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WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
DIVISION

November 29, 1984

B-214185

The Honorable John D. Dingell  
Chairman, Subcommittee on  
Oversight and Investigations  
Committee on Energy and Commerce  
House of Representatives



125989

Dear Mr. Chairman:

Subject: Information on Data Problems Identified by  
the Department of Energy With Its Final  
Entitlements Lists (GAO/RCED-85-45)

As requested in your October 19, 1983, letter and modified in subsequent discussions with your office, this report provides information on data problems identified by the Department of Energy (DOE) with its final entitlements lists. Monthly entitlements lists were published under DOE's Entitlements Program, established in November 1974 to implement a requirement under the Emergency Petroleum Allocation Act of 1973, as amended (Public Law 93-159). The act required that the President promulgate regulations providing for the allocation and pricing of crude oil and petroleum products. The lists were used by DOE to equalize U.S. refiners' crude oil costs by requiring that money transfers be made among the refiners based on their proportionate access to low-cost, price-controlled crude oil in relation to the national average. The lists were based on information provided to DOE by participants in the Entitlements Program.

In summary, we found that DOE does not have adequate documentation on the type and extent of problems it identified with data supporting the final entitlements lists. In June 1984, DOE decided not to publish the final entitlements lists because further operation of the Entitlements Program would disrupt the competitive status among refiners functioning in a market that had made the transition from regulated and price-controlled to unregulated and competitive since crude oil prices were decontrolled in January 1981. In addition, DOE stated that data problems were irrelevant to its decision and that public comments on data accuracy did not provide a basis to conclude that the data for the final entitlements lists were less reliable than the data on which prior lists had been published. Consequently, DOE plans to take no further action to resolve the data problems.

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The following sections of this report provide information on the background of the Entitlements Program; our objectives, scope, and methodology; and the results of our work.

## BACKGROUND

The Entitlements Program implemented a requirement of the Emergency Petroleum Allocation Act of 1973 that the President regulate the allocation and pricing of crude oil and petroleum products to provide for, among other things, (1) the preservation of an economically sound and competitive petroleum industry, (2) the equitable distribution of crude oil at equitable prices among all sectors of the petroleum industry, and (3) the minimization of economic distortion and unnecessary interference with market mechanisms.

The purpose of the program generally was to equalize U.S. refiners' crude oil costs by distributing the benefits of access to lower priced domestic crude oil proportionately to all domestic refiners. From the beginning, however, the program was continually altered and expanded. In order to eliminate any economic disincentive to the production and use of petroleum substitute fuels resulting from the operation of price controls on competing petroleum fuels, DOE revised the program to serve other regulatory objectives in addition to the allocation of price-controlled crude oil among refiners. For example, the scope of the program was expanded to include many nonrefiners, such as importers of residual fuel and producers and users of petroleum substitutes.

The Entitlements Program equalized crude oil costs by requiring monthly transfers of money among the program participants based upon information they reported each month to DOE. Using reported information such as the volumes and costs of crude oil received and processed by refiners, DOE calculated the amount each participant was to pay or receive and each month, with a 2-month lag, published the results in a monthly entitlements list. In general, the lists specified that refiners purchasing more low-cost, price-controlled crude oil than the national average make entitlements payments, and that refiners purchasing more high-cost uncontrolled imported crude oil receive entitlements payments. The program required the participants to make the money transfers among themselves without DOE serving as a clearinghouse to receive and distribute the money.

On January 28, 1981, the prices of domestic crude oil were decontrolled by Executive Order 12287. Although crude oil prices were decontrolled, the Executive order stated that the reporting and recordkeeping requirements of the Entitlements Program were to remain in effect until eliminated or modified by the Secretary of Energy. The Executive order also provided that the Secretary of Energy could adopt regulations and take actions to implement the

order, including the publication of entitlements lists for periods prior to the order and the establishment of a mechanism--referred to as a cleanup list--for entitlements adjustments for periods prior to the order.

