126403

BY THE COMPTROLLER GENERAL

Report To The Chairman, Subcommittee On Oversight And Investigations Committee On Energy And Commerce House Of Representatives

OF THE UNITED STATES

The Department Of Energy Should Improve Its Management Of Oil Overcharge Funds

Between August 19, 1973, and January 28, 1981, oil companies were subject to federal price control regulations on crude oil and refined petroleum products. The Department of Energy (DOE) is currently evaluating alleged pricing violations that occurred during that period to determine how much money, if any, the oil companies should return to overcharged customers.

In settling these alleged overcharge violations, DOE has required some companies (where the overcharged customers could not be specifically identified) to make payments to either the states where the oil companies do business or to a DOE escrow account with the U.S. Treasury. Also, in accordance with section 155 of Public Law No. 97-377, DOE has redistributed $200 million of the escrow account funds to the states.

GAO found that DOE has not given each state its pro rata share of the escrow funds and has not complied with its regulations for determining the appropriate recipients of the oil overcharge refunds. Accordingly, GAO makes recommendations to improve DOE's management of the refund program and restates the need for DOE to comply with the Comptroller General's decisions and opinions concerning DOE's procedures for identifying overcharged customers.

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

B-214953

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

Dear Mr. Chairman:

In response to your request, this report discusses the adequacy of the Department of Energy's (DOE's) management of funds distributed to states under section 155 of Public Law No. 97-377 and as a result of settlements DOE negotiated with oil companies to resolve their alleged oil pricing violations. The report makes recommendations to the Secretary of Energy to improve the management of oil overcharge funds and restates the need for DOE to comply with the Comptroller General's opinions and decisions concerning DOE's procedures for identifying overcharged customers.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date. At that time, we will send copies to the Secretary of Energy; the Director, Office of Management and Budget; and interested congressional committees. We will also make copies available to others upon request.

Sincerely yours,

Charles A. Bowsher
Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, COMMITTEE ON ENERGY AND COMMERCE, HOUSE OF REPRESENTATIVES

THE DEPARTMENT OF ENERGY SHOULD IMPROVE ITS MANAGEMENT OF OIL OVERCHARGE FUNDS

D I G E S T

Between August 19, 1973, and January 28, 1981 (the date the President lifted the price controls on refined petroleum products), the Department of Energy's (DOE's) Economic Regulatory Administration (ERA) and predecessor federal agencies established and enforced regulations controlling the allocation and pricing of crude oil and refined petroleum products. ERA has audited oil companies' compliance with these regulations during this period and has identified alleged violations, such as customer overcharges, which could result in oil company refunds totaling billions of dollars. The principal method ERA has chosen to resolve these alleged violations is negotiated settlements with the oil companies.

When ERA negotiates a settlement for alleged violations, a consent order is written specifying the actions ERA and the oil company agree on. When the parties injured by the oil companies' overcharges are not readily identifiable during the settlement, the consent orders have required the oil companies, among other things, to make payments to a DOE oil overcharge escrow account at the U.S. Treasury or directly to the individual states where the oil companies do business. As of July 1984, states had received or would receive from settled cases $36 million directly from the oil companies and $224.5 million from DOE's escrow account.

DOE redistributes the escrow account funds to either injured parties or the states by two means. The first is through DOE's regulations, which established procedures for determining the proper recipients of the escrow funds. Following these procedures, as of July 1984, DOE had paid or would pay states about $24.5 million. The second was through Public Law 97-377, Section 155 (Dec. 21, 1982), pursuant to which DOE disbursed $200 million of the

escrow funds to the 50 states, the District of Columbia, and 5 U.S. territories (collectively referred to as states) for use in four DOE energy conservation programs and the Department of Health and Human Services' low-income home energy assistance program. (See pp. 1 to 4 and 21 to 23.)

