulations and to take certain actions to reduce consumption of petroleum products.

The following DOE offices have primary responsibilities for administering the allocation regulations. Their organizational relationships are shown in the chart on page 4.

The Office of Regulations and Emergency Planning is responsible for developing policy and regulations concerning the allocation, distribution, and importation of crude oil, refined petroleum products, and natural gas liquids. Further, it is responsible for regulatory analyses of the allocation regulations to assure uniformity of application, and evaluations of their economic impacts.

The Office of Petroleum Operations (OPO) and its 10 regional offices are responsible for administering the allocation regulations. The headquarters office also acts on petitions from suppliers requesting DOE approval to use special provisions of the regulations, directs shifts in the distribution to meet supply imbalances, directs the redistribution of surplus motor gasoline, and maintains a capability for regulating decontrolled petroleum products should controls be reimposed.

The Energy Liaison Office serves as a central point of communication between DOE headquarters and State and local governments on energy emergency situations. The Office is responsible for identifying energy problem areas in the States and refers these problems to the appropriate operational divisions of DOE for necessary actions.

There are two enforcement agencies involved in the allocation program. The Office of Special Counsel for Compliance (OSC) and its three district offices--Southwest, Northeast, and Pacific--are responsible for intensified enforcement of the petroleum allocation regulations pertaining to the 34 domestic major refiners. Although this Office is organizationally a part of ERA, it receives direction on its compliance work directly from the Deputy Secretary of Energy. The Office of Enforcement (OE) and its six district offices--Northeast, Southeast, Central, Southwest, Rocky Mountain, and Western--are responsible for enforcement of the regulations pertaining to the other sectors of the petroleum industry.

Anyone experiencing a gross inequity or a serious hardship from supply dislocations caused by the regulations may petition DOE's Office of Hearings and Appeals (OHA) for an exemption from the regulations. This Office, including its five regional centers and five satellite offices, also is

with several adverse effects. Those seeking relief through DOE suffered by not receiving timely service. They sometimes turned to the State set-aside program, thus inappropriately increasing the workload of the States. (See p. 26.)

Much of the workload that consumed DOE's resources could have been averted if program requirements had been better defined and understood and an improved base period had been used. These measures, coupled with improved monitoring activities and a strong audit and enforcement program, would better insure that the program operates as intended. (See pp. 73-76.)

PROGRAM MONITORING PROBLEMS

DOE's lack of information on supply and market activity as well as operational information, or its failure to use the information on hand, was a recurring problem which eroded the program's effectiveness. For example, DOE could not determine whether supplies had moved to end-users and retail stations or instead were being stockpiled by distributors. DOE is taking action to obtain the information. Also, because DOE did not have confidence in the monthly allocation fraction reports from the suppliers it did not use them as a basis for exercising its authority to ensure equitable distribution of supplies throughout the United States. Because the States do not have access to the data, they are not in a position to know when imbalances exist and to request corrective action. (See pp. 18-23.)

AUDIT AND ENFORCEMENT PROBLEMS

DOE needs to establish an audit and enforcement program that will better assure program integrity and deter violators. DOE was not prepared to audit compliance with allocation regulations at the beginning of the 1979 shortage. Its Office of Enforcement did not begin its full-scale audit effort of small refiners until June, and of product resellers until August. Some of its staff

responsible for conducting hearings, and analyzing and ruling on appeals of DOE's regulatory decisions.

States' role

The allocation regulations provide for State programs to help alleviate hardship or emergency situations within a State as a result of temporary gasoline supply shortages. A percentage of the supplies brought into each State is "set aside" for this purpose. The State can direct the distribution of these set-aside supplies. The State is responsible for evaluating all applications for set-aside supplies, using ERA guidelines. Applicants are entitled to receive only enough supplies at a time to relieve their problems for a month. (See ch. 4.)

SCOPE OF REVIEW

Because of time constraints, we necessarily limited our audit work to a quick, broad review of the entire allocation program to obtain a general understanding of how well the program was administered and complied with and to identify program weaknesses. We did not perform an in-depth analysis of the impact of the weaknesses we identified, nor did we review in detail DOE's practices for determining who is entitled to adjustments or exceptions to the regulations. Our main review objectives were to

--evaluate DOE's and the States' preparedness to react to and mitigate supply disruptions during the 1979 gasoline and diesel shortages (see chs. 2 and 4),

--determine the effectiveness of the allocation program's design in meeting its basic charter of assuring sufficient gasoline supplies for priority uses, providing equitable distribution of gasoline supplies throughout the United States, and protecting the viability of certain independent gasoline marketers (see ch. 2),

--evaluate DOE's administration of the allocation program by focusing our attention on identifying problems in energy data management and verification systems, staffing, workload, facilities, and coordination between headquarters and the regional offices (see ch. 3),

--determine DOE's effectiveness in conducting surveillance and enforcement activities to insure the industry's compliance with the allocation regulations and

--set-aside supplies were distributed without requiring adequate documentation of emergency or hardship conditions,

--applicant information was not being verified, and

--priority users whose requirements should have been met through normal distribution channels were receiving set-aside supplies.

(See p. 51.)

PROBLEMS IN PROGRAM PLANNING AND DIRECTION

DOE failed to revise and update its program and to plan for its implementation. As a result, DOE was forced to make numerous program modifications, revisions, and updates between February and August 1979 during the course of the shortage. The frequency of changes and their immediate implementation caused significant problems, both for the industry in complying with the changes and for DOE field offices in retraining staff and dealing with the increased workload.

The changes were made without benefit of regulatory analyses and, in many cases, without public hearings, and with minimal time for written comments from interested parties. Also, this ad hoc approach forced DOE to make its decisions based on limited information, and invited further changes. (See pp. 11-17.)

DOE's emergency planning and management is fragmented and lacks overall high-level coordination and direction. In response to a similar finding by DOE's Inspector General, in September 1978 the Assistant Secretary for Policy and Evaluation was made responsible for coordinating departmental energy emergency planning activities. However, this action does not go far enough and the need still exists for the appointment of a full-time coordinator of energy emergency planning, with full-time staff. (See pp. 17-18.)

Phillips Petroleum Company (Kansas and Missouri), Sun Oil Company (Massachusetts), and Union Oil Company of California (California). Our work was limited in that, to avoid duplicate information requests to the prime suppliers, where possible we depended on information already obtained by the Office of Special Counsel for Compliance.

We also interviewed officials of selected wholesalers, distributors, and retailers of motor gasoline and home heating oil in the States we visited. These were Eric Oil Company (Minnesota), Fawcett Services Industry (Massachusetts), Gary Lowrie Oil Company (Kansas), James O. Gourley Oil Company (Tennessee), Hollingsworth Oil Company (Tennessee), Hutchinson Cooperative (Minnesota), Lonsdale Oil Company (Minnesota), Root River Oil Company (Minnesota), Sandri, Inc. (Massachusetts), V.B. Smith Distributing Company (Georgia), Stevens Oil Company (Georgia), UCO Terminals, Inc. (California), U.S.A. Petroleum Corporation (California), Wickland Oil Company (California), and Yocum (Minnesota).

The retailers we visited included Allen's Gulf Service Station (Georgia), Jack's Union 76 Service Station (Minnesota), Phillips Petroleum Company Retail Sales Outlet (Kansas), and Pine Ridge Standard Service Station (Minnesota).

In addition, we examined certain activities of the following selected high-demand priority users: the U.S. Postal Service (California and Washington, D.C.), the Department of Defense (Washington, D.C.), and the Agricultural Council of California. We also interviewed officials of several trade associations--Georgia Oilmen's Association, Indiana Oil Marketers Association, Kansas Oil Marketers Association, Minnesota Independent Retailers Association, New England Fuel Institute, Northwest Petroleum Association (Minnesota), Petroleum Retailers of Arizona, Inc., and the Tennessee Oil Marketers Association.

Time constraints limited our information verification efforts. We did not verify the accuracy of information reported to DOE by companies on gasoline supply inventories nor company computations for allocating fuel to its customers each month.

changed effective March 1, 1979, to the corresponding month in the period July 1977 through June 1978.

The regulations establish distribution priorities in line with the EPAA mandate to, as much as possible,

--protect public health, safety, and welfare and the national defense,

--maintain public services, and

--maintain agricultural operation.

Until August 1979, the 1974 priority rules were in effect. National defense and agricultural functions were given highest priority, and these users were initially entitled to 100 percent of their current requirements. The second priority users--emergency services, energy production, sanitation services, cargo, freight and mail hauling by truck, and aviation ground support vehicles and equipment--were allocated a portion of their current requirements. Effective August 1, 1979, DOE merged all these priority users into a single category, entitling them to 100 percent of their base period purchases.

As indicated earlier, the Mandatory Petroleum Allocation Regulations also established a State set-aside program which permits States to direct the distribution of certain motor gasoline supplies to meet the hardship and emergency requirements of end-users within that State. The supplies distributed under the State set-aside program are 5 percent of the supplies brought into the State. (The figure was 3 percent until May 30, 1979.) If the State does not direct the distribution of all the set-aside volumes by the end of the month, the distribution responsibility reverts to the suppliers. Applications for supplies can be made directly by the user or through a wholesaler. (See ch. 4.)

The allocation process begins with the prime supplier (a refiner or wholesaler) who first transports gasoline into a State for consumption within that State. The prime supplier, using DOE Form EIA-25, "Prime Supplier Monthly Report,"

--forecasts the total supplies available for distribution during the following month,

--subtracts priority entitlements,

--subtracts State set-aside volumes, and

ABBREVIATIONS

CPA	Certified Public Accountant
DOE	Department of Energy
DOD	Department of Defense
EPAA	Emergency Petroleum Allocation Act
ERA	Economic Regulatory Administration
FEA	Federal Energy Administration
GAO	General Accounting Office
OE	Office of Enforcement
OHA	Office of Hearings and Appeals
OPO	Office of Petroleum Operations
OSC	Office of Special Counsel for Compliance
PE	Office of Policy and Evaluation
SRO	Special Report Order

supplies from multiple sources--again requiring computation of an allocation fraction to guide distribution to the next level. The allocation fraction computation and its effect on distribution from refiner to retailer are shown in the illustration on page 12.

Middle distillates (home heating oil and diesel fuel) are now exempted from the allocation regulations. At present only the State set-aside program is active for middle distillates. DOE has not developed a contingency plan for implementing a middle distillate allocation program. In our report, "Iranian Oil Cutoff: Reduced Petroleum Supplies And Inadequate U.S. Government Response" (EMD-79-97, Sept. 13, 1979), we stated that DOE collects virtually no information on petroleum product stocks held by wholesalers and distributors. We recommended that DOE develop a reliable system for gathering, verifying, and publishing accurate and complete energy data in a timely manner. This system should include information not only on refinery stocks and operations, but also on the stocks at the middleman level--wholesalers, jobbers, and distributors. DOE now collects this information for middle distillates, but not for gasoline. The forms to collect the data on gasoline have been prepared for this system, but as of March 21, 1980, DOE and the Office of Management and Budget were considering whether reporting should be monthly or quarterly.

EMERGENCY PLANNING DELAYED OR AVOIDED

DOE's failure to revise and update its program and its failure to plan for its implementation evolve from a tendency to depend on ad hoc reactions to emergency situations. DOE officials involved in developing contingency planning policy told us that conditions and circumstances of energy emergencies are difficult to predict and plan for. We agree that some events and situations cannot be forecast, but this fact should not be used as an excuse for not planning for reasonably predictable situations. For example, workload processing and control systems, temporary staffing arrangements, and funding contingencies are the types of situations that lend themselves to advance planning.

Another factor which affected DOE's ability to respond to the gasoline supply problems was staffing shortages which are the result of the administration's requirement since fiscal year 1977 that DOE plan its programs on the basis that decontrol of all petroleum products would become a reality. This meant that budget requests reflected reduced staffing levels. DOE officials acknowledged that the allocation regulations have created problems, but said that regulation

--the adequacy and accuracy of data on energy emergencies,

--coordination among Federal, State, and local governments on energy supply problems,

--compliance and enforcement activities, and

--regulatory program management.

This report discusses these past findings and recommendations in chapters 2 and 3 in the context of our current findings.

DOE'S ALLOCATION RESPONSIBILITIES

In response to the U.S. shortage of petroleum supplies resulting from the 1973 Arab oil embargo, the Congress enacted the Emergency Petroleum Allocation Act (EPAA) (15 U.S.C. 751, et seq.) in November 1973. This act directs the President to issue regulations to control the allocation and selling price of crude oil, and refined petroleum products, including gasoline. The act states that, to the extent practicable, the regulations are (among other things) to insure equitable distribution of petroleum products at equitable prices among all regions and areas of the United States and to preserve the independent and small business sector of the petroleum industry, and preserve competition in general. The authority and responsibility given to the President to establish these regulations were delegated to the Secretary of Energy and the predecessor officials.

DOE'S role

The Mandatory Petroleum Allocation Regulations, administered by DOE's Economic Regulatory Administration (ERA), implement the EPAA. Though it is not universally known, the regulations have been in effect since they were issued in January 1974. However, except for minor disruptions when supplies of unleaded gasoline have been limited, there had been adequate gasoline supplies in succeeding years until 1979. In March of 1979 several refiners had smaller supplies of gasoline available for allocation to their customers. Other companies began to follow suit and by June refiners had reached their lowest point in gasoline distribution for 1979.

On January 12, 1979, ERA established the Standby Petroleum Product Allocation Regulations, giving the Administrator, ERA, authority to make quick changes to certain provisions of the Mandatory Petroleum Allocation Regulations. They provide flexibility to update the allocation or price

improvements had not been made before the 1979 shortage occurred because of staff shortages and the lower priority attention given the allocation program when gasoline supplies were adequate.

"Quick fix" approach to regulation revisions-- slow and not comprehensive

DOE has known about many of the problems in the allocation program for some time but has continued to put off major changes and to rely on some "quick fix" rule changes.

The Acting Director, Petroleum Allocation Regulations Division, told us that as far back as 1975, some DOE elements began to examine alternatives to the existing allocation program. For example, a November 10, 1975, study shows that FEA was considering a number of new or revised features for the allocation program. 1/ These included:

--A revised petroleum product user priority classification system that differentiates among public service, agricultural, energy production, and other economic sector users.

--A mechanism to account for changes in energy uses, conservation, and fuel substitution by petroleum product users over time.

--A mechanism for continually updating the base year volume against which allocation shares are determined.

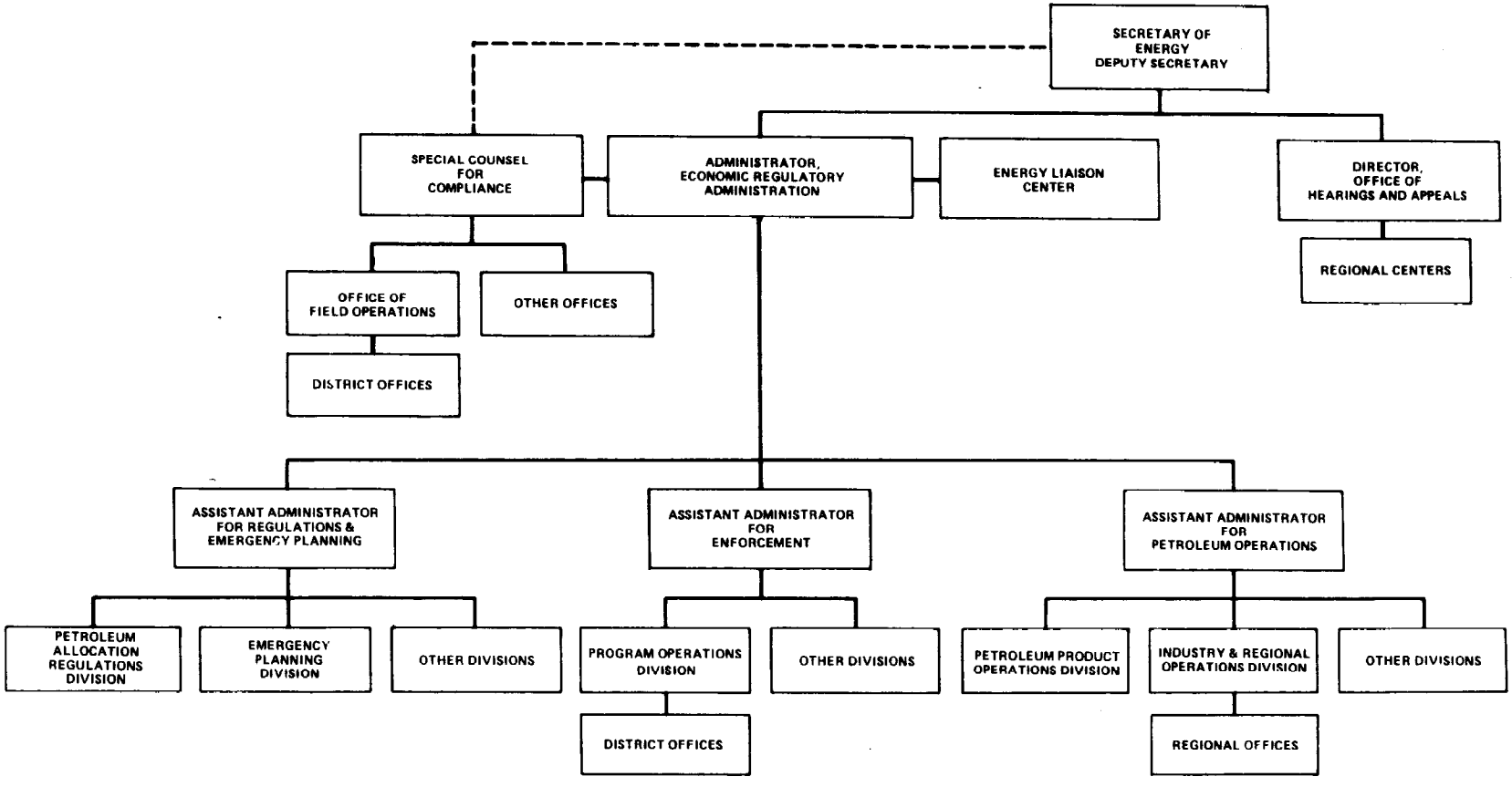
--Longer ranged forecasts of fuel allocations.

--An information system that meets the needs of the allocation program.

The study report analyzed problems and recommended revisions to the petroleum product user priorities in the allocation program as a basis for any likely future allocation program.

1/Resource Planning Associates, Inc., "Further Revision of the Petroleum Regulations Priority Classification System," prepared under contract to FEA.

DOE ORGANIZATIONS RESPONSIBLE FOR ADMINISTRATION OF THE PETROLEUM ALLOCATION REGULATIONS



The numerous changes, coupled with their frequency and immediate implementation, caused significant problems, both for the industry in complying with the changes and for DOE field offices in retraining staff and dealing with the increased workload. (See ch. 3.)