Since the program began, DOE has published each of the monthly entitlements lists with the exception of the list for January 1981. DOE planned to publish this list in March 1981 and, following this, to terminate the Entitlements Program by publishing a cleanup list that would make adjustments to the entitlements lists for October 1, 1980, through January 27, 1981, based upon changes reported by the participants. DOE believed it would be unlikely that adjustments would relate back before October 1980, because most firms would have already reported those adjustments.

According to DOE, the January 1981 and cleanup lists were not published as planned because various courts issued a number of temporary restraining orders and preliminary injunctions in favor of firms that anticipated making entitlements payments if the lists were published. Ultimately, all of these were vacated. Several issues were litigated which had the potential to change entitlements payments among participants. DOE deferred publication of the final lists until the issue under litigation that DOE considered most significant was resolved by the courts. In September 1982, the Temporary Emergency Court of Appeals ruled in DOE's favor on this issue, and in February 1983, the Supreme Court declined to hear the case.

In November 1983, after considering what actions to take to terminate the program, DOE proposed in the Federal Register not to publish the two lists. In its view, to do so would frustrate the purposes of the Emergency Petroleum Allocation Act and the Entitlements Program. DOE gave the following reasons for its proposal.

- The amount of price-controlled crude oil to be allocated by the lists is so small as to bear little relation to the fundamental purposes of the Entitlements Program. According to DOE, the percentage of price-controlled oil as compared to all oil received by refiners declined during the last year of the program--about 23 percent in January 1980 to about 1.4 percent in January 1981.
- The lists would contradict one of the major purposes of the program by requiring the transfer of substantial sums of money from small and independent refiners, as a class, to major refiners.
- The lists would impose a severe financial burden on the already beleaguered small and independent segments of the refining industry, as a class, since for the first time they would make net entitlements payments to major refiners.

- The lists would largely fail to narrow the crude oil differentials that existed among refiners in January 1981 and, in some instances, would exacerbate those crude cost differentials.
- The lists would unnecessarily distort and interfere with the marketplace more than 2-1/2 years after decontrol, based on past transactions whose effects already have been reflected in the unregulated market, without achieving any of the objectives of the program or the President's decontrol order.

DOE also stated in its proposal that the data on which the lists were based were unreliable, although data problems were not given as a reason for not publishing the lists.

The Entitlements Program began in November 1974 with 163 participants and with money transfers of about \$69 million. The participants for the last published entitlements list--December 1980--totaled 327, with monetary transfers of about \$534 million. From November 1974 through December 1980, about \$18.8 billion was transferred at a monthly average of about \$240 million, with the monthly average for 1980 being approximately \$496 million. As of November 1983, when DOE proposed not to publish the final lists, the money that would have been transferred if the January 1981 and cleanup lists were published amounted to about \$431 million and \$168 million, respectively.

After receiving public comments on its November 1983 proposal, DOE issued its decision in June 1984 not to publish the final entitlements lists. DOE stated that it reached this decision because issuance of the final entitlements lists was not necessary to implement immediate and orderly decontrol called for by the Executive order since the transition to a decontrolled market had been completed in the 3 years following decontrol. In addition, DOE stated that further operation of the Entitlements Program would be contrary to the objectives of the decontrol order because it would disrupt the competitive status among refineries functioning in a competitive, unregulated market. DOE also said that (1) the accuracy of the data on which the lists were based was irrelevant to DOE's decision and (2) the public comments DOE received on data accuracy did not provide a basis to conclude that the data were less reliable than the data on which prior lists had been published. Several legal actions have been filed challenging DOE's decision not to publish the final lists. As of October 1984, the suits were still pending.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

As requested in your October 19, 1983, letter and subsequently modified in discussions with your office, our objectives were to obtain information on

--the types and extent of the data problems that caused DOE to believe that the data for the final entitlements lists were unreliable and

--what DOE has done or plans to do to resolve the data problems.

To accomplish these objectives, we examined at DOE headquarters in Washington, D.C., DOE's documentation on data problems and held discussions with current and former DOE officials who were responsible for identifying and resolving these problems. We also discussed with DOE officials the relationship of data problems to DOE's decision not to publish the final entitlements lists. In addition, we obtained information on the amount of money that would have been transferred as of November 1983 when DOE proposed not to publish the final entitlements lists.