In April 1983, the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, requested GAO to examine DOE's administration and states' use of oil overcharge funds received (1) directly from the oil companies, (2) as a result of DOE's oil overcharge refund procedures, and (3) as a result of section 155. GAO reviewed DOE's policies and procedures for administering these funds and eight states' plans and procedures for using the funds. GAO selected these eight states to include the four which received the most oil overcharge funds and to represent different regions of the country. GAO also reviewed a ninth state's policies and procedures for using only the section 155 funds because of apparent problems identified during GAO's visits to DOE's regional offices. In total, the nine states received about $83.2 million of the $200 million section 155 distribution. As of July 1984, the eight states had received about $17.2 million of the $60.5 million distribution of the other oil overcharge funds.

The Subcommittee agreed with GAO's criteria for selecting the nine states. Because GAO judgmentally selected the nine states, the results of its review cannot be projected beyond those states. However, the scope of its review permitted GAO to evaluate the type of problems DOE has encountered in administering the oil overcharge program.

In addition, GAO reviewed DOE's computation of 26 of the 56 states' shares of the section 155 funds. The 26 states included 22 where ERA had identified errors it had made in computing the states' shares. (See pp. 4 through 6, 9, 23, and 30.)

DOE SHOULD IMPROVE ITS MANAGEMENT OF SECTION 155 FUNDS

Although state plans for using section 155 funds generally complied with applicable energy conservation program requirements, GAO believes that DOE could improve its management of these funds in three areas.

The first area is the states' use of interest earned on section 155 funds. DOE concluded that the Congress intended that interest earned on these funds be used only for specified energy conservation programs. GAO agrees. Although DOE informed the states of its conclusion, it had not required the states to report on how they used this interest. Thus, DOE is unaware of how much interest the states have earned and how they have used it.

In its review, GAO estimated that, as of January 31, 1984, the nine states had accrued interest on their section 155 funds of about $7.2 million. Five of the nine states planned to use such interest only for the specified energy conservation programs. The other four states, however, considered their $4.3 million of interest income to be general revenue and thus available for any state program. (See pp. 11 to 13.)

The second area needing improvement is the state proposals to demonstrate energy conservation techniques. DOE's regulations governing two of the conservation programs for which section 155 funds were authorized to be spent allow states to use such funds for projects which demonstrate commercially available energy conservation technologies and equipment.

These regulations, however, prohibit use of funds simply for weatherizing or otherwise improving the energy conservation of buildings. To qualify, the project <u>must be a demonstration</u>.

DOE, however, had not developed criteria specifying what documentation states should submit as justification for proposed energy conservation demonstration projects. GAO identified three projects, one in each of three states, with total estimated costs of $457,000 which DOE approved as demonstrations, but which, in GAO's opinion, were not adequately documented as such. For example, one state had a $320,000 project to demonstrate the use of a computer to regulate the heating and cooling of a state administrative building. The state's documentation for this project, however, did not describe the conservation benefits of the project and did not identify the amount and source of funds for evaluating and disseminating the results of the project. (See pp. 14 to 15.)

The third area needing improvement is ERA's computation of states' shares of the section 155 funds. Section 155 required that each state's share of the $200 million be based on its pro rata share of the total refined petroleum products consumed within all states during the period September 1, 1973, to January 28, 1981. GAO noted two problems in ERA's computation of states' shares--mathematical errors and not using the most representative data.

After the states had been paid, ERA found that it had made mathematical errors in calculating 22 states' shares. As a result of the errors, ERA overpaid 4 states by an average of $78,550 and underpaid the other 52 states by an average of $6,042. ERA plans to correct these errors and make the appropriate adjustments.

In addition, ERA found that it had not used the most representative petroleum product consumption data in calculating the shares of three states. If it had, ERA determined that the shares of the three states would decrease by a total of $423,400, which would then increase the other states' shares by the same amount. ERA officials said that ERA does not plan to adjust the states' shares because the distributions are reasonable and are based on what ERA believed was the best available data at the time it made the computations. GAO does not object to ERA's position on past calculations, because section 155 states that the calculations were to be based on "...estimates by the Secretary from reasonably available information." GAO believes that ERA should use the most representative data in making any future distributions of oil overcharge refunds to states based on section 155 provisions. As of November 16, 1984, however, ERA had not yet determined whether it would use the more representative data in making future calculations. (See pp. 15 to 18.)