The Assistant Administrator, Petroleum Operations, responsible for operating the allocation program, told us that her office measures the program's effectiveness on the basis of the volume of complaints received and the incidence of enforcement problems observed in the field. If the complaints and problems appear to warrant it, the regulations are revised.

Between January 12 and July 5, 1979, DOE made 27 changes to its motor gasoline and middle distillate allocation regulations. This ad hoc approach of making changes as problems are encountered resulted in the changes being made effective immediately, rather than providing time for regulatory analysis and public comment.

We believe one of the problems with this approach is that the Department is forced to make its decisions based on limited information, which opens the way for further changes. We found that most of the allocation regulation changes were made on this basis. Therefore, there were no or minimal public hearings and only minimal time for written comments from interested parties.

For example, since May 1979 four regulations concerning motor gasoline allocation base periods and set-asides have been made effective with no advance notice and with a full waiver of the requirement to provide for written comment. This has effectively denied most interested parties the benefit of a regulatory analysis and an opportunity to comment before adoption of the regulation. In some cases the regulations have been made effective on issuance, with comments invited afterwards. Companies have complained that this, in effect, assures instability because it will eventually lead to new regulations or, at a minimum, to some change.

The numerous, frequent changes and the immediacy of their effective dates are illustrated by the examples provided on the following page.

identify industry problems in observing the regulations for distributing gasoline (see ch. 3),

--evaluate the States' effectiveness in administering their set-aside programs to meet temporary hardship or emergency supply problems within States (see ch. 4), and

--determine DOE's preparedness to manage a potential middle distillates allocation program should the need arise (see ch. 2).

Our audit work for this report was conducted at DOE and ERA headquarters in Washington, D.C., and OPO regional offices in Atlanta, Boston, Chicago, Kansas City, and San Franciso. The regional offices we visited provided a broad perspective on the allocation program's implementation in the urban and agricultural sectors.

We also conducted audit work at OE's Northeast, Southeast, Central, and Western district offices. From this audit work we were able to evaluate DOE's efforts to monitor and enforce the industry's compliance with the allocation regulations.

We reviewed applicable legislation, policies, regulations, program documents, reports, correspondence, applications for adjustments of allocated gasoline supplies (Form ERA-99), applications for exceptions to DOE regulations, and appeals of regulatory decisions. We reviewed 10 Forms ERA-99 from each OPO regional office we visited. We also reviewed 10 applications for exceptions or appeals from each DOE regional OHA we visited.

We interviewed officials at State energy offices regarding the effectiveness of their participation in the set-aside program. We spoke to officials in Arizona, California, Georgia, Indiana, Kansas, Massachusetts, Minnesota, Missouri, Nevada, Rhode Island, and Tennessee.

Furthermore, we conducted limited audit work concerning selected firms which are prime suppliers of motor gasoline and home heating oil to the States we visited and which serve a large number of priority users. These prime suppliers (and the States they serve that we visited) included Amoco Oil Company (Illinois), Atlantic Richfield Company (California), Chevron U.S.A., Inc. (California), Farmers Union Central Exchange (Minnesota), Gulf Refining and Marketing Company (Georgia and Tennessee), Kerr-McGee Refining Corporation (Kansas and Missouri), Northeast Petroleum Corporation (Massachusetts),

Subject (cont.)	Issue date	Effective date
Amendment to motor gasoline priority users, restricting current users to 100 percent of base period--final	July 16	Aug. 1
Other areas		
Motor gasoline end-user minimum purchase rule	June 19	June 19 through Sept. 30
Governor's motor gasoline authority	July 11	July 11
Assignments to new retail sales outlets	July 15	July 6 through Oct. 31

The problems caused by these frequent changes are discussed in chapters 3 and 4. The Administrator, ERA, told us on February 20, 1980, that future changes to the regulations would be accomplished with benefit of regulatory analysis and public comment.

Departmental energy emergency planning needs improvement

The 1979 experience makes it even more clear that DOE could profit by consolidating and coordinating its energy emergency planning.

We had previously brought this matter to DOE's attention in our October 10, 1978, report, "Improved Energy Contingency Planning Is Needed to Manage Future Energy Shortages More Effectively" (EMD-78-106). In the report we recommended, among other things, that

--DOE make sure that a specific plan of action is provided to respond to energy emergencies.

--The development of an energy emergency management information system be given top priority within the Energy Information Administration (EIA).

--DOE's energy emergency forecasting capability be refined to candidly report current energy impacts and to present a balanced assessment of projected conditions.

CHAPTER 2

DOE WAS UNPREPARED

FOR A GASOLINE SHORTAGE

DOE was ill-prepared to manage the 1979 gasoline supply shortage. Its allocation program, established 5 years earlier and found by us and others to be seriously deficient, had not been revised or updated when the 1979 crisis first developed. Further, DOE had not defined how it would handle the increased program activity during a crisis period--how the program would be staffed or how supplies and facilities would be provided. The predictable adverse effects occurred in many areas of our Nation and are described in succeeding chapters.

Why was DOE unprepared? First, its tendency has been to rely on crisis management in dealing with emergency situations--to depend on ad hoc responses, rather than well-planned approaches to anticipated problems. Second, since fiscal year 1977, DOE and its predecessor have budgeted for a scaled-down regulatory program on the assumption that petroleum products would be decontrolled. The reality DOE faced was reduced staff levels in the face of continued controls and increased staffing demands to deal with a highly volatile and critical supply problem.

BASIC PROGRAM ELEMENTS

The Federal Energy Office issued the Mandatory Petroleum Allocation Regulations in January 1974, 6 weeks after passage of the EPAA. The motor gasoline allocation portion of the regulations affects the entire distribution system from the refiner to wholesalers and finally to the retail stations.

To protect purchasers' access to gasoline supplies, the regulations provide that supplier/purchaser relationships in an earlier "base period" will be maintained. Suppliers must sell to the same purchasers who bought from them during the base period. The amounts purchased during the base period, referred to as "base period volume," are used to determine the quantity of products to which purchasers are entitled.

From the program's inception until March 1979, the base period for any given month was the corresponding month in calendar year 1972. That period was selected because it was thought to be the most recent year properly mirroring free-market conditions. In February 1979 the base period was

The monthly allocation fraction reports from the prime suppliers, when considered in the aggregate, give an indication of whether the supplies will be equitably distributed throughout the United States. The reports made during 1979 indicated that the distribution would not be equitable. DOE officials told us, however, they did not have enough confidence in the accuracy of the reports to use them as a basis for exercising its authority to adjust the distribution.

The use of a fixed base period means that outdated business relationships are not adjusted for and do not adequately reflect changing demand patterns or current business conditions, yet influence the distribution of the gasoline. This is precisely what happened as DOE continued to use 1972 as the base period. In February 1979 ERA finally established a more current base period. However, that caused the industry to make numerous changes to adjust to the new base period. Many were made without DOE involvement, but others could not be and DOE was flooded with applications. DOE was caught unprepared to handle this workload. The severe backlogs and delays it experienced in processing the applications are discussed in chapter 3.

We believe a reliable reporting system could be devised. A method of automatically updating the base period is discussed on page 74.

Unreliable supply distribution data

The regulations do not coordinate the actions of individual refiners or prime suppliers to assure equitable distribution throughout the United States. Federal antitrust statutes prevent the refiners from coordinating their marketing activities themselves. Each company is generally required to use a single fraction in distributing supplies nationwide, but

--not all suppliers serve all States,

--the allocation fractions vary among the prime suppliers, and

--a prime supplier's share of the State market varies from State to State.

As a result, the composite allocation fraction for individual States (the combined allocation fraction of all prime suppliers serving the State) can vary among States.

The following schedule shows the allocation fractions of the individual prime suppliers serving the State of Georgia

--divides the remaining supplies by the base period volumes of the remaining purchasers, thus arriving at the "allocation fraction," or the percentage of the base period volume that the purchasers will be entitled to receive.

The prime supplier must use a uniform allocation fraction nationwide to guide the distribution of the gasoline, unless DOE directs or approves the use of a different allocation fraction for a particular region. Companies are generally able to maintain a uniform fraction by adjusting the distribution of their own supplies, or through purchase or exchanges with other companies. Companies that experience problems in maintaining a uniform distribution fraction are permitted to make temporary adjustments of less than 5 percent on a month-by-month basis, and notify DOE after the fact. If a more persistent problem is encountered, or they need more than a 5-percent change, they must ask DOE for advance approval of multiple allocation fractions (different fractions for different States or regions). DOE, on its own initiative, may direct companies to use multiple allocation fractions to correct regional imbalances.

Suppliers are obligated to serve the purchasers they served during the base period, but the purchasers are not obligated to buy the volumes offered them. Purchasers who have experienced unusual growth between October 1978 (the end of the base period) and February 1979 (when the base period was updated) may obtain relief through an adjustment of the base period volume. The supplier is responsible for making this one-time adjustment without waiting for a request from the eligible purchasers. Purchasers coming into business since the base period are assigned base period volumes by DOE, in line with base period volumes of comparable businesses nearby.

DOE, under authority of the DOE Organization Act (42 U.S.C. 7101, et seq.) also provides a mechanism for making adjustments in cases involving gross inequity or serious hardship. Through the Office of Hearings and Appeals a purchaser or supplier can request an exemption from regulations or can appeal a decision made by DOE.

Although the prime suppliers are generally required to use a uniform allocation fraction, as the supplies move through the distribution chain each level frequently has a different allocation fraction. The first purchaser may be purchasing from several refiners--each with a different allocation fraction. The purchaser should then compute an allocation fraction to guide distribution to the next level in the distribution chain. That level may also be receiving

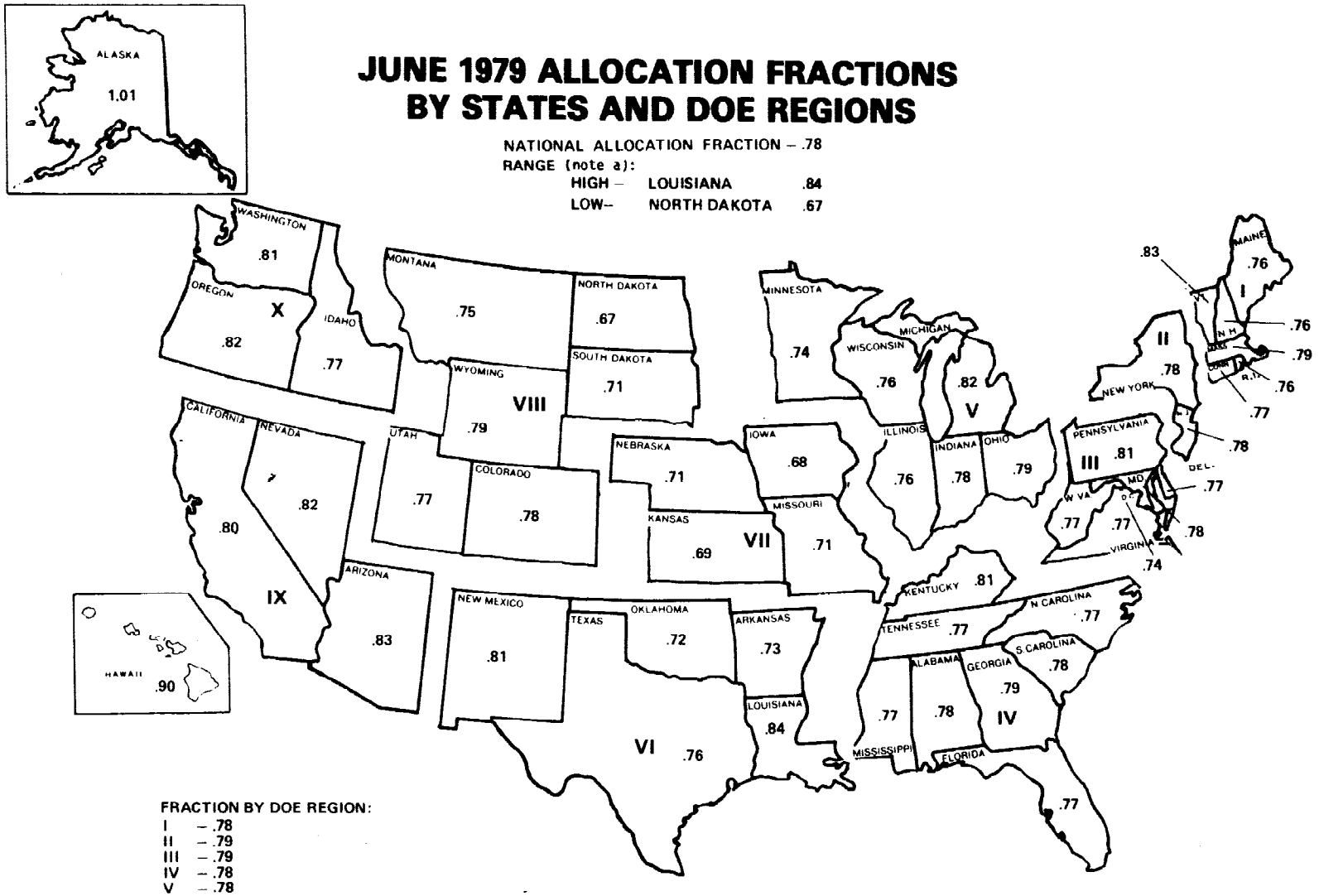
JUNE 1979 ALLOCATION FRACTIONS BY STATES AND DOE REGIONS

NATIONAL ALLOCATION FRACTION – .78

RANGE (note a):

HIGH – LOUISIANA .84

LOW– NORTH DAKOTA .67



FRACTION BY DOE REGION:

I – .78
II – .79
III – .79
IV – .78
V – .78
VI – .77
VII – .70
VIII – .76
IX – .81
X – .82

a/EXCLUDES ALASKA AND HAWAII.

ILLUSTRATION OF ALLOCATION FRACTION COMPUTATION AND ITS EFFECT ON DISTRIBUTION FROM REFINER TO RETAILER

ALLOCATION FRACTION COMPUTED BY THREE REFINERS

	REFINER A	REFINER B	REFINER C
FORECAST OF TOTAL AVAILABLE SUPPLY FOR THE COMING MONTH	700,000,000 GALS.	135,000,000 GALS.	29,000,000 GALS.
LESS:			
PRIORITY ENTITLEMENTS	(55,000,000)	(7,000,000)	(1,500,000)
STATE SET-ASIDE VOLUMES	(35,000,000)	(6,750,000)	(1,450,000)
AVAILABLE TO NONPRIORITY CUSTOMERS	610,000,000	121,250,000	26,050,000
DIVIDED BY BASE PERIOD VOLUMES (BPVs)	÷762,500,000	÷186,538,460	÷61,294,117
ALLOCATION FRACTIONS	0.80	0.65	0.425

ALLOCATION FRACTION COMPUTED BY FIRST WHOLESALE CUSTOMER

WHOLESALER D IS A CUSTOMER OF REFINERS A AND B AND HAS BASE PERIOD VOLUMES OF 1,000,000 AND 500,000 GALLONS, RESPECTIVELY, FROM THEM.

VOLUMES RECEIVED (EXCLUSIVE OF PRIORITY ENTITLEMENTS):

- FROM REFINER A (1,000,000 GAL. BPV X 0.80)
- FROM REFINER B (500,000 GAL. BPV X 0.65)
- TOTAL

COMPOSITE ALLOCATION FRACTION (1,125,000 : 1,500,000 GAL. BPV)

ALLOCATION FRACTION COMPUTED BY SECOND WHOLESALE CUSTOMER

WHOLESALER E IS A CUSTOMER OF BOTH WHOLESALER D AND REFINER C AND HAS BASE PERIOD VOLUMES OF 450,000 AND 300,000 GALLONS, RESPECTIVELY, FROM THEM.

VOLUMES RECEIVED (EXCLUSIVE OF PRIORITY ENTITLEMENTS):

- FROM WHOLESALER D (450,000 GAL BPV X 0.75)
- FROM REFINER C (300,000 GAL. BPV X 0.425)
- TOTAL

COMPOSITE ALLOCATION FRACTION (465,000÷750,000 GAL. BPV)

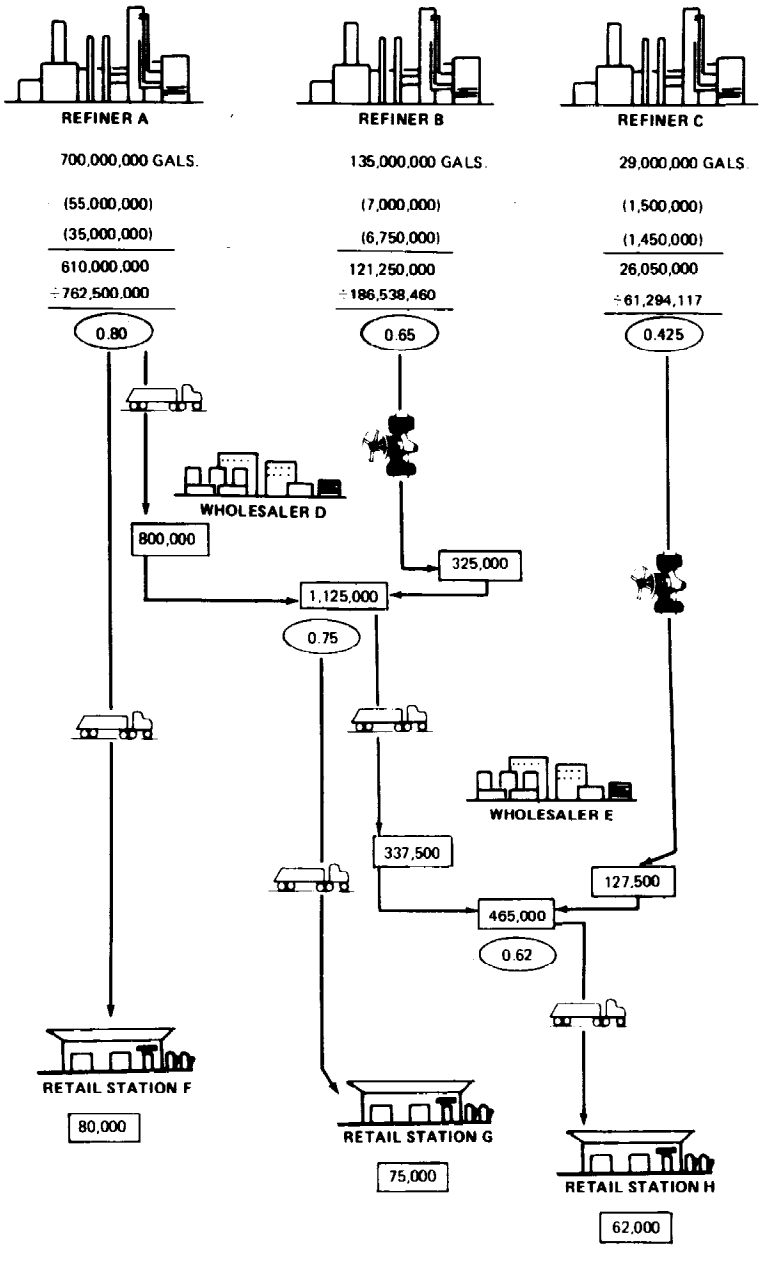
VOLUMES RECEIVED BY THREE RETAIL STATIONS

ALL THREE STATIONS HAVE BASE PERIOD VOLUMES OF 100,000 GALLONS

RETAILER F IS OWNED AND EXCLUSIVELY SUPPLIED BY REFINER A. IT RECEIVED (100,000 GAL. BPV X 0.80)

RETAILER G IS AN INDEPENDENTLY OWNED BRANDED STATION, RECEIVING ITS SUPPLIES FROM WHOLESALER D (100,000 GAL. BPV X 0.75)

RETAILER H IS AN INDEPENDENTLY OWNED, NONBRANDED STATION. RECEIVING ITS SUPPLIES FROM WHOLESALER E (100,000 GAL. BPV X 0.62)



Note: All Figures For Refiners, Wholesalers, And Retailers Are Hypothetical.