At the request of your office, we met with a refiner to discuss one of the data problems identified by DOE. With the exception of obtaining information from this refiner, we limited our examination to the information that caused DOE to believe that the data supporting the final entitlements lists were unreliable. As agreed with your office, we did not independently verify the entitlements data submitted by the firms for the final entitlements lists.

In addition to obtaining information on the data problems that DOE identified, at the request of your office, we obtained information on the organizational responsibilities for the Entitlements Program (see enc. I). Our work was performed between January and July 1984.

In discussions with your office, our Office of General Counsel was requested to examine certain legal issues related to the Entitlements Program and will communicate its results to you separately. These issues are (1) whether DOE is legally obligated to publish the final entitlements lists and, if not, whether it has the authority to change its regulations for this program, (2) what consideration DOE has given to the potential litigation that could be brought against it by parties allegedly harmed by a decision not to publish the final entitlements lists, and (3) what consideration DOE has given to the sources of funds that may be needed to satisfy court judgments in current and future litigation.

At the request of your office, we did not obtain written agency comments on this report. However, we did discuss the results of our work with the DOE Deputy General Counsel for Enforcement and Litigation, the DOE Deputy General Counsel for Regulation, and the Economic Regulatory Administration's (ERA's) Deputy Administrator, and they agreed with our findings. Except

as noted, our review was conducted in accordance with generally accepted government auditing standards.

TYPE AND EXTENT OF DATA PROBLEMS  
ARE NOT ADEQUATELY DOCUMENTED

In its November 1983 proposal not to publish the final entitlements lists, DOE said it believed that the data supporting the lists were unreliable for two reasons.<sup>1</sup> One was that some refiners' suppliers reclassified crude oil from uncontrolled to price-controlled status after the cutoff date for the refiners to report such changes to DOE. The other reason was that some refiners' reports showed negative numbers of barrels of crude oil being received, which DOE did not believe to be possible under the reporting regulations. DOE was concerned that reporting errors causing these negative numbers (negative crude oil receipts) might be widespread.

Oil reclassification

In describing the oil reclassification problem, DOE stated that it had been informed by some refiners that a number of their suppliers had changed their classifications of crude oil from uncontrolled to price-controlled status after August 15, 1981, the cutoff date for the refiners to report such changes to DOE for inclusion on the cleanup list. Entitlements payments were intended to equalize crude oil costs for those refiners paying higher prices for uncontrolled oil. DOE therefore believed that if the cleanup list was published without accounting for these adjustments, refiners would receive entitlements benefits that were not appropriate.

The Deputy General Counsel for Enforcement and Litigation and the Deputy General Counsel for Regulation told us that changes in oil classification were identified by former DOE attorneys in discussions with refiners. However, the former DOE attorneys told us that these discussions were not documented. They also said that DOE did not obtain documentation on crude oil reclassifications prior to pointing them out in its November 1983 proposal and requesting public comments on the subject.

Since DOE had no documentation on the oil reclassifications prior to identifying them as a problem in its November 1983 proposal, we asked the DOE officials what related information was

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<sup>1</sup>Although DOE stated in its proposal that the data in support of both the January 1981 and the cleanup lists were unreliable, the Deputy General Counsel for Enforcement and Litigation told us that the data problems pertained only to the cleanup list.

received in the public comments. The officials told us that one firm said that its suppliers had reclassified their oil after the cutoff date and believed that this practice could be widespread among refiners.

At the request of your office, we met with representatives of this firm. They told us that their company's suppliers had reclassified a substantial amount of crude oil after the August 1981 cutoff date. They said that, if their firm's experience with reclassifications were typical, the amount of affected crude oil on the cleanup list was enough to make the list too inaccurate to publish. However, they said they had no information on whether their company's experience was typical.

### Negative crude oil receipts

Of the total 204 refiners participating in the Entitlements Program, DOE identified 21 that had claimed, as an adjustment on their reports for the cleanup period, more barrels of price-controlled oil than they had originally reported as having received in their monthly entitlements reports. DOE did not believe these cleanup reports were accurate because they showed that the firms in effect received a negative number of barrels of oil (negative crude oil receipts). The entitlements value of these negative receipts was about \$53 million.