The significance of how DOE administers the section 155 funds and how states use their refunds could be magnified by the terms of a March 1983 U.S. district court decision which ordered Exxon Corporation to make restitution for alleged overcharges on crude oil sales by paying the U.S. Treasury about $1.6 billion. The court also ordered DOE to disburse these funds to the states in accordance with the procedures set forth in section 155. Exxon Corporation has appealed this decision to the Temporary Emergency Court of Appeals, which, as of October 2, 1984, had not yet ruled on the appeal. (See p. 18.)

NEED TO ENSURE THAT OTHER OIL OVERCHARGE REFUNDS TO STATES RESULT IN RESTITUTION TO INJURED PARTIES

DOE's regulations established procedures for distributing oil overcharge refunds when those overcharged and the amounts of the overcharges could not be readily identified. These procedures, promulgated pursuant to the Emergency Petroleum Allocation Act of 1973, stipulated that such cases be referred to DOE's Office of Hearings and Appeals, which is responsible for ensuring that the refunds are used to provide restitution to parties injured by the oil companies' overcharges. As of July 1984, the states would share in $60.5 million as a result of 10 oil company settlements. In six of these cases, which resulted in payments of about $24.5 million to states, DOE complied with its procedures and referred the cases to the Office of Hearings and Appeals.

In its settlements with the other four oil companies, however, ERA bypassed the Office of Hearings and Appeals and required the companies to make direct payments, totaling $36 million, to the states where they sold petroleum products. These payments were made without first attempting to identify the overcharged customers, thus potentially denying refunds to injured parties. GAO previously brought this matter to DOE's attention in two opinions and two decisions of the Comptroller General of the United States.[1]

DOE maintains that it has the authority to take any action necessary to eliminate or compensate for the effects of a violation of its petroleum pricing and allocation regulations. Therefore, DOE believes that it does not have to refer cases to the Office of Hearings and Appeals, but rather has the authority to approve direct payments to the states. GAO still disagrees and restates the need for DOE to comply with the Comptroller General's opinions and decisions. (See pp. 23 to 24 and 26 to 27.)

In a related matter, GAO found that states which received direct payments as a result of ERA's settlements with the four oil companies may not have been using their refunds for restitution to injured parties. For example, Pennsylvania used some of the funds for basic and applied research and Georgia funded airport improvement projects. These four cases should have been referred to the Office of Hearings and Appeals to permit that Office to carry out its procedures for attempting to identify injured parties. (See p. 25.)

RECOMMENDATIONS TO THE SECRETARY OF ENERGY

To improve DOE's management of section 155 funds, GAO recommends that the Secretary of Energy (1) require the states to report on the interest earned on section 155 funds and certify that it is used for authorized energy conservation programs, (2) develop criteria for states to use in determining what documentation is needed to justify energy conservation demonstration projects, (3) implement the plans to correct the errors made in the individual states' shares of section 155 funds, and (4) use the most representative data in calculating states' shares of any future oil overcharge refunds made according to section 155 provisions. (See p. 20.)

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[1] Comptroller General of the United States Opinions B-200170, Apr. 1, 1981, and 60 Comp. Gen. 15 (1980); and Decisions 62 Comp. Gen. 379 (1983) and 63 Comp. Gen. 189 (1984).

GAO did not obtain any agency comments on this report, but did discuss the results of its review with DOE program officials.