These illustrations, showing the wide range of allocation fractions among suppliers and the wide range of composite fractions among the States, demonstrate that the program does not assure equitable distribution of supplies thoughout the United States. As noted earlier, ERA told us it lacked confidence in the reliability of the allocation fraction data as reported by the companies and consequently had not attempted, on a monthly basis, to use its authority to order firms to adjust the distribution as a means of correcting these regional imbalances. DOE has awarded a contract to study the problems in the allocation fraction reporting system. The final report had not been issued by the contractor as of March 25, 1980.

Outdated base period

The gasoline allocation program's use of historic distribution patterns and business relationships as a basis for allocating supplies created problems in implementing the program because the base period did not reflect current market distribution patterns.

When the allocation program was first established in 1974, the corresponding month in 1972 was chosen as the base period. When the Arab embargo ended in 1974 and gasoline supplies became sufficient again to meet demand, interest in the allocation program waned and for years no changes were made to the established base period. Meanwhile, some gasoline marketing firms went out of business, new firms were established, and the volumes sold by continuing firms increased or decreased. Similarly, customers who qualified as priority users changed. Seller/purchaser relationships also changed. However, under the allocation regulations the prime suppliers were required to use the same 1972 base period when they periodically computed and reported to DOE the allocation fraction.

The problem is not new. The Presidential Task Force on Regulatory Reform noted in its 1976 report that many purchaser/supplier arrangements existing at that time no longer reflected the "official" relationships which were established by the program, but had changed in accordance with the dynamics of the market. As a result, many of the base period relationships which legally existed as part of the program simply did not reflect current market distribution patterns. The Task Force was concerned that in a time of a shortage the then-current regulations (basically maintenance of the 1972 base period relationships) would result in complete chaos because many transportation and distribution patterns would

The Acting Director further said that to meet some of the major problems, such as the need for a revised base period, DOE developed some "quick fix" regulations to be available in the event of a shortage of products, either those that had already been decontrolled, such as middle distillates, or those still under controls. These Standby Petroleum Product Allocation Regulations took over 2 years to develop and issue (Dec. 1976 to Jan. 1979).

These regulations would allow the Administrator, ERA, to reimpose allocation and price controls on products that had been exempted and to make changes to the refiner and reseller price rules. Also, the Administrator could update the base period, impose maximum allocation fractions, or increase or decrease the base period volumes of certain large-volume fuel users with the capability to use alternate fuels.

The Deputy Secretary of Energy, in a June 15, 1979, letter to a member of the Council of Economic Advisors, said that these standby regulations were intended to be temporary, and would eventually be replaced by permanent regulations. The Deputy Secretary noted that the standby changes had the advantage of providing a program familiar to industry and government, but they did not address the much larger tasks of revising the priority classification system, devising a simpler regulatory system, or analyzing the effects on the economy of wholly new and untried approaches to allocation and price regulation.

The Deputy Secretary stated that DOE had a contractor working on an analysis that is needed as a basis for choosing among various methods of allocation and price regulation. The DOE official monitoring this study told us that, although the study draft report was completed in May 1979, as of March 21, 1980, they were discussing revisions with the contractor and did not know when the final report would be issued. The Assistant General Counsel for Petroleum Regulations, DOE, and the Director, Petroleum Allocation Regulations, ERA, both told us that there had been little interest within DOE or the industry to improve the allocation program within recent years because there had been more than enough gasoline.

Multiple regulation changes while the program was active

DOE's failure to refine and update its program in advance of an emergency required it to make numerous revisions to the regulations during the height of the 1979 shortage.

--processing applications for assignment of base period volumes for new firms.

Failure to keep the fixed base period updated virtually guarantees that when a shortage occurs, OPO and OHA are confronted with a flood of applications for such adjustments or appeals for exemptions from the regulations.

The 1979 experience showed that normal staffing levels were not able to handle the heavy workload which suddenly developed. This situation was not surprising in itself, and it would be unreasonable to maintain a staffing complement all of the time to respond to workload peaks. The lesson to be learned from this experience, however, is the need for DOE to plan for these eventualities--something it has not done. (The problems this situation caused are discussed in ch. 3.) Furthermore, DOE should look for ways to improve the program design to minimize workload surges, and perhaps reduce the workload.

Selected Changes to Mandatory Petroleum Allocation Regulations and Related Actions

Subject	Issue date	Effective date
Base period		
Notice of activation order to update the motor gasoline allocation base period stand-by regulation--interim rule	Feb. 22	Mar. 1
Guidelines regarding updated base period--request for comments	Mar. 14	Mar. 14
Motor gasoline allocation base period and adjustments--interim final	May 1	May 1
Motor gasoline allocation base period and adjustments--final	July 15	Sept. 1
State set-aside		
Amendment to include gasoline retailers within State set-aside program--final (special rule no. 8)	Apr. 19	Apr. 19
Amendments to extend special retailers provision of motor gasoline set-aside program and to increase set-aside volumes to 5 percent--final (amendment to special rule no. 8)	May 25	June 1
Priority users		
Amendments on levels for Department of Defense uses--final	June 4	June 7

seller/purchaser relationships and assignment of suppliers and base period volumes for new firms. The regional Offices of Petroleum Operations were responsible for handling this paperwork, but large backlogs developed and Office of Enforcement staff were temporarily reassigned to OPO to assist in processing. This, in turn, reduced the resources available to devote to surveillance and enforcement. In the five regions we visited, we found problems in assembling, training, and organizing staff and the lack of a management information system to control the work. The field Offices of Hearings and Appeals experienced similar difficulties in responding to the requests for exemptions or exceptions to the regulations or appeals of decisions by OPO.

Chapter 4 discusses instances in which those who did not receive timely relief through ERA turned to the State set-aside program for relief, thus inappropriately increasing the States' workload. Also, many applications received "rubber stamp" approvals, that is, without verification of the information contained in the applications. Therefore, ERA had no assurance that the actions taken were warranted by the facts in the cases. Resolved cases were not monitored to assure consistent and appropriate disposition.

The problems the Office of Hearings and Appeals had in processing the workload were exacerbated by the work required to effect consolidation of OHA regional offices. There also were coordination problems between field and headquarters units.

Workload management problems

Both OPO and OHA received a surge of workload which they were unprepared to handle. The staff OPO added to deal with the workload were not trained in advance, received inadequate training, had inadequate facilities, and had work limitations. OHA's problems were compounded because during the period March through May 1979 when the shortage was developing and OHA's workload was increasing, OHA headquarters consolidated the 10 field offices into 5. This was intended to provide more efficient use of staff to meet the increasing workload, but it also caused coordination problems.

Both Offices were hampered by not having an adequate management information system to track and manage the workload. Also, both were hampered by inadequacies in their administrative procedures.

DOE told us, in responding to our report, that as of August 1978, the Assistant Secretary for Policy and Evaluation was formally assigned the task of coordinating Departmental energy emergency planning activities. The Assistant Secretary was also given the responsibility for energy emergency policy development and designated as the Chairman of the Energy Management Emergency group, the body which will coordinate the Departmental response during an energy emergency. We found that, although this group was involved in the development of the Iranian response plan, they made little contribution to the decisions ERA made concerning the gasoline allocation program because ERA tended to bypass the group and deal directly with the Deputy Secretary of Energy.

In a September 15, 1978, report on energy emergency preparedness, the DOE Inspector General stated that the Office of Policy and Evaluation (PE) had produced little in the area of emergency plans, mainly because of the way it has set its own priorities. 1/ The Inspector General said that PE had devoted its attention to gasoline rationing and given most other contingencies little attention as yet.

The Director, Office of Emergency Response Planning, told us that nonemergency plans and activities tend to demand priority and pull top management's attention away from energy emergency planning. He also stated that another problem is that different DOE offices have very similar responsibilities, which causes duplicative emergency planning efforts.

Our views on how to give energy emergency management planning the attention it needs are discussed beginning on page 80.

PROBLEMS COMPLICATING THE PROGRAM

The allocation program has two key problems which complicate program execution. These are

--the failure to provide a reliable reporting system which could be used to identify significant supply imbalances between States or regions and to provide a basis for corrective action, and

--the constantly aging fixed base period.

1/U.S. Department of Energy, Office of Inspector General, "Energy Preparedness," Inspection Report, Part I, Sept. 15, 1978, p. 5.

Weaknesses in workload management

Several weaknesses existed in DOE's workload management:

--The staff in place was too small to handle the increased workload.

--The staff obtained to handle the increased workload was inexperienced and the training provided was inadequate.

--The staff was poorly utilized because of work restrictions and use of the most experienced staff to provide on-the-job training.

--There was a lack of screening procedures to ensure proper handling of the workload.

--There were communication problems which hampered efficient workload processing.

Inadequate staffing--The OPO and OHA field staff levels at the time the gasoline allocation program was activitied were insufficient. Therefore, the OPO staff was augmented by staff detailed from DOE elements, by temporary hires, and by contractor personnel. OHA not only increased its staff through a contract, but also concentrated its field staff by reducing the number of field offices.

The increases in OPO staffing are shown in the following schedule.

Staffing	Feb.	Mar.	Apr.	May	June	July	Aug.
Permanent	99	94	95	97	94	93	92
Detailed	-	3	4	6	28	30	27
Temporary	-	-	2	5	26	32	35
Subtotal	99	97	101	108	148	155	154
Contract	-	-	12	35	38	36	34
Total	99	97	113	143	186	191	188

An OPO official informed us that one of the biggest problems was the personnel ceiling on regional office staff. The budget for OPO regional offices for fiscal year 1977-79 had been about 40 people for the 10 regions. The official said that OPO had been instructed to budget as if petroleum products would be completely decontrolled, which accounted for the low numer of staff budgeted for the regions.

for the month of August 1979, and the resulting composite allocation fraction for the State. Also shown is the composite fraction for the United States.

Schedule of Prime Suppliers' August 1979
Allocation Fractions For Georgia

Amerada Hess Corp.	00.950
American Petrofina, Inc.	00.600
Amoco Oil Co.	00.700
Ashland Oil, Inc.	00.848
Atlantic Richfield	00.850
Champlin Petro. Co.	00.700
Charter Oil Co.	01.000
Chevron USA	00.880
Cities Service Co.	00.800
Coastal States Mtg.	00.998
Conoco, Inc.	00.750
Crown Ctrl. Petro. Corp.	00.800
Delta Refining Co.	00.833
Exxon Corp.	00.850
Gulf Oil Corp.	00.850
Hi Octane Terminals	01.000
La Gloria Oil & Gas	00.850
Marathon Oil Co.	01.000
Mobil Oil Corp.	00.870
Murphy Oil Corp.	00.820
Phillips Petro. Co.	00.700
Shell Oil Co.	00.750
Tenneco Oil Co.	00.770
Texaco, Inc.	00.780
Texas City Refg., Inc.	00.950
Tosco Corp.	00.750
Triangle Ref., Inc.	00.630
Union Oil Co. of Cal.	00.800
State composite allocation fraction	00.807
U.S. composite	00.818

The map on page 21 shows the varying composite allocation fractions for each State for June 1979 when the national fraction was at its lowest in the period from January to November 1979. The map on page 22 shows the varying composite allocation fractions for each State for May 1979 when the range of composite allocation fractions was at its greatest during the same period.

a staffing level capable of promptly processing the workload. The regional offices in San Francisco, Seattle, and Denver had, in total, a staff of 1 at March 1, 1979. They were combined as the Western Regional Center in May 1979. By September 4, 1979, the permanent staff had been increased to 12 and, even with the 5 staff members provided under contract, was not adequately handling the increasing number of cases. The Director informed us that appeals and exceptions were taking from 90 to 120 days to complete. He estimated that with adequate staff, facilities, and equipment, this processing time could be cut down to 2 to 4 weeks.

OE provided staff and management to OPO field offices--ERA had to use OE to augment the staff in all OPO field offices and to manage three OPO regional offices. OE had to devise and install a work management system for the three offices.

By the time the allocation workload materialized, the OPO field staff had been reduced, during the past several years, both in numbers and management grade levels. To deal with the increased workload, 44 OE staff members were detailed to OPO field offices around the country. They generally remained for periods of 60 days. There were eight still on detail to the Atlanta OPO on March 25, 1980.

To provide management, the higher ranked OE regional directors were given the additional responsibility of directing the OPO regional offices in Atlanta, Chicago, and Denver. This dual responsibility was still in effect on March 25, 1980, for Atlanta and Chicago. OE sent a team from headquarters to review the organization, procedures, and management practices of the Atlanta OPO office. It found numerous problems and devised a system for processing the workload. The team also made organizational and management practice changes which were instituted in June 1979.

Most of these changes were also made in the Chicago OPO office. Because of its lower workload, only a few changes were made in the Denver office.

While this assistance from OE to OPO improved the ability of the OPO field offices to handle the sudden increase in workload, it also reduced the resources available to OE to both continue its normal audit activities and to provide surveillance and enforcement of the industry's compliance with the allocation regulations during the crisis period.

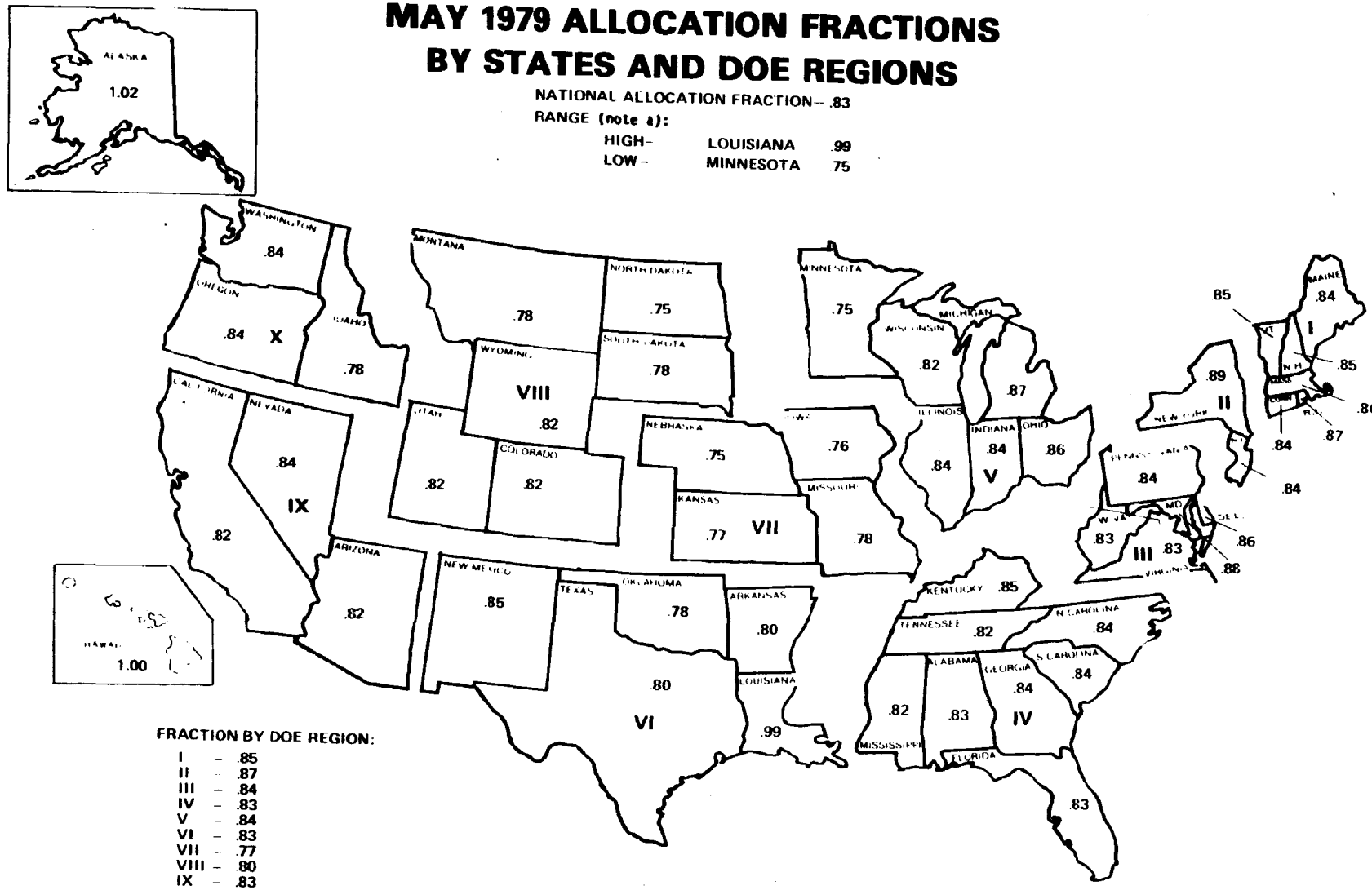
MAY 1979 ALLOCATION FRACTIONS BY STATES AND DOE REGIONS

NATIONAL ALLOCATION FRACTION – .83

RANGE (note a):

HIGH – LOUISIANA .99

LOW – MINNESOTA .75



FRACTION BY DOE REGION:

I	–	.85
II	–	.87
III	–	.84
IV	–	.83
V	–	.84
VI	–	.83
VII	–	.77
VIII	–	.80
IX	–	.83
X	–	.84

a/EXCLUDES ALASKA AND HAWAII.

The applicant resubmitted the case under the correct name of the retail outlet but, because this was a different name, it was set up as a new case when subjected to the normal screening procedures. The case was also referred to another case examiner. Moreover, processing of the case was delayed because of the need to again ask for data which had been supplied on the previous application.

Poor staff utilization--We found that the staff was not utilized as well as they could have been because of the manner in which training was provided and because of limitations on the work that contract staff were allowed to perform.