Between early 1982 and mid-1983, DOE attempted to resolve the negative crude oil receipts data problem through correspondence, telephone conversations, and meetings. Through DOE's efforts, 9 of the 21 refiners eliminated negative crude oil receipts from their reports and 4 others made reductions. Also, the entitlements value of the negative crude oil receipts decreased from about \$53 million for the 21 refiners to about \$27 million for the 12 refiners with negative crude oil receipts still included in their reports.

In its November 1983 proposal, DOE attributed the negative crude oil receipts for the 21 firms to seven categories of reporting errors on the part of the refiners and believed that the errors were widespread. For example, according to DOE, one of these categories was clerical errors: refiners used the wrong sign (+ or -) or misplaced decimal points when reporting adjustments to crude oil receipts.

The available documentation that DOE used to identify the reporting errors was not adequate for us to verify DOE's categories of reporting errors or determine how many errors each of the 21 refiners made. Nor could DOE provide us any evidence that the reporting errors were widespread among other refiners.

DOE's Deputy General Counsel for Enforcement and Litigation told us that resolution of data problems was not carried through because in mid-1983 DOE shifted its emphasis away from resolving the data problems toward deciding whether to publish the entitlements lists. He said that DOE did not consider resolving the problems to be necessary unless a decision was made to publish the lists. In addition, DOE's Deputy General Counsel for Regulation and ERA's Deputy Special Counsel told us that there was no evidence of false reporting on the part of firms that reported negative crude oil receipts.

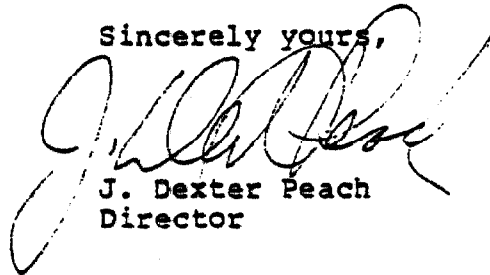
DOE HAS NO PLANS TO FURTHER  
RESOLVE DATA PROBLEMS

DOE's Deputy General Counsel for Enforcement and Litigation, DOE's Deputy General Counsel for Regulation, and ERA's Deputy Administrator told us that, in view of DOE's decision not to publish the lists and the irrelevance of data problems to that decision, DOE plans to take no further action to identify and resolve data problems with the lists.

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At your request, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the date it is issued. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,



J. Dexter Peach  
Director

Enclosure



ORGANIZATIONAL RESPONSIBILITIES FOR  
THE ENTITLEMENTS PROGRAM

The ERA had overall responsibility for the Entitlements Program. However, DOE's Office of General Counsel had, since early 1981, been the focal point for program completion because of litigation involving the publication of the final entitlements lists.

In carrying out its responsibility, ERA received and processed the entitlements reports submitted by the participants and published the monthly entitlements lists. For each of the last 2 years of the program (fiscal years 1980 and 1981), ERA had a staffing level of six people with a budget of about \$600,000. In October 1981, the ERA entitlements staff was eliminated during a reduction-in-force. However, DOE's Deputy General Counsel for Enforcement and Litigation and ERA's Deputy Administrator said that the reduction-in-force had no impact on ERA's management of the Entitlements Program because the reports filed by the participants for the last entitlements lists had been processed by then. Although ERA did not have a separate budget or staff for the Entitlements Program after fiscal year 1981, two ERA staff members, on a part-time basis, continued to maintain the data base for the program and make the changes in entitlements data that resulted from DOE's efforts to resolve data problems.

DOE's Office of General Counsel was the focal point for the completion of the Entitlements Program. It performed most of the work in (1) analyzing data problems, (2) determining the reliability of the data for the last two lists, (3) preparing DOE's position not to publish the final entitlements lists, (4) reviewing comments submitted on DOE's proposal not to publish the final lists, and (5) establishing the positions that DOE took in its final decision not to publish the last two lists.