Contents

ILLUSTRATIONS

ABBREVIATIONS

DOE	Department of Energy
EIA	Energy Information Administration
ERA	Economic Regulatory Administration
GAO	General Accounting Office
HHS	Department of Health and Human Services
OHA	Office of Hearings and Appeals

CHAPTER 1

INTRODUCTION

In 1970, to stem the growth of inflation in the economy in general, the government intervened in the market price structure for crude oil and refined petroleum products. In 1973, the government took more specific action by regulating the price of crude oil and refined products and ensuring the fair allocation of petroleum supplies. In late 1973 and early 1974, the Organization of Petroleum Exporting Countries embargoed crude oil exports to the United States and then dramatically increased the price of its crude oil exports. Consequently, the Congress, attempting to minimize any adverse repercussions, passed the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 751 et seq.). The act was primarily intended to

--prevent price gouging by domestic crude oil producers that were able to produce oil at a fraction of the cost of imported oil and

--assure fair allocation of crude oil supplies and petroleum products to all in the marketing chain.

The pricing regulations applicable to the sale of covered petroleum products were originally promulgated on August 19, 1973 (38 F.R. 22536, Aug. 22, 1973), by the Cost of Living Council under the Economic Stabilization Act of 1970, as amended (12 U.S.C. 1904, note). In December 1973, the Federal Energy Office was established and was delegated authority to enforce both the pricing regulations and the allocation regulations implemented under the Emergency Petroleum Allocation Act of 1973. The Federal Energy Office later transferred the pricing regulations to the Federal Energy Administration[1] along with all authority vested in the President by the Emergency Petroleum Allocation Act of 1973. Subsequently, the Department of Energy Organization Act (42 U.S.C. 7151) transferred all functions vested by law in the Federal Energy Administration to the Secretary of Energy. Further, the authority previously granted to the Federal Energy Administration by Executive Order No. 11790 was delegated to the Department of Energy (DOE), effective October 1, 1977.[2]

The Secretary of Energy delegated to the Administrator, Economic Regulatory Administration (ERA), the authority and responsibility to establish and enforce compliance with the regulations. ERA and the above-mentioned agencies had responsibility for enforcing compliance with the regulations from August 19, 1973 (the date price controls were established), until January

[1]Executive Order No. 11790 (39 F.R. 23185, June 27, 1974).

[2]Executive Order No. 12009.

28, 1981 (the date the President issued Executive Order 12287 lifting all price controls on refined petroleum products). ERA still has the authority and responsibility to enforce the regulations for violations that occurred during the period of regulation. As such, ERA is responsible for (1) identifying violations of petroleum pricing and allocation regulations, (2) recovering overcharges, and (3) obtaining restitution for injured parties. As of April 1984, ERA estimated that about $5 billion to $6 billion in alleged violations remained to be resolved.

When ERA, through its audits, alleges civil violations of the allocation and/or pricing regulations, it may negotiate a settlement with the oil company. To resolve the alleged violation, ERA may initiate administrative action separate from, or concurrent with, the settlement negotiations. This administrative action includes issuing a proposed remedial order to the company which specifies the alleged violations and recommends remedial action. At any time in this process, ERA may also initiate legal action in a court of law to resolve the alleged violations. If a settlement is achieved, a consent order is written to specify the actions ERA and the company agree will settle the alleged violations.

When the parties injured by the oil companies' overcharges are not readily identifiable during the settlement, ERA has agreed to several types of distributions as settlement of the oil companies' alleged violations. These distributions have included oil company payments to the U.S. Treasury miscellaneous receipts, state governments, and DOE's interest-bearing escrow account with the U.S. Treasury. As discussed in chapter 3, the decision of the Comptroller General of the United States is that ERA should not agree to oil company payments to the U.S. Treasury miscellaneous receipts or state governments without prior efforts to identify parties injured by the oil companies' overcharges. We believe if ERA's efforts fail to readily identify the injured parties, ERA is required by DOE's regulations to refer these cases to the Office of Hearings and Appeals (OHA), which is responsible for attempting to identify and distribute refunds to the injured parties. OHA's procedures require it to publicly announce in the Federal Register the method it will use to make refunds. OHA also allows potentially injured parties an opportunity to comment on its proposed method of disbursing funds and to file a claim for a refund. If any of the oil companies' refunds remain after all eligible claims have been paid, OHA can order payments to the states from DOE's escrow account provided the payments are on a restitutionary basis according to approved state plans for programs connected to the overcharges and the class of injured consumer.[3]