The lack of formal training had an effect on operations because regular full-time staff had to train new workers individually during the heavy workload period. An OPO official in the Kansas City region told us this occurred there with both DOE and contract temporary personnel who were new. We noted that, to the extent possible, the more experienced contract personnel provided training for their own employees.

A Kansas City OPO official said the lack of training also meant that the more difficult cases were being avoided by the inexperienced, temporary personnel. Meanwhile, more experienced employees were already overburdened by their own workload.

Another factor was the role of contractor personnel. A contract was entered into with a CPA firm to provide additional staff to assist OPO. This was done because the firm was familiar with certain refiners. These contract personnel were limited to applications involving these refiners and this reduced their effectiveness.

DOE had previously obtained the services of this firm to assist the Office of Special Counsel in audits of the 34 major U.S. oil companies. Thus, when the gasoline shortage occurred, OPO contracted with the firm to assist in processing applications involving any of the 34 major oil refiners as a prime supplier.

When we visited the Kansas City office, we examined the CPA firm's records which showed that, in any one week, the firm had as many as seven staff members working at DOE's regional office, putting in from 2 to 40 hours. However, because of "running out of cases to work" involving the 34 refiners, they pulled staff off the job from time to time.

have to change instantaneously and many sellers would be placed at a competitive disadvantage because of artificially low base period volumes.

The Task Force's concern was borne out, but in a manner not envisioned by it. DOE updated the base period at the last moment before the shortage hit and the chaos arose from the flood of applications to adjust to the new base period.

In February 1979 several refiners were already unable to supply the base period volumes of their customers and others had announced that they would not be able to do so in March.

DOE, therefore, on February 22, 1979, updated the 6-year-old base period to the corresponding month in the period July 1, 1977, to June 30, 1978. The change was to be effective for the period March 1 through May 31, 1979. Effective May 1, 1979, the base period was advanced 4 more months, to November 1977 through October 1978. This change was to be effective through September 1979. This last change was made permanent on July 15, 1979.

In addition, on May 1, 1979, DOE instituted a rule known as the "10-percent growth adjustment factor," or the unusual growth provision. The rule was established to make adjustments for increases in a retail station's sales which occurred between the base period and February 1979 when the base period was updated. For example, if a retail station's average monthly purchases for the period October 1978 to February 1979 exceeded that of March 1978 by more than 10 percent, the allocation for March 1979 could be based upon the higher amount. A separate calculation would be required for each month.

Each change in the base period meant "good news and bad news." The good news was that a more recent period more closely approximating current conditions was used. The bad news was that the firms had to determine hastily the seller/purchaser relationships and the base period volumes for the new base period, calculate allocation fractions, and, if necessary, request adjustments of the base period volumes through exceptions or exemptions. Long delays in ERA or OHA actions on the requests were common.

ERA's Office of Petroleum Operations has the responsibility for

--approving changes in supplier/purchaser relationships, and

applications intended for OHA were initially sent to OPO. Because of the backlog at OPO, several weeks could pass before the form was recognized as an appeal or application for exception and forwarded to OHA.

There is an additional delay associated with the applications for exceptions. The Boston OHA performs no processing function with such applications. They are forwarded to the Washington OHA for processing. Applicants are notified of this and advised of whom to contact regarding the status of the application.

We believe applications could be processed in a more timely manner if applicants were instructed to mail them directly to the office where they would be processed.

Frequent regulation changes increased the workload--The Boston OPO director said that the numerous changes to the regulations created problems in that each change normally meant that OPO would receive numerous telephone calls from individuals seeking more information. The telephone calls, estimated at 1,200 per week in May and June, diverted OPO staff from processing applications and thus contributed to the growing backlog. OPO staff also noted that every application affected by a regulation change had to be reworked in accordance with the new regulation, regardless of the status of the application. This often meant recalling orders from the typing pool where they were being typed for final issuance.

The Kansas City OPO acting director particularly noted problems with the changes to the base period regulations. He said his office had no idea that the most recent change in the base period was even being contemplated. Moreover, at the time this information was received by the region, his staff had not processed all the applications caused by the previous base period change. The San Francisco OPO director said that the ability of the OPO staff to process work had been hampered by the continual process of learning required to keep up with the regulatory changes.

Poor or nonexistent management information systems--OPO had not provided an automated management information system to keep track of the status of the applications received by the regional OPO offices. OHA had such a system for tracking its regular workload, but did not have the capacity to handle the increased workload associated with the gasoline allocation program. This lack of control hampered the orderly processing of the workload.

CHAPTER 3

INADEQUATE PROGRAM ADMINISTRATION, BELATED AND INCOMPLETE AUDITS, AND WIDESPREAD NONCOMPLIANCE

The outdated regulations and inadequate program implementation planning resulted in a large workload that DOE was not prepared to handle. Large processing backlogs developed. Also, the agency's audit activities were belated and of mixed success. These audits and our review identified a high incidence of possible violations of the regulations.

Backlogs developed in the five DOE regional offices we visited, not only because the program created an unnecessarily heavy workload volume, but also because the workload was not handled effectively. The backlog had several adverse effects. Those seeking relief through ERA did not receive timely service and turned to the State set-aside program for relief, thus inappropriately increasing the workload of the State energy offices. Also, in most cases decisions were made on the applications without verification of the information contained in them. Instead, reliance was placed on the certified statements in the applications and on comments from "aggrieved parties" (competitors of the applicant who may be adversely affected if the applications were granted).

The Office of Enforcement had not prepared to satisfy audit needs during shortages. It was June 1979--the low point in gasoline distribution--before it was able to begin its full-scale audit effort.

Some resources of the Office of Special Counsel for Compliance were diverted from its mission to conduct allocation program audits of some major refiners, but some of its audits were ended prematurely because of the need to resume and complete certain of its primary mission audits. The allocation audits were later resumed using a Certified Public Accounting (CPA) firm under contract, and are to be completed by April 30, 1980. However, the results of these audits, along with the work we performed, indicate that there was widespread noncompliance with the allocation program regulations.

INEFFECTIVE PROGRAM OPERATION

The gasoline shortage and the outdated regulations brought a surge of applications in 1979 for changes in

Ineffective program results

Predictably, both OPO and OHA experienced large workload backlogs. Also, they were making decisions with limited or no verification of the information provided by the applicants.

Large backlogs

OPO experienced its backlog in its regional offices. OHA's backlog occurred in both its field and headquarters offices. The backlogs were both large and, in many cases, old.

The monthly staffing and case backlog for the OPO regional offices during the period March through August 1979 are shown in the following schedule.

	Mar.	Apr.	May	June	July	Aug.
Staffing	97	113	143	186	191	188
Ending backlog	3,307	5,612	6,640	7,426	7,704	7,106

The schedule shows that, although the regional staffing had nearly doubled in June, July, and August, the initial backlog experienced in March had more than doubled.

The case backlog was old as well as large, based on our limited testing. For example, at the Kansas City regional office the 10 oldest cases had been unresolved for over 100 days at the time of our visit. Four of the 10 cases had not been assigned to application examiners for over 105 days after they were received.

In the Boston regional office in mid-August 1979, we selected 10 of the oldest outstanding cases. Two of the 10 were received in February 1979, 7 in March, and 1 in April. One significant delay was in assigning the cases to examination officers. For these 10 cases, the length of time between receipt of the application and assignment to an examiner ranged from 11 days to 71 days, with an average of 45 days. The reason cited for the delays generally was the volume of applications and the size of the backlog.

A Boston OPO official estimated that the average application takes 60 to 90 days to process, with many exceeding that time. The backlog had increased from 105 at the end of January 1979 to 586 at the end of July 1979.

Sudden heavy workload to process

The surge of workload for OPO occurred primarily in the regional offices. The following schedule of the monthly caseload for the period March through August 1979 shows that by June the workload had more than doubled.

Workload	Mar.	Apr.	May	June	July	Aug.
Cases received	2,275	5,039	4,354	4,617	4,497	3,777
Total cases	–	8,346	9,966	11,257	11,923	11,481
Cases processed	–	2,734	3,326	3,831	4,219	4,375
Case backlog	3,307	5,612	6,640	7,426	7,704	7,106

Comparable statistics are not available for OHA workload. Its automated caseload tracking system does not differentiate between the cases generated by the allocation program and other DOE programs. However, we believe the increases in its total caseload, shown in the following schedule, can reasonably be attributed to the gasoline allocation program.

Workload	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.
Headquarters:									
Cases received	203	1,829	2,153	1,807	1,109	962	649	561	478
Total cases	1,011	2,635	4,453	5,537	5,461	5,062	5,246	5,037	4,806
Cases processed	205	335	723	1,185	1,361	465	770	709	766
Case backlog	806	2,300	3,730	4,352	4,100	4,597	4,476	4,328	4,040
Regions:									
Cases received	133	616	1,128	905	1,644	1,060	1,279	1,458	1,160
Total cases	369	938	1,891	2,682	3,749	4,293	5,244	6,296	6,970
Cases processed	47	175	114	577	516	328	406	486	787
Case backlog	322	763	1,777	2,105	3,233	3,965	4,838	5,810	6,183

OHA had caseload increases in both the headquarters and regional offices. The following schedule of the monthly caseload for the period February through September 1979 shows that by May the headquarters caseload had increased over fivefold and the regional caseload had increased over sevenfold. By October the regional caseload had increased over eighteenfold.

The San Francisco Regional Center was established in May 1979. The lack of trained staff, facilities, and equipment caused a tremendous backlog of cases. When we visited the center on August 31, 1979, 637 of the cases had been outstanding for 1 or more months.

DOE, in commenting on a draft of this report (see app. II), stated that by December 1979 OHA had significantly reduced the backlog. However, we examined information which more recently became available and found that, while the backlog has been mightily reduced, there appears to be a significant backlog remaining and a large portion of it is old. The following table, abstracted from February 20 and 21, 1980, OHA caseload aging reports, shows that about 90 percent of the headquarters backlog and 21 percent of the regional backlog are over 6 months old.

	Total open cases	Ages of cases: Less than 90 days	Between 91 and 108 days	Over 6 months: Number	Over 6 months: Percent
OHA headquarters	1,144	52	64	1,028	89.86
OHA regions	3,824	2,098	930	796	20.82

Insufficient verification

One of the most disturbing problems in program administration has been the inadequate verification of information received from applicants. OPO generally does not verify the information and OHA makes verification checks by telephone. Thus, DOE has limited or no assurance that the decisions made are supported by the facts in the case. Reliance is placed on the certifications contained in the applications and on comments from aggrieved parties. An aggrieved party is a competitor of the applicant who may be adversely affected by approval of the application. The aggrieved parties are identified by those submitting the applications.

The Director, OPO, told us that generally the OPO regional offices did not verify the information contained in the requests for assignment of base period volumes for new stations, and other requests affecting the allocation of gasoline to individuals.

In the Atlanta OPO, for example, applicant information was not verified until the Regional Director of Enforcement assumed responsibility for the OPO activities. Enforcement

To deal with its problems, OHA established five regional centers to consolidate and handle cases previously handled in all 10 DOE regions. An OHA official told us that OHA wants to have at least 18 staff in each of the 5 regional centers instead of 2 or 3 staff in each of the 10 regions. OHA believes consolidating the regions will provide needed expertise.

The increase in OHA headquarters and field staffing is shown in the following schedule.

Staffing	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.
Headquarters									
Permanent	75	74	74	74	75	76	88	92	91
Detailed and Temporary	8	11	11	18	22	22	20	19	17
Subtotal	83	85	85	92	97	98	108	111	108
Contract	-	-	-	10	10	10	10	10	7
Total	83	85	85	102	107	108	118	121	115

Regions	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.
Permanent	15	15	15	15	15	18	18	26	39
Detailed and Temporary	-	-	-	-	3	6	10	14	14
Subtotal	15	15	15	15	18	24	28	40	53
Contract	-	-	-	10	28	29	31	31	29
Total	15	15	15	25	46	53	59	71	82

By the time DOE began increasing the OHA headquarters and regional staff in May, the headquarters caseload had increased fivefold over the February caseload. (See p. 28.) The regional caseload had increased sevenfold.

The Deputy Director, OHA, advised us that on August 6, 1979, the fiscal year 1979 full-time employee staff ceiling of 117 was raised to 166, an increase of 49. Also, the fiscal year 1980 ceiling was established as 211, an additional increase of 45 employees.

The Western Regional Center in San Francisco illustrates OHA's lack of staffing when the gasoline allocation program was activated and the delays experienced in reaching

at nine of the firms, to be completed by the end of February 1980. The deadline was extended to April 30, 1980, because of access problems during refiner strikes.

The results of the OE audit activity indicate widespread noncompliance by the industry. Even the limited work of OSC found instances of apparent noncompliance. Other evidence we obtained supports this view.

Office of Enforcement: late, but a productive approach

OE had not developed audit strategies and audit programs before the Iranian shortfall, and the industry had been allocating supplies for 4 months before OE's small refiner and reseller audit programs were into full-scale implementation in June 1979. However, OE's audits were finding a large number of possible violations.

Small refiners

Around February or March 1979 OE began development of the audit program for small refiners (those other than the 34 major refiners covered by the Office of Special Counsel). The audit program is directed toward computation of the allocation fraction, following the allocation fraction in distribution of supplies, and activities in the spot market.

OE documents indicate that 18 small-refiner allocation audits had fieldwork completed as of October 16, 1979. These audits began between May 9 and September 17, 1979. Suspected violations were found in eight of the audits.

OE estimated that there are about 150 small refiners. OE also estimated that about 30 to 40 of them represent about 70 to 80 percent of small refinery production and are concentrating their audits on them. This targeting of small refiners for audit seems to be reasonable. The preliminary indications from the initial audits of small refiners are that there is a high incidence of possible violations of the regulations. Whether this will be borne out as these and other audits are completed and the cases are brought to a conclusion remains to be seen.

Resellers

In February 1979 OE established a headquarters unit to be responsible for allocation and pricing audits of resellers of refined products. The audit approach selected was to send Special Report Orders (SROs) to selected companies. The SRO is designed to elicit information which would disclose possible violations.

Inadequate training of inexperienced staff--As the OPO staff was increased, the new staff members were not adequately trained. This was reflected in the quality of work performed, and slowed the workload processing.

In the San Francisco regional office OPO staff were not receiving any training on processing applications or the changes to the regulations until June 1979, when a new Director, OPO, was assigned and established a training program.

In the Boston regional office we found that OPO did not have a formal training process for new employees. Training basically was received on the job. Regional OPO staff gave new employees a 1- or 2-day briefing on the regulations and a package of all the forms used. The supervisor also gave new employees 25 to 30 completed cases of various types to review and discuss with him.

At the Kansas City regional office we found that temporary staff, including contract personnel, received only limited formal training. Both Kansas City OPO officials and contract officials said that the initial group of five contract personnel received a brief formal orientation at DOE Washington headquarters and also a more intensive orientation session for several days at the regional office. However, due to lack of the overall continuity of contract staff during the life of the initial contract, about 5 months (discussed below), it was not possible to provide this formalized training to all new contract personnel. Therefore, subsequent contract staff received on-the-job training. An OPO official attributed the need for this type of training to the constant fluctuation of contract personnel and the demand on permanent personnel during the crisis period.

We found several instances in which the lack of training was reflected in the quality of work performed. For example, in one case, a priority user was denied assistance by DOE and was referred to OHA. He was not, however, informed that as a high-priority user he was entitled to 100 percent of base period use and should contact his supplier. A DOE supervisory official was not aware this had happened until he was notified by the applicant's State energy office that this individual should be considered a priority user.

In another case the name of the retail outlet was not properly identified. The case examiner, a temporary employee who had not received formal training, dismissed the case and asked the applicant to resubmit a new application in the actual name of the sales outlet. This action was not reviewed in detail by supervisory personnel. Thus, for all practical purposes, the case was classified "resolved."

Office of Special Counsel resources diverted to allocation audits

A portion of OSC's staff resources were diverted for a short time to audit 18 of the 34 major refiners' compliance with the allocation regulation during March and April 1979. The audits commenced in mid-May 1979 and were to be completed by August 1, 1979. They involved 120 auditors for a total of about 15,000 staff-hours.

Public concern about the major refiners' reaction to the gasoline crisis prompted OSC to interrupt its normal work for a period of 70 days. The Director of Field Operations, OSC, in a memorandum dated May 11, 1979, directed the three district directors to undertake a motor gasoline allocation audit of the 15 major refiners already undergoing OSC's 1973-76 pricing and certification audit, plus another firm. The Director said the increasingly short supply of motor gasoline made it imperative that OSC be in a position to determine the compliance levels of the major refiners with the allocation regulations. Subsequently, two additional firms were added for audit, a total of 18.

The time schedules associated with the allocation audits were extremely short. Each refiner was to be notified by May 14, 1979. A memorandum on the preliminary results of the audit was to be provided for each refiner by June 15, 1979. Summary reports were to be submitted by August 1, 1979. The district directors were instructed to report any indications of widespread noncompliance with the allocation regulations if their preliminary review of materials indicated any problems.

Because OSC had audit staff at these major refiners and had established working relationships, the allocation audits were to commence immediately. The audit teams were to initially review the firm's motor gasoline allocation activities during the months of March and April 1979. The purposes of the audit were to evaluate:

--The method of computing the allocation fraction.

--Whether the allocation fraction was observed in distribution of the product.

--The refiners' activities in the spot market.

Although we found some differences among the districts, the basic approach included (1) sending questionnaires to those companies which had the greatest crude oil shortage requesting information on crude oil supplies, surplus refined

At the San Francisco office we found that contractor personnel were excluded from cases on which they might have a conflict of interest, from telephone cases, and from general correspondence and walk-in cases. All staff--permanent and temporary--were generally involved with processing applications. The permanent staff (except for two secretaries) perform all case work except assignments to new retail outlets, in which case they advise the contractors and review their work.

This limitation was removed in September 1979 when the Office of Enforcement negotiated a new contract which will allow the contractor to work on all cases regardless of the supplier.

Lack of application screening--Prompt, orderly workload processing was hampered by inadequate or nonexistent screening of applications. Thus, there were delays in

--identifying incomplete applications and requesting the missing information, and

--identifying and forwarding applications that should have been sent to other DOE units.

Normal procedure calls for applications to be date-stamped, logged in, and screened for completeness upon receipt. The director of the Atlanta OPO told us that when he was appointed he found that this procedure was not being followed. He said that case resolution officers returned many applications because of missing information. Also, the office was not compiling information on the types of cases processed and the case backlog.

The director of the Boston OPO said the clerical shortage eliminated the screening process. The applications did not receive preliminary screening until they were received by the supervisor of case examiners, which might be 2 or 3 weeks after they were received at OPO. At the time of our visit the director said he was advertising for a case control clerk, but had had difficulty getting applicants.

The lack of screening by the Boston OPO also affected the timeliness of processing appeals and applications for exceptions by the Boston OHA satellite office. The acting director said most applications are forwarded to OHA from the Boston OPO. Because there is no special form for these applications, the applicants submit them on Form ERA-99 with an attached letter stating that they are appeals or applications for exception. This is the same form used to make requests to OPO for assignment of suppliers or base period volumes. Consequently, many

the allocation fraction report but did not verify the company records used in computing the allocation fraction. We found during the course of our work that the company had failed to deduct priority users' supplies before computing the fraction. (See p. 47.)

Phase II audit incomplete--The inadequacies of the OSC audits created by not receiving needed data are well illustrated by its audit of company C. The phase II audit at company C was suspended before the audit was completed, and the audit objectives were not met.

The OSC audit of the company's March and April 1979 computation of its allocation fraction was incomplete at the time of our visit with the OSC audit staff on August 28, 1979. Much of the information required for the audit, particularly regarding supply obligations, had not yet been provided by the company. OSC staff also stated that they were not able to verify much of the information which was available to them because of time constraints imposed for the audit. Consequently, OSC was not able to determine whether or not the company's declaration of an allocation fraction of less than 1 was justified.

In evaluating the company's adherence to DOE regulations, OSC identified several differences between the company's and DOE's allocation fraction methodology. For example, DOE allocation regulations adjust total supply available by subtracting priority user volumes before the allocation fraction is calculated. The company, however, only considered priority user volumes on a customer-by-customer basis after the fraction had been calculated. The result of this practice is that the needs of priority users are met from the volumes allocated to their wholesalers rather than from the refiner's total supplies. It is unlikely that all of the company's wholesalers have identical priority user volume commitments. Therefore, to the extent that there are variations, the actual allocation fraction varies among the company's customers, rather than being identical as required by DOE regulations. OSC was not able to assess the impact of the company's handling of priority user volumes because OSC never received enough information on its priority users.

OSC attempted to evaluate the company's justification for declaring an allocation fraction of less than 1. OSC, however, was unable to do this because it did not receive data on

--the company's total crude inventories for January-June 1979, or

The Director of Enforcement, Atlanta, said that when he was given responsibility for the staff and functions of the Atlanta OPO in June 1979, one of the problems he encountered was the absence of an automated management information system. He said that:

--The office did not compile information on the types of cases processed and backlog of cases.

--Procedures for locating active files did not exist. Personnel could not locate files in a timely manner, and many times not at all.

He also said that placing the application information in a computer system could assist in verifying information and in processing applications. He said that computerization could help find abuses such as the same applicant applying under different names, as well as readily identify duplicate applications, and identify the base period volumes of comparable retail outlets.

An OHA official said that the computer system for tracking regional office cases was generally inadequate and was being redesigned. He told us that although the old computer system worked well in the past, it was not capable of handling the tremendous increase in workload. In addition, he said that OHA headquarters is shifting all motor gasoline exception cases to the regions, which will further increase their workload. As a result, some regional centers, such as Dallas, did not have any of their cases on the computer tracking system.

The inadequate computer tracking system, combined with the OHA processing procedures, also resulted in coordination problems. Cases completed by OHA field offices are forwarded to OHA headquarters for review. Also, when the OHA regional centers were being established, some regional work was shifted to other regions. For example, for a time the Chicago Regional Center was handling all the cases from the San Francisco and Kansas City regional offices. Further, as noted in the previous section, the applications for exemptions received by the Boston satellite office were forwarded to OHA headquarters for handling.

An OHA official told us that there had been some regional coordination problems, including, at one point, overlaps in case handling by headquarters and regional offices. He said that OHA planned to establish a regional and headquarters listing of cases to crosscheck and eliminate duplicative handling of cases.

--supplied company-owned retail stations more gasoline than authorized by regulation.

In addition, OSC could not reconcile the company's reported supplies with company records.

OSC's special audit of company G's allocation procedures also indicated that gasoline is not being distributed in accordance with the regulations. OSC found in two States that 50 percent (37 of 74) of the stations' gasoline sales exceeded their base period allocation in March 1979 by an average of 8,536 gallons. They found that in April 1979 the sales for only one company-owned station exceeded its base allocation. However, in May 1979, 59 percent (44 of 75) of the stations' sales exceeded their base period allocation by an average of 18,477 gallons. Because the audit was not completed, OSC had not evaluated the effect on the independent retail stations the company serves. The company, however, did agree to stop the practice.

GAO results indicating possible noncompliance

In addition to the possible noncompliance identified by OE and OSC, we found several other examples during our work at the companies and OPO offices. These involved computation of the allocation fraction, distribution of supplies, adjustment of base period volumes, and certification of priority user supplies.

Because of time constraints we did not perform in-depth analyses of these examples of noncompliance to determine if they were intentional or unintentional.

Improper computation of allocation fraction and distribution of supplies

Two of the 10 prime suppliers we visited did not properly compute their allocation fractions nor did they follow the fraction in distributing gasoline. Three of the 13 wholesalers we interviewed also did not follow the allocation fraction in distributing gasoline.

In reviewing company B's reports to DOE on its allocation fraction, we found that the company in computing its allocation fraction for May, June, and July 1979 failed to recognize large quantities of gasoline that should have been reserved for agricultural priority users. The regulations in force at that time provided that priority users were to receive 100 percent of their current needs.

In the San Franciso regional office we selected 10 of the 105 cases resolved in June 1979 and found that on the average it took about 53 days to go through case screening and an additional 62 days to go through case resolutions. The office, prior to February 1979, had been receiving an average of 50 applications monthly and averaging a backlog of about 600 cases. However, from February 1 through August 31, 1979, OPO had received about 4,200 applications, averaging 600 monthly, and the backlogs had correspondingly increased (1,650 cases at June 15 and 875 on July 27, 1979).

In the Chicago regional office we selected 10 cases resolved by July 31 and found that on the average it took 10 days to go through case screening and 27 days to case resolution--an average of 37 days in total. The range was 3 to 76 days from receipt to resolution.

The monthly staffing and case backlog for the OHA headquarters and regional offices during the period February through October 1979 are shown in the following schedule.

	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.
Headquarters									
Staffing	83	85	85	102	107	108	118	121	115
Ending caseload	806	2,300	3,730	4,352	4,100	4,597	4,476	4,328	4,040
Regions									
Staffing	15	15	15	25	46	53	59	71	82
Ending caseload	322	763	1,777	2,105	3,233	3,965	4,838	5,810	6,183

The cases in backlog vary in age. For example, in August the Atlanta OHA Regional Center was processing May, June, and July cases. Some cases dating back to 1978 were awaiting headquarters review.

The Chicago OHA Regional Center had the worst backlog. When the regional centers were being established, Kansas City, and San Francisco for a time, transferred all of their cases to Chicago, but Chicago did not receive additional staff with the additional workload. Unfortunately, the reorganization and case transfer occurred at the same time DOE issued regulations changing the base period. Two prime suppliers had a number of requests appealing assignment orders, and 5 months or more had elapsed since OHA contacted either firm.

During discussions with company E officials, we found that for June and July 1979 the company did not have sufficient motor gasoline to meet the needs of its customers. Beginning in August 1979, the company asked its customers to submit certifications based on quantities actually sold during the base period for agricultural purposes.

Many of the company's customers sell fuel both by bulk delivery to farms and through retail service stations. In responding to the certification request, many of the customers reported service station sales as agricultural use, probably because most service stations' sales are made to farmers and the station managers considered such sales to qualify as priority usage. This would not be a proper interpretation, however, because only bulk deliveries for use in farm equipment are qualified as agricultural usage.

The company, therefore, did not have valid data on which to arrange equitable distribution for August. The dilemma was temporarily resolved only because additional supplies were obtained to enable them to distribute 100 percent of the needs of both priority and nonpriority users. In February 1980 a company official said the problem persisted. He said the data could be validated through site visits to the 1,500 wholesalers, but the cost would be high.

A wholesaler in one State and two distributors in another State acknowledged that they did not always deliver customer supplies according to authorized allocations. The wholesaler told us that he did not know his customers' allocations and that he made no attempt to limit sales to authorized amounts. The distributors told us that they generally had enough gasoline to meet all customer demands. As a result, they had no reason to limit sales to authorized amounts.

Improper certifications to obtain supplies

The regulations require wholesalers and retailers to certify their priority requirements, but do not require priority end-users to certify their priority supply volumes. The Director, Petroleum Products Division, OPO, told us that there is a potential for abuse if an oral statement is acceptable for priority certifications. He said that in mid-1979 some prime suppliers began to be more stringent, requiring that wholesalers obtain written certifications from the priority users.

assigned four auditors part-time to verify applicant information and, on the basis of their work, the Regional Director estimated that 75 percent of the applications for new station base period volumes were incorrect. He said that many applicants apply for base period volumes greater than they can justify and some try to get deliveries before their stations are operational. However, the Regional Director estimated that two full-time auditors are needed in each of the eight States in the region if the Office is to effectively verify applicant requests.

The Kansas City OPO generally was granting applicant requests with limited verification of the information on the requests.

The Atlanta OHA regional center verified the allocation problems by telephoning various groups including State and Federal agencies, the applicants, and the competition. The office did not perform site visits.

AUDIT AND ENFORCEMENT:
BELATED AND OF MIXED SUCCESS

ERA had not prepared to conduct audit and enforcement activities in the event of a shortage of petroleum products. No shortages were anticipated and the DOE fiscal year 1980 budget justification for ERA and its Office of Enforcement specifically stated that the budget was prepared on the basis that there would be complete decontrol.

OE spent January through May 1979 developing audit strategy and audit programs, and began the first six audits of small refiners in May. OE did not begin its full-scale audit effort until June 1979, when the national allocation fraction reached its low point. Belated as they were, the audit approaches seemed to be productive.

The Office of Special Counsel for Enforcement diverted a portion of its staff resources from its specific mission for a short time to audit 18 of the 34 major refiners. Audits of four refiners did not proceed beyond a general overview of the allocation fraction computation, spot market sales, and inventory practices. At the remaining 14 refiners a more detailed audit was conducted, but none were pursued to completion. They were suspended at the end of a set time period even though the audit steps were not completed and there were indications of possible violations that had not been fully investigated. This was done so that a deadline could be met for completing a portion of its primary mission. Subsequently, in December 1979, DOE contracted with a CPA firm to conduct additional audit work

CHAPTER 4

THE STATE SET-ASIDE PROGRAMS: ABUSED AND NOT EFFECTIVELY MANAGED

States we visited generally had not effectively managed the State set-aside program during the 1979 emergency. There were wide variations among the States in definitions of emergencies and hardships and the criteria for allocating set-aside supplies. DOE had not provided the program guidance and review necessary to promote more effective program administration. In addition, State energy offices were unprepared to handle the significant increase in workload. As a result we found that

- --there were wide variances among the States in granting set-aside supplies, and State releases of set-aside volumes were not distributed uniformly or equally,
- --set-aside supplies were distributed with inadequate documentation that an emergency or hardship existed,
- --applicant information was not verified, and
- --priority users whose requirements should have been met through normal distribution channels were receiving set-aside supplies.

DOE, in cooperation with the States, needs to develop clear and consistent definitions for emergencies and hardships, clear and consistent criteria for evaluating requests, and guidelines for releasing unallocated set-aside supplies. There also is a need for DOE to make State participation in the program contingent upon States providing DOE with evidence of adequate funding and staffing levels, and adequate policies and procedures for administering the program. In some cases Federal assistance may be necessary to satisfy State funding needs.

DOE has requested information from the States regarding the cost, staffing, and caseload of the State set-aside program so that it can consider requesting authority and funding for the States beginning with the fiscal year 1982 budget request. DOE had received data from 37 States at March 25, 1980, and was evaluating the responses.

Between May 14 and November 23, 1979, OE had sent SROs to 323 companies and received 305 responses. The responses are screened by the headquarters staff. Screening of the first 225 cases identified possible violations in all of them and they were referred to OE field offices for further investigation. Audits had been started on 44 of these cases by November 23, 1979. The remaining 80 cases were still being screened as of that date and none had been eliminated as having no indications of possible violations.

Most resellers are not required to file reports with DOE. ERA, therefore, has no direct knowledge of the total number of refined petroleum product resellers. Industry estimates range from 16,000 to 25,000. The SROs were sent to companies selected on the basis of complaints received by OE, information obtained in retailer pricing audits, and results of prior OE audits of the firms.

The targeting of resellers for audit seems appropriate, based on the screening results to date. Whether the indicated widespread noncompliance of the selected companies is an indication of the level of compliance among all resellers would be sheer conjecture.

Office of Special Counsel for Compliance

OSC diverted some of its staff resources for a short time to audit 18 of the 34 major refiners for current compliance with allocation regulations. However, most of the audits were suspended before completion, even though in several instances there were indications of possible violations that had not been fully investigated. OSC officials said that the audits would be completed by a CPA firm by April 30, 1980. Also, in three cases OSC found instances of probable violations.

Mission of Office of Special Counsel

The Office of Special Counsel for Compliance was established in December 1977 for a specific mission--audits of the 34 major refiners' compliance with pricing and allocation regulations during the August 1973-December 1976 period.

OSC had a goal of completing the audits of the 15 largest refiners by December 31, 1979. These audits examine the costs which firms could pass through to the public and whether the varying prices for "old" and "new" domestic oil and for imported oil were identified and passed through the marketing chain to the consumer.

does not provide any means to force State agencies to lend staff nor is the lending for any specified time.

Inadequate and inexperienced staff

Although several States had increased their fuel allocation staffs to handle the increased workload, the program was still hindered because many States had to depend on temporary, inexperienced employees. Shown below is the increase in staffing and workload levels for 10 States we visited.

State Energy Office Staffing Levels

State	Average staff during Mar. 1979	Average staff during July 1979	Increase	Workload Mar.	Workload Apr.	Workload July
California	1	30	29	-	874	3,595
Georgia	1	1	-	0	18	118
Indiana	2	6	4	228	365	1,285
Kansas	1	4	3	210	393	1,520
Massachusetts	3	9	6	-	1,072	2,607
Minnesota	3	9	6	755	1,116	2,831
Missouri	1	9	8	311	488	1,642
Nevada	1	1	-	137	244	232
Rhode Island	2	4	2	209	229	586
Tennessee	1	7	6	57	144	877

California, for example, had no permanent employees assigned to the State set-aside program. The State energy office had been given authority to administer the State set-aside program, but had no authority to hire permanent staff. As a result, the entire staff was temporary or on loan from other agencies. Staff were recruited from other State agencies to keep up with the case workload; however, because the employees were borrowed for short periods of time, the State energy office had a high staff turnover. The director told us this hindered the State in processing set-aside claims because significant amounts of time were needed to train new personnel to process claims.

Kansas had to seek supplemental appropriations to increase its set-aside program staff. Missouri added staff by using authorized, but unfilled, personnel positions in other energy office programs. In addition, both States borrowed two clerical persons from the Agriculture Stabilization and Conservation Service.

The Tennessee allocation officer told us he also had to borrow help temporarily from other State programs to assist his four permanent staff, and the staff had to work extra hours and weekends just to process applications.

In addition to the staffing problem, some States were having problems in providing adequate space and facilities for the additional staff. Three States noted this problem.

In February 1980, the Massachusetts official in charge of the program told us that the staffing situation had substantially improved. She said the program now has eight full-time employees, all with over 6 months' experience. She said this has enabled them to verify more information provided by applicants through telephone contacts and in-office meetings with suppliers, terminal operators, and others knowledgeable of the supply situation in the State. However, there is still not enough staff for field visits.

She said the increased verification allowed them to identify one major distributor and about a dozen smaller distributors who were obtaining set-aside product and selling it on the spot market. She also noted that in one case an application was received for a nonexistent station. In this case a staff member went out to confirm that the station did not exist. She said that any people found cheating are barred from further assistance from the set-aside program. She said the States, given adequate funding, could do a very good job of running the set-aside program.

DEFINITIONS AND CRITERIA VARY WIDELY

The States' definitions of emergencies and hardships varied significantly, as did the criteria for receiving set-aside supplies. Lacking Federal definitions, the States were generally using vaguely worded definitions which allowed almost anyone to qualify for relief. The criteria did not appear adequate to insure that only applicants experiencing legitimate emergencies and hardships are provided set-aside supplies.

States did not always allocate their entire set-aside volumes each month, and therefore released unused volumes back to the prime suppliers for redistribution within the State. The timing of State releases ranged from early in the month to the end. Variations existed among the States in the instructions they gave prime suppliers for the distribution of released supplies. Some States gave prime suppliers detailed distribution instructions, while other States allowed prime suppliers to determine the distribution.

Lack of DOE guidance

DOE has not provided the States with criteria and procedures for uniform administration of their set-aside programs. The State set-aside program is intended to permit State allocation of set-aside supplies within a State to meet emergency and hardship needs. States electing to participate in the program are required to follow the guidelines established by DOE. However, the guidelines are very general and provide little assistance to the States. For instance, DOE regulations contain no criteria defining what constitutes an emergency or hardship. DOE has also generally taken a "hands off" approach, and did not adequately monitor or evaluate the program.

We reported on the need for better Federal guidance and review of the State set-aside program in a prior report (OSP-75-13, May 8, 1975). At that time FEA had responsibility for the program. In that report we recommended that FEA

--reevaluate its set-aside regulations to determine whether the set-aside program should be continued in its present form, and

--consider reducing the amount of fuel allocated to the set-aside program.

We recommended that, if the set-aside program is continued, FEA determine whether State offices

--have established and are following consistent and concise criteria for evaluating hardships and emergencies, and

--are allocating set-aside fuels for reasons other than those of hardship and emergency and take appropriate action to correct any deficiencies in the program.

DOE has recognized that a problem exists, and awarded a contract in September 1979 to develop a guidebook to assist States in administering their set-aside programs. The contractor is supposed to identify and review existing set-aside practices and develop standardized procedures for managing set-aside programs. The guidebook should facilitate more efficient coordination of energy responses between State and Federal energy offices. This is especially important because State energy offices are assuming an increasing role in responding to short-term energy shortfalls. The guidebook is expected to identify the roles and responsibilities of Federal and State agencies. We believe, however, that

the mere issuance of a guidebook is not sufficient and DOE needs to take actions such as those recommended in our 1975 report to alleviate the problems.

On March 24, 1980, the Director, Energy Liaison Office, said that the wide variances in definition and criteria, as illustrated below and discussed in our draft report, caused the Administrator, ERA, to reconsider the direction of this contract. The Administrator will provide the contractor direction on what the final guidebook will contain.

Variances in definition and criteria for allocating set-aside supplies

There are wide variations among the States in their definitions of emergencies and hardships and in the criteria for allocating the set-aside supplies. The following table compares the definitions and criteria for seven of the States we visited.

Definitions and Criteria for Allocating Set-aside Supplies

Definition	Criteria
Federal (written):	
Until May 1974,	
Hardship--"* * * a situation involving or potentially involving subtantial discomfort or danger and/or economic dislocation caused by a shortage of an allocated substance due to maldistribution of that substance."	None.
After May 1974,	
None.	
Georgia (written):	
Emergency or hardship--"* * * a situation in which an end-user, wholesale purchaser-consumer, or a supplier of such persons or firms, is unable, after diligent effort, to locate sufficient amounts of an allocated pro-	Limits allocations to end-users and consumers that have attempted and failed to obtain needed supplies from all potential sources, including both retail and wholesale suppliers.

Definition (cont.)	Criteria (cont.)
duct to meet the requirements of an end-user or a wholesale purchaser-consumer."	
Tennessee (written):	
Emergency--"* * * a condition likely to pose an immediate danger to the health or safety of the individual applicant or to the public, due to that applicant's inability to obtain fuel * * *."	Generally limits allocations to end-users and to wholesalers that are seeking supplies for end-users and consumers. Applicants are only required to seek supplies from two potential sources before applying for State set-aside.
Hardship--"* * * a condition likely to cause economic harm to an eligible applicant due to that applicant's inability to obtain fuel * * * which is necessary to conduct ongoing business activities or to maintain existing services."	
Kansas:	
Uses the Federal definition for emergency and hardship which was eliminated in May 1974.	Set-aside supplies are released only for priority uses (based on priority uses defined in DOE regulations) on a first-come, first-served basis, and to retail stations.
Missouri:	
Hardship--"a situation involving or potentially involving substantial discomfort or danger and/or economic dislocation caused by a shortage of an allocated petroleum product."	Set-aside supplies are released primarily for priority users listed in DOE regulations. Assigns a priority to each application and then releases set-aside supplies in order of importance of the priorities assigned. An application received early in the month may not be acted on until later in
Emergency has not been defined. State officials consider an emergency to be any hardship so urgent	

Definition (cont.)	Criteria (cont.)
that immediate action must be taken to get the product to the requester and then accomplish the necessary paperwork after the fact.	the month when all higher priority requests have been processed. Set-aside supplies are also released to retail stations. Both Kansas and Missouri routinely hold all requests for retail stations until the 20th of the month whereupon fuel is released provided it is available from the requester's supplier. Will not release an amount to an applicant greater than the difference between his current month's allocation and his base period amount.
Massachusetts (oral):	
An emergency application is one received from an emergency service organization such as police and fire departments or water treatment facilities or any other service which affects public safety. All other applicants are classified as hardships.	Considers that hardships exist when suppliers are on a low allocation fraction. The allocation officer said it would be reasonable to expect that every dealer and end-user would be eligible for set-aside because of the allocation fractions. However, certain categories of applicants receive priority consideration. Police and fire departments, sanitation services, ambulances, or any other services which affect public safety are classified as emergencies and receive the highest priority. Industrial and commercial end-users, such as construction companies, manufacturing plants, and transportation companies, also receive priority. Retail service stations are

Definition (cont.)	Criteria (cont.)
	evaluated for priority consideration according to the location, emergency, or commercial accounts they service and the financial hardship situation which may exist.
Rhode Island (oral):	
Emergency cases include all requests for emergency vehicles, storm-related conditions and special events. Hardship cases are usually retail stations and high-priority end-users (e.g., commercial and industrial users) which are being provided less than 90 percent of their base period volume by their suppliers.	Applications accumulate until about the middle of the month before allocations begin. Allocations are made to emergency cases on a priority basis and to others depending on the amount of product available. Although applicants are required to submit a written application, many allocations are made in response to telephoned requests. Written applications only disclosed 1977 and 1978 fuel purchases and were not required to disclose current supply levels, allocation fractions, and base period upward certifications.
California:	
Basically, California considers an emergency to exist if the applicant is out or nearly out of fuel. All other applications are considered hardships.	All cases are processed on a first-come, first-served basis within the separate emergency or hardship categories. Emergency cases are processed first. Since California generally releases about 80 percent of the set-aside supplies to the prime suppliers, California has never had to prioritize the requests. If requests exceeded the set-aside supplies, it would

Definition (cont.)	Criteria (cont.)
	use the Federal priority system (see p. 9) to allocate the supplies.

The table shows that definitions are so generally worded they allow almost anyone to qualify for relief. Also, the criteria for receiving supplies appear to be inadequate, as there is generally little or no documentation that an emergency or hardship situation exists.

We compared the definitions and criteria of two State programs--Georgia and Tennessee--that are in the same DOE region and thus would probably have been affected equally by OPO and OHA backlogs. In addition, the June 1979 composite allocation fraction for each State is within 1 percentage point of the national composite allocation fraction, and within 2 percentage points of the other.

We noted that although Tennessee appears to have a stricter emergency definition (immediate danger to health or safety), Georgia has more stringent criteria for approving applications (attempted and failed to obtain supplies from all potential sources, both retail and wholesale). Although other factors may be affecting these two States, it appears that Georgia's more stringent criteria have a greater effect than Tennessee's stricter definition on the number of applicants and the volume of supplies allocated, as shown in the following table. The table compares, for Georgia and Tennessee, the number of applications processed and the volumes allocated each month from March through July 1979.

Month in 1979	Applications processed		Volumes allocated	
	Georgia	Tennessee	Georgia	Tennessee
			(thousands)	
March	0	57	0	1,233
April	18	144	277	2,230
May	53	424	856	4,706
June	29	789	326	6,008
July	118	877	1,478	7,781

We believe the above comparison provides a good case for uniform definitions and criteria to provide greater assurance that set-aside supplies are used to meet emergency and hardship needs on an equitable basis among the States.

Varying distribution of released supplies

States do not always allocate their entire monthly set-aside supplies and DOE regulations specify that any unused set-aside volumes cannot be carried over to the following month. DOE regulations do, however, allow State energy offices, at any time during the month, to release part or all of the set-aside volume through the prime supplier's normal distribution system in the State. Therefore, in instances where unallocated supplies remain, States usually notify prime suppliers that unallocated supplies are being released back to the supplier for distribution within the State.

We found variations in the States' methods for distributing released supplies, ranging from States specifying detailed distribution methods to States allowing prime suppliers to determine who received the released supplies. Thus, there is not always assurance that the released volumes were distributed equally by the prime suppliers among their customers.

We also found indications that released supplies are not always getting into the State distribution system because they are released too late in the month.

The following schedule shows the varying percentages of the July 1979 set-aside volumes allocated by five States we visited.

	Set-aside supplies allocated (percent)
California	10 to 20
Georgia	About 10
Kansas	84
Missouri	89
Tennessee	About 50

Several States adopted policies for releasing from 10 to 90 percent of their monthly set-aside allocations and directing the prime suppliers to redistribute these portions, either proportionally or equally, to customers within the States. Various reasons were cited for not using the entire set-aside volumes and, instead, releasing the unused set-aside to the suppliers. These include:

--The gasoline problems in the State were no longer severe enough to warrant use of all of the set-aside.

--The program has not distributed set-aside supplies in an equitable manner to those experiencing hardships.

--The normal distribution channels provide a more equitable distribution of the gasoline than does the set-aside program.

--The increase in the set-aside from 3 to 5 percent was at the expense of these customers in the State subject to an allocation fraction. The amount released has the effect of returning the set-aside to 3 percent.

Several States we visited specify the distribution method for released supplies. We noted that Minnesota, in September 1979, directed the prime supplier to distribute the remaining 35,045 gallons equally to each of 52 customers. This amounted to 674 gallons per customer. In February 1980 a Minnesota official said that a separate delivery is not required; the supplier can simply add to a regular delivery.

In contrast, Illinois attempted to accomplish more with the released supplies. In July 1979, Illinois advised a prime supplier that

> "in order to relieve hardships of priority end-users and to prevent end of the month business closures, you are directed to release the following quantities of motor gasoline from our state July set-aside in the following accounts indicated."

Illinois listed 50 retail accounts with amounts of gasoline to be distributed to them ranging from 41 to 3,192 gallons, and averaging 1,235 gallons. It is questionable whether such small volumes delivered--for example, 41 or 293 gallons--would prevent end-of-month retail station closures.

On the other hand, States such as Tennessee and Georgia allow prime suppliers to distribute set-aside supplies when they are released statewide. Tennessee usually releases about half of the set-aside and Georgia almost all.

Although DOE regulations require suppliers to distribute statewide releases to all customers, the States of Georgia, Kansas, Missouri, and Tennessee allow the prime suppliers to distribute the gasoline as they choose and determine who needs additional supply and how much gasoline each will receive.

Independent retailers maintain that the major suppliers have failed to provide them an equitable share of set-aside releases. One prime supplier's representative acknowledged that all customers do not always get gasoline and that some customers get more than others. However, he maintained that the supplier attempts to deliver gasoline to those that have the greatest need. He said the prime supplier's distributors are told to do the same; however, the representative acknowledged that the supplier has no assurance that distributors are in fact making deliveries to those that need it most. In fact, he said that oftentimes the gasoline is delivered in accordance with the "squeaking wheel theory--those that make the most noise get the most gasoline."

The Tennessee allocation officer told us that their office had chosen to allow suppliers to determine who gets State set-aside releases because they generally know who needs additional supplies, and oftentimes it is uneconomical and impractical to deliver supplies on a pro rata basis to all customers. He acknowledged he had not attempted to monitor the suppliers, and therefore did not know whether they were taking advantage of this authority. In a later contact he told us that he had begun trying to monitor the suppliers, but was not verifying how they distributed supplies.

Kansas and Missouri also allow prime suppliers to determine who receives released volumes. Officials in both States would like to have the unused set-aside distributed in their States, but they have no way to assure that this is done. The Missouri official said that this would be nearly impossible to do equitably because the amounts allocated to individual customers of the suppliers would be so small as to be impractical to deliver.

This view was corroborated by two major suppliers. Officials of these companies advised us that several States returned from 40 to 60 percent of their State's set-aside and instructed them to distribute this product equitably, or in some cases equally, among their customers in their respective States. This required the suppliers to manually prepare a separate allocation of the amounts returned and usually resulted in allocations of insignificant amounts of gasoline to individual customers.

DOE has urged States to release unrequired set-aside volumes as early as possible during the month so that the supplies can be distributed. However, we found that release times varied.

For instance, Kansas released unused gasoline by the 25th of each month, while Missouri waited until the end of the month, when the unused portion reverted automatically to the suppliers.

We believe that the later in the month that releases are made, the less certain it becomes that those set-aside supplies will actually get into the State's distribution system.

APPLICANT INFORMATION NOT DOCUMENTED OR VERIFIED

DOE regulations require the State energy offices insure that applicants for set-aside supplies provide evidence of emergency or hardship conditions. We found instances, however, of States failing to comply with these regulations by allocating set-aside supplies with little or no documentation that emergency or hardship conditions existed.

States are rarely able to effectively verify set-aside applications, and DOE regulations do not require it. Therefore, State set-aside supplies may be going to unqualified applicants.

Applications undocumented

DOE regulations permit applications for State set-aside supplies to be either written or verbal (including telephone requests). The regulations require, however, that State energy offices insure that applications, whether written or verbal, provide sufficient information to enable the State to determine that the applicant is experiencing an emergency or hardship. At a minimum, this requires applicants to provide information concerning justification of the emergency or hardship condition, previous set-aside supplies received, and the inability of a base period or a new supplier to supply the fuel (including identification of suppliers that were contacted).

We found that 3 of the 12 States we visited generally allocated set-aside supplies either with no justification or with inadequate justification of an emergency or hardship condition.

For instance, applications we reviewed in Tennessee frequently failed to explain fully and justify adequately the circumstance warranting State release of hardship and emergency supplies. For example, the justifications stated in two applications were:

--"Our present supplier tells me that he will not have enough gasoline by the end of the month due to his allocations, and is out of gasoline at the present time."

--"We need the fuel to supply our farm, commercial, and industrial customers during the month of June so that they may carry on their business."

Other applications had no explanation or justification of the hardship. In our subsequent contact, the Tennessee allocation officer stated the office had begun requiring a justification on the application.

We found that even though the applicants often inadequately documented hardships, the State rarely denied requests. Our review of records indicated that the State generally approved requests from eligible participants. Furthermore, State officials readily acknowledged that they denied few requests, did little to verify the information presented in set-aside requests, and did not attempt to determine whether the applicants actually sought supplies from other sources or determine whether a fuel shortage actually existed in the applicant's area. They relied instead on the information provided by the applicants.

DOE regulations require that an applicant requesting set-aside supplies provide sufficient information to enable the State energy office to determine if an emergency or hardship condition exists. Even under special rule 8, which permits a State to direct supplies to retailers, thereby providing the State flexibility to deal with local problems, requires the station to make a written certification that it has experienced a gasoline supply emergency.

However, some Rhode Island retail stations were receiving allocations every month without submitting applications. The director of the Rhode Island program told us that in most instances, petroleum products were allocated to the station because of its location. For example, some stations received petroleum products because (1) they were located near an interstate highway intersection and thus serviced many travelers or (2) they agreed to stay open on weekends. The director said he was not sure in each case if the station itself was experiencing a hardship, but he felt it was more important to have gasoline available where and when motorists wanted it. An ERA official said that ERA encouraged this practice to prevent lines at retail stations.

We also noted that the monthly set-aside of one company was allocated in one day without any applications being received. For example, the August set-aside of about 158,000 gallons was allocated on August 9 to 32 service stations, none of which had submitted an application. The director stated that each month he meets with a company representative to make the allocation. In August 1979, the company representative had prepared a list of all the stations in Rhode Island which shows each station's total 1978 volume, the average demand for the month of August, based on a historical sales curve applied to total 1978 volume, and the August 1979 allocation from the company which was also expressed as a percentage of the average August demand. The director uses the list to decide which stations will receive set-aside supplies and the volumes. The director told us his general objective is to bring those with lower percentages up towards the 90-percent level.

This method of allocating the set-aside supplies has the practical effect of altering the allocation fraction method of distributing gasoline. The program director told us that he believes the set-aside program is needed to provide some flexibility in the distribution of gasoline to take care of hard-hit areas and stations and to accommodate growth. He said part of the problem is that DOE takes too long to process the applications for adjustment of base period volumes. He also asserted that DOE's unusual-growth provisions do not provide large enough adjustments to the base period volumes.

Finally, we found that even when Rhode Island received written requests, the applicants seldom provided sufficient information to justify State allocations. For example, applicants often failed to describe adequately hardship or emergency conditions or to provide data on prior-period gasoline supplies. Even if the applicants provided all information the State requests, it would still be incomplete. For instance, applicants are not required to disclose current supply levels, allocation fractions, and base period upward certifications. The only information requested is 1977 and 1978 fuel purchases. The director agreed that more information is needed, and said that he intended to revise soon the application forms to incorporate all the above information.

Applications unverified

DOE regulations do not require State energy offices to verify applications, and we found that States rarely attempt to verify the validity of information provided, or the reasonableness of amounts requested by applicants seeking

set-aside supplies. Therefore, set-aside fuels may be going to unqualified applicants. While State officials recognize that more independent verification is needed, they maintain that little time is available for such verification. One State is considering allowing prime suppliers to allocate its set-aside supplies.

State officials from Indiana, Kansas, Massachusetts, Missouri, and Rhode Island told us that the data presented by applicants generally is accepted because the State has such limited means to verify it independently. An ERA official stated that Missouri requires each applicant for more than 1,000 gallons to present a notarized statement swearing to the validity of the request.

Indiana officials stated that considering the widespread fuel shortages that exist, many claims for hardships and priority uses may be exaggerated or false and the redistribution of set-aside fuel could be doing more harm than good. Because they are unable to validate applications, the officials are considering allowing prime suppliers to allocate State set-aside supplies since they are better situated to make equitable allocations. In February 1980 an Indiana official stated that the office now requires applicants to provide base period volume data, give estimates of volumes that will be received, and give written justification for the assistance they are requesting.

Tennessee officials acknowledged that they seldom independently verified the validity of information submitted by applicants. In addition, the State generally does not determine whether the applicant sought supplies from other sources or whether a fuel shortage actually existed in the applicant's area. The allocation officer told us that processing applications is about all his current staff can do, considering the present workload, and little time is available for verifying facts and figures. The officer believed that his staff would have to be increased from 7 to 12 employees to handle the workload, and even then only selected applications could be independently verified. In our subsequent contact the officer stated that he had begun to make spot checks.

Our earlier comparison of the verification policies of Georgia and Tennessee and the number of set-aside applications received and volumes allocated indicates that verification is important.

State officials generally said that questionable items are verified to a limited extent. For example, Missouri officials told us that, if an applicant requested substantial

quantities which suggested bulk deliveries, they would telephone his supplier to verify that the retail outlet had the equipment necessary to make bulk deliveries before considering the application. Kansas officials estimated that this type of telephone verification is made on about 5 percent of the applications received. However, Kansas and Missouri officials believed that the small size of their staffs placed limits on their method of operation, and neither office verified information to the extent they would have if there had been additional staff.

The Minnesota energy agency, on the other hand, relies on a network of fuel coordinators to verify data on applications for fuel set-aside. Fuel coordinators have been appointed in each of the 84 Minnesota counties. They are usually county government officials, i.e., a treasurer, auditor, or sheriff. All applications for State set-aside fuel must be accompanied by the local fuel coordinator's certification. The certification states that the coordinator has verified the accuracy of the facts stated in the application and explains the method used for verification. However, one county coordinator told us that he had never sought to examine records of applicants. In some cases he had questioned applicants about the data, but in most instances he merely certified the application without attempting to verify the accuracy of it. In some cases he even had his secretary sign the certification for him. A Minnesota official said that this was not typical of the county coordinators' efforts and that most of them are very conscientious and are doing a creditable job.

We found one instance in another State where a jobber may have inappropriately used State set-aside supplies to supplement his supplier's reduced monthly allocations. During the period October 1978 through August 1979 the jobber requested over 1 million gallons of gasoline and received over 800,000 gallons. Our review of the applications disclosed that the jobber consistently submitted the same list of customers, and that for the last 5 months his customers' needs had always exceeded his allocations from his prime supplier by exactly 90,000 gallons.

To confirm the validity of the requests, we randomly selected and contacted several of the jobber's customers. The customers could not remember signing applications for State set-aside allocations, and most of them had never heard of the program. Our comparison of gasoline amounts requested and delivered disclosed that every customer consistently received less than the amount requested on his behalf.

PRIORITY USERS RECEIVED STATE SET-ASIDE VOLUMES

Priority users requested and received substantial gasoline supplies through State set-aside programs, even though they should have received all of their gasoline needs from regular suppliers. The reluctance or inability of the suppliers to give them enough gasoline (see ch. 3) often forced the users to seek State assistance.

Until August 1, 1979, DOE regulations allowed agricultural and national defense users to obtain all their current requirements from regular suppliers. While the States receive few requests from DOD users, many agricultural users have sought and received State assistance. Priority users told us that DOE rules have changed so often recently that suppliers have been inconsistent in their deliveries. Priority users also informed us that they are receiving supplies that have been reduced by prime suppliers' allocation fractions. Consequently, they have been forced in numerous cases to supplement their supplies through the State set-aside programs. At the time of our review, priority users were in disagreement with the prime suppliers concerning their right to have base volumes adjusted. Prime suppliers have taken the position that under DOE regulations priority users are not entitled to upward certification of their base periods. Priority users maintain that, since they are being subjected to allocation fractions, they should be entitled to unusual-growth adjustments.

Kansas and Missouri State energy office officials cited the following reasons why agricultural needs were not fully met by the agricultural users' suppliers, causing these users to turn to the State set-aside program:

--Inability to predict accurately current needs because they vary from year to year depending on crop yield, weather, and so forth.

--Lag time associated with recognition of need, submission of required certifications, and the receipt of an increased allotment based on the certifications.

--Lack of care on the part of wholesalers and jobbers in distinquishing between that portion of their allocation meant for agriculture and that for other customers.

--Reluctance on the part of suppliers to encourage the submission of certification for priority use.

Some States devoted substantial effort to educating and keeping agricultural customers advised of the need for upward certification. For example, Kansas used Agriculture Stabilization and Conservation Service agents to keep its farmers advised, and Missouri contacted all applicants in July who requested State set-aside for agricultural use and advised them of the certification process. State officials also said this was necessary because some suppliers often "drag their feet" in processing upward certifications, simply because it is in their best interest to do so.

A Minnesota official stated that priority users applying for assistance from the State set-aside program are served. However, they are required to register a complaint with the OPO regional office. An ERA official advised us that the State of Washington refers all violations of DOE regulations to the OPO regional office.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

The 1979 gasoline shortage was another painful reminder of the continued U.S dependence on foreign oil supplies and the ever-present threat of supply disruptions. It also dramatically underscored our lack of preparedness to minimize the impacts of such disruptions.

The earlier chapters of this report show that the petroleum product allocation program has not met the legislated goals of assuring adequate supplies to priority users, protecting independent marketers, and equitably distributing supplies throughout the United States. In summary, we found that:

--Emergency response planning was incomplete and outdated.

--Federal and State Governments were ill-prepared to deal with their supply management role.

--The effectiveness of program operations was plagued by inadequate management and staffing, relentless demands for services, poor or totally lacking information systems, and unclear guidance and direction. Even under the best of conditions the workload would have been formidable; in this instance, it was overwhelming.

We can expect the same results during future shortages unless the Government acts now to overhaul the petroleum allocation program.

IS THE ALLOCATION PROGRAM NEEDED, AND IF SO, IS IT FIXABLE?

The importance of the allocation program is seen by the fact that, except when national security is threatened, it is the only program in place which can be used to manage the distribution of supplies when shortages are under 20 percent. Under the Energy Emergency Conservation Act of 1979, rationing can be used only if the shortage is 20 percent or more, unless the President considers a lesser shortage to be a danger to national security. Barring any reduction in this percentage requirement, a program for managing supply shortages of less than 20 percent is needed--witness the hardships caused by the 1979 shortfall of about 5 percent. The legislative authority for the allocation program expires in October 1981. The Congress will doubtless consider whether to extend the authority or to provide for another program.

The United States will continue to run the risk of shortages as long as it depends, in substantial part, on imported energy. Furthermore, in a product-short situation, industry decisions and practices, based as they are on profit motivations, may not satisfy public interests or needs and will warrant Government intervention. Consequently, despite all its shortcomings, we favor efforts to make the allocation program an effective tool. It should be noted that the program has not yet had a "fair" test. After it was established in 1974 it was not significantly revised until the midst of the 1979 gas shortage; and even those revisions were "quick fix" remedies. If substantive improvements do not make the program effective, it should be replaced with an alternative approach.

In this chapter we draw upon the results of our review to identify desirable characteristics an allocation program should have and to gain perspectives on the key problems which must be addressed to improve the program.

DESIRABLE CHARACTERISTICS OF AN ALLOCATION PROGRAM

We believe a petroleum allocation program should be built around the following characteristics.

--Provisions for strong leadership and direction, placing the program responsibility at an organizational level high enough to insure maximum access to the authorities and powers needed to get the job done.

--Simplicity in design and operation which emphasizes timeliness and quality of service, consistent with program purposes.

--Recognition of the distinct, but complementary, roles and responsibilities of Government and industry. Unnecessary Government regulation and intervention should be avoided, and industry should be allowed to exercise its operational judgement within clearly defined and understood guidelines and regulations.

--Provisions for program monitoring to insure that desired results are being achieved and needed adjustments are made.

--Provisions for a strong compliance and enforcement program to insure that abuses and violations are detected and vigorously pursued.

PROBLEMS AND OPPORTUNITIES FOR IMPROVEMENT

The problems associated with the allocation program were most visible at the Federal and State operations offices and DOE's Office of Hearings and Appeals, where individual requests for supplies and appeals of denied requests continued to pile up. The volume of requests and appeals is in itself a sign of program failure, but only a small indicator of the havoc and market impacts which resulted from program implementation.

The following sections summarize the principal findings and improvements which we believe are possible in

--workload reduction and management,

--program monitoring,

--audit and enforcement,

--Federal/State Government relationships, and

--program planning and direction.

Workload reduction and management

The evidence of the 1979 gasoline allocation experience shows that the program was out of control from the very beginning. DOE found itself in a ground swell of activity for which it had not planned or prepared.

The day-to-day operations took on a reactive, rather than managed, atmosphere and the sheer volume of requests, coupled with staffing shortages, made it difficult to reverse the situation.

Need for training and education programs

Our review disclosed

--a need for trained Federal and State staff to operate the program, and

--a need to foster a better understanding of the regulations and program procedures.

If incomplete and improper requests are reduced and the program requirements are understood and followed, the processing workload should decrease. Furthermore, better training should permit faster, more efficient workload processing.

These objectives could be accomplished in several ways, such as (1) the development and dissemination of operational and user handbooks, (2) the use of workshops and conferences to foster further understanding of the program, and (3) the use of operational training programs for State and Federal officials designated as having principal responsibilities for program execution.

Rolling base period could offer a better approach

The base period is the cornerstone of DOE's allocation program. An inherent problem with using a base period is that it will not reflect all changes in supply and distribution patterns. As a result, adjustments will always be needed to allow for new firms entering or leaving the market, and recent major growth in sales.

DOE's failure to update a 5-year-old base period until the very last moment, and then with only a few days' notice, created problems and uncertainties. Two other changes in rapid succession only helped to perpetuate these effects. The objective, therefore, is (1) to establish a base period that is recent enough to minimize the adjustments needed to recognize changes in supply and distribution patterns, and (2) also to avoid quick, unpredictable changes in the base period.

A rolling base period, which uses the corresponding month from the previous year, comes as close as possible to current conditions without being affected by the seasonal variations in the annual cycle of gasoline usage. Therefore, the need for adjustments to base period volumes is considerably reduced, with accompanying decreases in the allocation program caseload. The base period is automatically advanced each month, which eliminates the uncertainty of updating. Another advantage is that all know in advance what the new base will be, know to keep the base period business records available, and have 11 months to request any needed changes in the base period volumes.

In our draft report we proposed that DOE use a rolling base period instead of updating the fixed base period each time a shortage occurs. DOE disagreed with our proposal (see app. II), saying that it had considered it in 1977 and 1979 and had rejected it both times on the basis that the hearing record suggested that it would cause greater administrative burdens and greater dislocations than a fixed base period.

DOE officials had expressed concern that:

--More exceptions and appeals may be requested during an improving supply situation by retail stations with low base period volumes.

--Integrated firms may favor their affiliated firms through pricing and other actions and could gradually eliminate the independent sector by reducing their base period volumes.

--In times of shortage no real growth takes place, so the base period volumes should remain static and the rolling base period would generate useless activity.

DOE's arguments were primarily subjective and no data was provided to substantiate them. Similarly, the comments received during the 1977 and 1979 DOE hearings were not accompanied by substantive analysis of the arguments for or against the rolling base period. Nor has DOE conducted an in-depth regulatory or economic analysis of either a rolling base period or a fixed base period that is occasionally updated.

The first two concerns, we believe, could just as well be applied against a fixed base period as a rolling base period. While the third concern has merit, it could be remedied by stopping the base period from rolling during a shortage period and resuming after the shortage passes, thereby skipping the static shortage period.

Given the recent experience with the fixed base period we fail to see how DOE can accept the status quo, i.e., continued use of a fixed base period. Although the rolling base method may carry with it some risk, we believe its relative advantages, particularly the automatic updating and the advance knowledge of what the new base period is, make it a preferred option. At a minimum it warrants further consideration and we are not persuaded by DOE arguments to the contrary. The complacency which DOE seems to hold regarding this issue seems to us irreconcilable with the poor results obtained from use of a fixed base period. While we believe a rolling base period is a preferable option, as we first proposed to DOE, we have broadened our recommendation to encourage DOE action in seeking any alternative to the fixed base period which will be cost-effective, administratively workable, and an improvement over that which is now in place.

Workload reduction and control

Changing to a rolling base period should even out, and may reduce, the number of applications to DOE for setting or adjusting base period volumes and changing purchaser/supplier relationships. This would tend to minimize sudden surges of workload and permit greater stability in program operations.

Supplies for priority users is an area in which both workload reduction and control improvements can be made. The regulations do not require priority end-users to certify their priority supply volumes. This creates a potential for abuse. Some prime suppliers in mid-1979 began closing this loophole on their own, requiring that written certifications be obtained from the priority end-users. However, some dealers have expressed concern that providing individual certifications to their suppliers would reveal proprietary data. In one instance we found that priority use volumes were not properly accounted for in preparing the allocation fraction reports. Priority users were frequent users of the State set-aside program, although their needs should have been met by industry following the allocation regulations.

Requiring priority use certifications could reduce the workload for the State set-aside program, as well as provide better assurance that priority entitlements are supplied. It would also provide a written record, enhancing verification and enforcement efforts and in turn reducing abuses of the priority system.

Improvements to the present certification procedures should include:

--Requiring certifications by priority users and by all other levels in the distribution chain. The certifications by the priority users should be retained by their suppliers. Each higher level in the distribution chain should make its certifications on the basis of the certifications made to it.

--Requiring that all certification forms state the criteria for priority use. Priority users should certify that they meet the criteria.

Improvements in program monitoring

A serious weakness in DOE's administration of the petroleum allocation program was the lack of monitoring to measure

the results of efforts and identify occurrences requiring action. For example, DOE did not have any assurance that the needs of priority users were being met, or that supplies were being equitably allocated on a regional and national basis.

During the shortage some priority users were not receiving the volumes of gasoline to which they were entitled. As a result, they went to the State set-aside program for immediate relief and to DOE for enforcement of their rights. Some oil companies calculated their allocation fractions in ways which violate DOE rules and some did not follow the fraction in distributing gasoline.

One common facet of the problems we identified in the allocation program is the lack of information or failure to use it. This includes both supply and market activity data as well as DOE operational information. There is an urgent need for DOE to improve its data collection and management information systems.

DOE has been hampered in evaluating the overall gasoline and heating oil situation because its data collection system does not provide the type of information necessary to determine the status of supply distribution. DOE's system is designed to gather data only at the primary (refinery and bulk storage) level of the distribution system, not at the secondary (distributor) and tertiary (end-user or retail station) inventory levels. Therefore, DOE is unable to determine whether these supplies have moved to end-users and retail stations or are instead being stockpiled by distributors. The forms have been prepared for this system, but as of March 21, 1980, DOE and the Office of Management and Budget were considering whether reporting should be monthly or quarterly. DOE is also concerned about the adequacy of the data it is receiving on the allocation fraction reports and has commissioned a study of the subject which was expected to be completed in February 1980. However, DOE was still evaluating a December 1979 draft of the report as of March 24, 1980.

At the present time, DOE does not use the allocation fraction reports from prime suppliers to evaluate whether serious imbalances in supply between States or regions exist. DOE told us that the information is not credible and it does not want to risk its use. The States do not have access to the data, so it is difficult for them to know when they should request corrective action by DOE, except in the gravest and most obvious situations. Clearly, DOE needs to work towards developing a reporting system which is credible and can be used for program purposes.

Another data weakness involves information on the status of applications to OPO, OHA, or the States, and on the results of the decisions made on them. DOE's upper management has not been receiving useful, timely, and detailed information but has depended largely on oral reports of perceptions. The effectiveness of program management would be greatly enhanced if reports were available to highlight problems and indicate the need for management action. For example, management's attention should be drawn to the need for (1) correcting critical State or regional imbalances in supplies, (2) reducing undue processing times of applications by an office or by an individual, (3) acting on low-level use of set-aside supplies by a State, and (4) audit and enforcement attention signaled by patterns of complaints involving individual companies.

Importance of audit and enforcement

While we favor a program which will make maximum use of industry's experience and judgement and avoid unnecessary Government intervention, it must be recognized that an individual company's behavior may not always work in concert with the program's objectives. In some instances, its actions may even represent intentional abuses or violations of regulations. A strong audit and enforcement program is necessary to help assure program integrity and deter violators.

DOE was not prepared to audit compliance with allocation regulations at the beginning of the 1979 shortage. The Office of Enforcement did not begin its full-scale audit effort until June, and of product resellers until August. Some of the enforcement staff were also detailed to augment the Office of Petroleum Operations field staff at the expense of continuing normal audit and enforcement activities. The Office of Special Counsel for Compliance allocation audits of 14 major domestic refiners were incomplete, even though in some instances there was preliminary evidence of potential violations that needed further investigation.

DOE needs to develop a plan which would allow a quick scale-up of its audit and enforcement program at the onset of a gasoline shortage, using fully developed audit programs. Likewise, there should be a public awareness that there is a reasonable chance that violators will be identified, and that DOE will take whatever enforcement actions are necessary to remedy the violations, including assessing adequate penalties to encourage compliance.

Federal/State Government relations

One of the principal relief mechanisms in the allocation program is the State set-aside program. It is intended to meet emergency and hardship needs. However, the State set-aside program has not been well managed. Priority users have inappropriately received set-aside supplies; large set-aside volumes (up to 90 percent) have been returned to prime suppliers; and some set-aside supplies appear to have been provided for other than emergency and hardship uses. The eligibility requirements and the effectiveness of program administration vary among the States, and DOE has helped to perpetuate this problem by failing to provide the direction and leadership required for uniform and consistent application throughout the country. A critical prerequisite to an effective petroleum allocation program is uniform and consistent administration of the State set-aside program. The development of Federal guidelines setting forth standard definitions of hardships and emergencies for use by State agencies is a necessary first step toward this objective. Other needed improvements include

--Setting criteria for evaluating requests for relief.

--Setting a lower percentage of supplies to be set aside, with provision for upward adjustments in following months for individual States that are not able to fill all requests that meet the criteria for hardships and emergencies. The releases of unused supplies might be a good indicator of what the lower percentage should be.

--Setting criteria and procedures for release of unused set-aside supplies. Such releases should be early enough to allow distribution that same month by the prime supplier. This could include phased releases.

--Requiring that service to priority users be reported to ERA for investigation of the problem causing the user to apply for set-aside relief.

--Requiring that the State have a strong program for verifying information contained in requests for relief.

--Requiring that participating States have adequately staffed, trained, housed, and funded organizations to administer the program.

--Identifying one or more means of assuring adequate funding for the States' programs.

Program planning and direction

The public record is replete with evidence of poor work by DOE and its predecessor agencies in responding to energy emergencies. The primary causes of these failures can be summed up as inadequate planning, lack of preparedness, and no central responsibility for leadership and direction. This report is yet another illustration of the problems that these shortcomings continue to cause.

Planning

DOE failed to revise and update its program and to plan for its implementation. As a result, DOE was forced to make numerous program modifications, revisions, and updates during the course of the shortage. The frequency of changes and their immediate implementation caused significant problems, both for the industry in complying with the changes and for DOE field offices in retraining staff and dealing with the increased workload.

The changes were made without benefit of regulatory analyses, with no or minimal public hearings, and with only minimal time for written comments from interested parties. Another problem with this ad hoc approach is that the Department is forced to make its decisions based on limited information, which opens the way for further changes.

Preparedness

As noted earlier, there is a critical need for adequate training and education programs to better limit and manage the workload. DOE received a surge in workload which it was not prepared to handle. The staff added to deal with the workload were not trained in advance, received inadequate training, had inadequate facilities, and had limitations on which applications they could work on. The States were likewise unprepared to implement the State set-aside program.

Coordination and direction

DOE's energy emergency planning and management is fragmented and lacks overall high-level coordination and direction. In response to a similar finding by the Inspector General, DOE, in September 1978, the Secretary of Energy designated the Assistant Secretary for Policy and Evaluation as responsible for coordinating departmental energy emergency planning activities. However, the action does not go far

enough and the need still exists for the appointment of a full-time coordinator of energy emergency planning, with full-time staff.

The Assistant Secretary has many responsibilities other than for emergency planning. Further, he was not given full responsibility for taking actions during an energy emergency. Instead, he was appointed to chair the Emergency Policy Group, which was formed to coordinate energy emergency activities. The Group is composed of officials throughout the Department having responsibility for taking emergency actions.

One Emergency Policy Group member stated that there had been a reluctance on the part of ERA members of the Group to fully cooperate and participate, and that they took action as ERA officials without consultation within the Group. For example, with respect to the many revisions to the gasoline allocation regulations made by ERA in 1979, the Group neither performed analyses nor conducted discussions of the revisions.

We agree with the Inspector General that there should be a single high-level official with the sole responsibility for the Department's energy emergency management planning and implementation.

RECOMMENDATIONS TO THE SECRETARY OF ENERGY

We recommend that the Secretary of Energy act immediately to revise the Mandatory Petroleum Allocation Regulations and insure successful implementation of the regulations during shortage periods. Those regulatory changes which do not require observance of the Administrative Procedures Act should be made quickly. Other regulatory changes will take longer, but should not be delayed past September 1980. These changes and improvements in implementation should incorporate the desirable characteristics stated on page 72, and should include the following specific recommendations for improving the program.

To reduce the workload and improve its management:

--Seek a cost-effective and administratively workable alternative to a fixed base period, giving special attention to the adoption of a modified rolling base period.

--Require certifications by priority users and by all other levels in the distribution chain. The certifications by the priority users should be retained by

their suppliers. Each higher level in the distribution chain should make its certifications on the basis of the certifications made to it.

--Require that all certification forms state the criteria for key priority use. Priority users should certify that they meet the criteria.

--Establish operational training programs for key Federal, State, and industry officials responsible for the program, and give DOE's Office of Petroleum Operations regional offices ~~prime~~ responsibility for conducting these programs.

To improve program monitoring by

--Require States to notify ERA when priority needs are met through the State set-aside program and refer such cases to the Office of Enforcement for investigation.

--Establish an information gathering and analysis system which will provide reliable data on the distribution of gasoline supplies and use the reports to evaluate whether there are serious imbalances in supply between States or regions, and to determine what adjustments to individual prime suppliers' allocation fractions would best correct the imbalances.

--Seek a cost-effective and practicable method for ~~obtaining data on secondary and tertiary storage~~ of gasoline and middle distillates to provide a better basis for supply and distribution decisions.

--Revise the OHA case-tracking system to provide data on the speed with which cases are being resolved; the types of cases being received; and whether a particular supplier is generating an unusually high number of appeals, is being reversed by OHA in a high ratio of its decisions, or is experiencing a disproportionate number of protests of its decisions by independents. The tracking system should have sufficient storage capacity to track the cases generated by the allocation program.

--Establish a system for obtaining data on the use of the State set-aside program, including analyses which will highlight problems and the need for DOE action.

--Review the program requiring information from DOE operating personnel and, where needed, revise it

so that the method of updating the data places a minimal burden on the DOE employees, assuring that they are not unduly diverted from their duties.

To improve audit and enforcement activities by

--Periodically reviewing the audit programs for the allocation program to assure that up-to-date audit programs will be ready for use when supply shortages require allocation.

--Reviewing the allocation program, including the changes being made to it, to assure that appropriate audit effort is applied to all facets of the program.

--Planning how the audit priorities will be revised at the beginning of a supply shortage to assure that an appropriate, effective level of audit effort will be applied throughout the term of the shortage.

To improve Federal/State relations by

--Providing the direction and leadership required to achieve uniform and consistent application of the State set-aside program throughout the country.

--Setting standard definitions of hardships and emergencies.

--Setting criteria and standards of verification for evaluating requests for relief.

--Setting a lower percentage of supplies to be set aside, with provision for upward adjustments in following months for individual States that are not able to fill all requests that meet the criteria for hardships and emergencies. The releases of unused supplies might be a good indicator of what the lower percentage should be.

--Setting criteria and procedures for release of unused set-aside supplies. Such releases should be early enough to allow distribution that same month by the prime supplier. This could include phased releases.

--Requiring that participating States have adequately staffed, trained, housed, and funded organizations to administer the program.

--Identifying options for assuring adequate funding for the State program, including the feasibility of Federal funding.

To improve program planning and direction by

--Placing responsibility for the Department's energy emergency management planning and implementation within the Office of the Secretary of Energy and enhance the position's effectiveness by making it a single-responsibility function.

CHAPTER 6

AGENCY COMMENTS

DOE, by letter dated March 7, 1980, provided comments on a draft of this report. (See app. II.) DOE agreed with our findings regarding operational aspects of the allocation program, with the exception of the portion dealing with OHA. Consequently, DOE endorsed our recommendations for identifying means to improve the program monitoring, audit and enforcement activities, Federal/State relations, and program planning and direction.

DOE said it was conducting a comprehensive regional office review to improve case management and strengthen program monitoring. Also, DOE said, it is in the process of resolving issues relating to the State set-aside program, including proper guidance, and reviewing the entire allocation system and continuing audit and enforcement activities.

The final report on the regional office review, issued in late March 1980, confirms our findings regarding DOE's operation of the program during 1979.

However, DOE disagreed with our findings regarding

--the base period,

--the regulatory functions performed by DOE, and

--the OHA response to the problems created by the gasoline shortage.

THE BASE PERIOD

DOE defended its decision not to update the base period until February 1979 and disagreed with our proposal for a rolling base period.

In its March 7, 1980, letter, DOE stated that our draft report alleged that DOE did not consider updating the base period adopted in 1974 until it was changed on an emergency basis in February 1979.

DOE disagreed with our proposal for changing to a rolling base period. DOE said our draft report failed to acknowledge that it had previously considered making such a change and said the change was not made because the hearing record suggested that a rolling base period would cause greater administrative burdens and greater dislocations than a fixed

base period. DOE also suggested that we had not explored the hearing record.

We found DOE's hearing record deficient in that the arguments were not accompanied by substantive analyses of the regulatory or economic effects. (See p. 74.) Our concern about DOE's position on the rolling base period is expressed in the section beginning on page 74. That section also discusses the modification of our proposal for a rolling base period made on the basis of informal DOE comments.

REGULATORY FUNCTIONS

DOE disagreed with a finding and the related proposal in our draft report to give industry responsibility for processing all applications to set or adjust base period volumes and to change purchaser/supplier relationships. Our original understanding, which later proved incorrect, was that the February 1979 and the original January 1974 unusual-growth provisions had the same decision-sharing feature. That is, that suppliers could increase base period volumes up to 20 percent, but increases of 20 percent or more required DOE approval. Thus we were concerned that DOE was performing a function that could be better performed by suppliers. DOE pointed out and provided supporting documentation showing that it was already allowing the suppliers to make all adjustments under the unusual-growth provision.

With respect to purchasers' requests for permission to change suppliers, we thought that suppliers could be permitted to make the decision when all three parties were in agreement (so-called three-party agreements). DOE expressed concern about the potential for fraud and abuse if DOE approval were not required. In addition, it cited recently available information on the makeup of its case backlog which showed that these applications constitute a low percentage of the caseload.

With respect to setting base period volumes for new firms, DOE states that the regulations provide for interim assignments by the suppliers. DOE said that this system had not worked and again expressed concern about the potential conflict of interests of the suppliers.

As a matter of principle, however, we believe that DOE should avoid unnecessary emergency regulations and interventions and allow industry to exercise its operational judgement within clearly defined and understood guidelines and regulations.

We had addressed these matters in a single proposal in our draft report. On the basis of the comments and additional information received from DOE we withdrew the proposal.

OHA RESPONSE TO THE SUDDEN WORKLOAD

DOE objected to our description of OHA's actions in trying to deal with the sudden workload. DOE also made extensive statements about OHA's most recent actions.

OHA reorganization

DOE said that the reason for the reorganization of the OHA field offices was to better deal with the dramatically increased workload. It cited the handicap OHA had in facing that workload with a skeleton staff as a result of the administration's anticipation of decontrol. In the body of this final report we have recognized the reason for the reorganization. We agree with DOE's statement of the cause and effect of the problem.

OHA's more recent actions

DOE said OHA made a number of major organizational improvements and analytical shortcuts to cope with the huge influx of cases. It cited

--changes in the computer system for tracking regional cases,

--personnel hired and trained to operate the computer system,

--development of simplified analytical formats, and

--use of consolidated decisions to decide numerous similar cases with a single decision.

We have recognized these statements in this report to the extent possible after receiving limited further information and documentation regarding these statements from the Director, Office of Economic Analysis, OHA.

However, we should point out that the impression given by DOE's letter is that these improvements have been completed. We found that some were initiated more recently than indicated by DOE's letter and that some are still in progress.

For example:

--The improvements to the computer system were begun in September, but the computer program is still being "debugged."

--The computer personnel were hired beginning in October 1979 and completed initial training by mid-December. More advanced training is still in progress.

--The computer system does not identify suppliers generating unusually high numbers of appeals.

--The reports on caseload processing are not considered to be reliable.

With respect to OHA backlog reduction, a fairly large, but unknown, number of "case dismissals" are thought to be cases withdrawn because, with the passage of time (and an improving market), the point has been made moot. Also, while the backlog has been mightily reduced, there appears to be a significant backlog remaining and a large portion of it is old. (See p. 39.)

APPENDIX I

LISTING OF

SENATORS AND REPRESENTATIVES

WHO REQUESTED THIS REPORT

Requestor

Senators:

Robert Dole
J. James Exon
Richard G. Lugar
William Proxmire
William V. Roth, Jr.

Representatives:

William R.

Bill Archer
Marilyn Lloyd Bouquard
Robert K. Dornan
Benjamin A. Gilman
Norman F. Lent
Fernand J. St. Germain
Guy Vander Jagt
G. William Whitehurst

APPENDIX II

Department of Energy
Washington, D.C. 20585

MAR 7 1980

Mr. J. Dexter Peach
Director
Energy and Minerals Division
U. S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

We appreciate the opportunity to review and comment on the General Accounting Office (GAO) draft report entitled "Gasoline Allocation Experience: A Chaotic Program in Need of Overhaul." While we agree with many of the recommendations contained in the report, we also disagree with a number of the conclusions and recommendations. The Economic Regulatory Administration (ERA) has already provided to your staff detailed comments and an annotated copy of the draft report noting factual errors, inconsistent statements and other matters which inappropriately reflect on the experience of last spring, on the allocation program in general and on the feasibility of adopting some of the GAO recommendations.

In general, our areas of agreement with the draft report involve the operational aspects of the allocation program, with the exception of the discussion concerning the Office of Hearings and Appeals (OHA). Consequently, we endorse the recommendation for identifying means to improve our program monitoring, audit and enforcement activities, Federal/state relations, and program planning and direction. Members of your staff have been provided with a summary of DOE actions already taken in areas relating to the report recommendations. For example, we are currently engaged in a comprehensive regional review to improve our allocation case management and to strengthen program monitoring activities. We are also in the process of resolving issues relating to the state set-aside, and setting forth proper guidance, reviewing the entire allocation system and continuing audit and enforcement activities.

We do, however, have strong disagreement with certain aspects of the draft report. Primarily this involves Chapter 2, and the conclusions and recommendations that stem from it, relating to the design of the allocation program. In addition to several errors in the description of the operation of present laws and regulations, the draft report alleged that the 1972 base period adopted in 1974 was not reconsidered until a change was made on an emergency basis in February 1979. The facts refute this allegation. In 1977 the Federal Energy Administration proposed changes to the base period. Those changes were not made in light of the public comments that such a change would be counterproductive. In 1978 the Department of Energy, recognizing that a supply

shortage probably could not be adequately managed on the basis of a 1972 base period, undertook a rulemaking to adopt standby petroleum product allocation regulations. This rulemaking with full public comment resulted in the promulgation of standby regulations in January 1979. It was these regulations that were invoked a month later when the anticipated shortage became real. Thus, the 1972 base period had been reconsidered, and emergency planning during 1978 resulted in the promulgation of a standby regulation that was in fact invoked.

Moreover, Chapter 2 of the draft report purported to find two basic design weaknesses in the allocation program--one, a fixed, as opposed to a rolling base period, and two, an assumption of supposedly unnecessary regulatory duties by ERA. With respect to a rolling base period, the draft report failed to acknowledge that such a change was considered by DOE and its predecessor, the Federal Energy Administration, in both 1977 and 1979. The determination in both cases not to adopt a rolling base period was founded upon a record, apparently unexplored by GAO, that suggested that a rolling base period would cause greater administrative burdens and greater dislocations than a fixed base period. Given the President's commitment to decontrol gasoline as soon as market conditions allow, as well as the fact that controls expire in any case by October 1981, the Department believes a change to a rolling base period at this time would be ill-advised.

Second, with respect to the claim that ERA has assumed unnecessary regulatory functions that could be more efficiently performed by the oil companies themselves, the draft report identified only three such purported functions. The first function mentioned in the draft report, adjusting base period volumes when in excess of 20 percent, simply does not exist in ERA.

The second function mentioned is approving changes in supplier/ purchaser relationships. It is true that ERA does require its approval for termination of supplier/wholesale purchaser reseller relationships and consequent new relationships (sometimes referred to as three-party agreements), but ERA has found these three-party agreements to be often used for fraud and abuse, such that ERA approval should be required. Moreover, the backlog of cases is not attributable to requests for approvals of changes in supplier/purchaser relationships.

The third function mentioned is processing applications for assignment of base period volumes for new firms. Interestingly, in light of GAO's recommendation that these assignments be handled by the oil companies themselves, the existing regulations already provide for interim assignments by the oil companies. The failure of this system to work demonstrates the futility of attempting, as GAO suggested in the draft report, to have oil companies make essentially adjudicatory decisions concerning scarce resources with respect to which they are interested parties. ERA has in the past attempted to have oil companies play a larger role in the allocation system, but these attempts have largely been unsuccessful. The draft report fails to acknowledge these past experiences and the fundamental problems involved in the recommendation to have oil companies play a larger role in the allocation program.

Finally, with respect to Chapter 3's discussion concerning OHA, the report does not present an accurate picture of the response of OHA to

APPENDIX II

problems created by the recent national motor gasoline shortage. The primary concern is the misconception of the reasons for and the nature of the field structure reorganization which OHA initiated in April 1979. Proper response by our regional offices to the cases arising from the gasoline shortage were not delayed by the reorganization. At the time the motor gasoline shortage began, OHA had no functioning regional offices. Throughout fiscal year 1979, it had been operating with budget and personnel ceilings which reflected traditional levels of case receipts and DOE plans to decontrol a number of petroleum products. As of May 1979, the ten regional offices of OHA were staffed with a total of only ten professional employees. Regional offices in San Francisco and Denver existed only on paper. The entire staff of the OHA regional office for Region VI, a five state area including Texas, consisted of one fulltime permanent employee. When the flood of applications for exception involving retail service stations arrived, rapid expansion of the staff of the regional offices was inevitable and unavoidable. The OHA reorganization of its regional operations was simply intended to make certain that this expansion of regional operations took place within an organizational framework designed for maximum efficiency and effectiveness.

We had implemented a number of major organizational improvements and analytical shortcuts in order to cope with the huge influx of cases. The report recommendations to improve our computer system for tracing regional office cases were implemented in the summer of 1979. The mechanism for entering new cases in the computer was greatly simplified. New personnel were hired and trained to manage regional computer functions. As a result, the system has been providing data on the speed with which cases are being resolved, the types of cases being received, the suppliers generating unusually high numbers of appeals, and the nature of determinations issued with respect to those appeals. By early fall of 1979, OHA had already made every effort to provide detailed accounts of our activities to the Department of Energy's upper level management. Currently, OHA prepares and makes available on a regular basis, useful, timely and detailed information on the status of applications received.

OHA has expended tremendous effort in recent months to reduce its backlog of cases. The last month for which backlog figures are given is October 1979. By that time, OHA had taken a series of steps, including the development of simplified analytical formats and the issuance of consolidated decisions, that were to dramatically increase the speed with which we were able to issue case determinations. The report includes a statement that even though the staff of the San Francisco regional center had been increased to 12 and supplemented with five additional staff members under contract to OHA, the regional center still was not able, as of September 4, 1979, to handle its case load adequately. Our most recent computer reports indicate that between September and December 1979 the San Francisco Regional Center resolved more than 1,300 cases, issued significantly more decisions than the number of new cases which it received, and reduced its backlog from more than 1,200 cases to less than 900 cases. The Chicago Regional Center, described in the draft report as having the largest backlog, resolved some 1,500 cases during the same period and has reduced its backlog from more than 1,600 cases to less than 650 cases. Other OHA regional centers had similar success. Between October and December 1979, our regional offices issued a combined total of 4,745 case determinations

APPENDIX II

and, despite receiving an addititional 3,943 cases, managed to reduce their backlogs by more than 1,200 cases. These improvements should be considered in evaluating the experience of OHA during the motor gasoline shortage.

We appreciate your consideration of these comments in the preparation of the final report and will be pleased to provide any additional information you may desire in this matter.

Sincerely,

for Jack E. Hobbs
Controller

APPENDIX III

GAO REPORTS EVALUATING DOE'S AND THE STATES' ABILITIES TO REACT TO AND MANAGE AN ENERGY SUPPLY SHORTAGE

Report Title 1/	Date Issued
Review of Complaints Concerning the Mandatory Petroleum Allocation Program and the Regulation of Petroleum Pricing (B-178205)	May 3, 1974
Problems in the Federal Energy Office's Implementation of Emergency Petroleum Allocation Programs at Regional and State Levels (B-178205)	June 23, 1974
Suppliers' Compliance with Allocation and Price Regulations (Report to Administrator, FEA Region I Office)	July 30, 1974
Improving the Operations of the Federal Energy Administration's Region X Office in Handling of Allocation Requests (Report to Administrator, FEA Region X Office)	Aug. 15, 1974
Review of the Operations Division of the Federal Energy Administration's Region I Office (Report to Administrator, FEA Region I Office)	Oct. 24, 1974
Federal Energy Administration's Actions on Allocation and Pricing of Fuel (Report to Administrator, FEA Region IX Office)	Oct. 29, 1974
Problems in the Federal Energy Administration's Compliance and Enforcement Effort (B-178205)	Dec. 6, 1974
Problems of Independent Refiners and Gasoline Retailers (OSP-75-11)	Apr. 4, 1975

1/Reports to the Congress, unless otherwise indicated.

APPENDIX III

The Administration of the Petroleum Set-Aside Program by State Energy Offices (B-1178205) (Report to Administrator, FEA)	May 8, 1975
Federal Assistance to State and Local Governments in Developing and Administering Energy Programs (OSP-76-20) (B-178205) (Report to Administrator, FEA)	April 23, 1976
Letter Report on Natural Gas Curtailments During Winter 1976-77 (B-180228) (EMD-77-12)	Jan. 13, 1977
Energy Issues Facing the 95th Congress (B-178205) (EMD-77-34)	Apr. 28, 1977
U.S. Oil Companies' Involvement in the International Energy Program (B-178205) (HRD-77-154)	Oct. 21, 1977
Federal Energy Administration's Compliance Program in the New England Area (B-178205) (EMD-77-71)	Nov. 7, 1977
Emergency Natural Gas Purchases: Actions Needed to Correct Program Abuses and Consumer Inequities (EMD-78-10)	Jan. 6, 1978
Allocation of Propane Supplies Under the Emergency Petroleum Allocation Act of 1973 (B-178205) (Memorandum to GAO Supervisory Auditor; by Senior Attorney, Office of the General Counsel, DOE)	Nov. 23, 1977
Better Planning Needed to Deal with Shifting Regional Energy Demand (EMD-78-35) (B-178205) (Report to Secretary of Energy)	Feb. 22, 1978
Department of Energy's Development of Contingency Plans for Dealing with Energy Supply Interruptions (B-178205) (EMD-78-59) (Report to Secretary of Energy)	Apr. 27, 1978

APPENDIX III

Improved Energy Contingency Planning is Needed to Manage Future Energy Shortages More Effectively (B-178205) (EMD-78-106)	Oct. 10, 1978
Federal Regulation of Propane and Naphtha: Is It Necessary? (B-178205) (EMD-78-73)	Oct. 24, 1978
Need to Consider a Regional Petroleum Reserve for All Petroleum Products (B-178205) (EMD-79-14) (Report to Secretary of Energy)	Mar. 20, 1979
Analysis of the Energy and Economic Effects of the Iranian Oil Shortfall (B-178205) (EMD-79-38)	Mar. 5, 1979
Improvements Needed in the Enforcement of Crude Oil Reseller Price Controls (EMD-79-57)	May 29, 1979
Iranian Oil Cutoff: Reduced Petroleum Supplies and Inadequate U.S. Government Response (EMD-79-97)	Sept. 13, 1979
Washington, D.C., Area Home Heating Oil Supplies Adequate But At Escalating Prices (EMD-80-42)	Jan. 22, 1980

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