In addition to the consent order refunds received directly from oil companies and as a result of the OHA process, each state received a refund under section 155, Public Law 97-377 (Dec. 21, 1982). Under the provisions of the law, the Congress directed the Secretary of Energy to disburse to the states and territories[4] up to $200 million from DOE's interest bearing escrow account, which, as of December 17, 1982, had a balance of $549.5 million. In the months preceding enactment of section 155, members of Congress, state and local officials, and consumer and other public interest groups had expressed increased interest in the use of the escrow funds. By enacting section 155, the Congress made a statutory determination for DOE regarding the disposition of up to $200 million of the escrow fund. The Congress specified, however, that the escrow funds remaining after deducting the section 155 funds must be sufficient to satisfy claims identified either in OHA's proceedings or judicial proceedings initiated prior to December 17, 1982. DOE determined that the maximum amount of $200 million could be made available for section 155 purposes.

The law required each state's share to be based on the state's pro rata share of refined petroleum product consumption between September 1, 1973, and January 28, 1981 (the period during which crude oil and petroleum products were subject to DOE's pricing and allocation regulations). In computing the individual shares, ERA first determined the refined petroleum product consumption of each state, both in total and as a percentage of the total consumption in the 56 states. ERA then multiplied the $200 million by the percentage to determine the state's dollar share.

The states were to use the funds as if such funds were received under one or more of the following five programs (DOE

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[3]On February 29, 1984, DOE submitted proposed legislation to the Congress specifying how the funds remaining after all eligible claims have been paid would be used. (This process of distributing these remaining funds is called the second-stage distribution process.) There has been public and congressional concern expressed that this proposal might result in using funds for existing energy programs rather than to make refunds to overcharged consumers. The 98th Congress did not enact this proposed legislation. In the meantime, DOE has decided to await congressional action on this proposal before commencing the second-stage process for new cases.

[4]In addition to the 50 states and the District of Columbia, 5 U.S. territories or possessions received section 155 funds. These five were Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas. For purposes of this report, these 56 entities are collectively referred to as states.

administers the first four programs and the Department of Health and Human Services (HHS) administers the last one through a block grant):

- --The State Energy Conservation Program promotes the development and implementation of comprehensive state energy conservation plans.

- --The Energy Extension Service is an energy outreach program directed toward small businesses and individual energy users.

- --The Institutional Conservation Program assists schools and hospitals in implementing energy conservation procedures and in acquiring and installing energy conservation measures.

- --The Weatherization Assistance Program assists low-income people, particularly the elderly and handicapped, to make home improvements to reduce heat loss and conserve energy.

- --The Low-Income Home Energy Assistance Program assists eligible households in meeting the costs of home energy and to weatherize homes of low income persons.

ERA computed each state's share of the section 155 funds and in February 1983 distributed the refunds to the states. DOE's Office of State and Local Assistance Programs, under the Assistant Secretary, Conservation and Renewable Energy,[5] was responsible for ensuring that the states which chose to use their section 155 funds for one or more of the four DOE conservation programs did so in accordance with the legislative requirements and restrictions. HHS was responsible for ensuring that states choosing to use their section 155 funds for low-income home energy assistance did so in accordance with the applicable regulations.

The remaining $350 million of the $550 million in the escrow account as of December 1982, and any other subsequent deposits, will be distributed by DOE as it identifies the parties injured by the oil companies' overcharges. As of October 31, 1984, the escrow account balance had increased to $527 million.

OBJECTIVES, SCOPE, AND METHODOLOGY

On April 12, 1983, the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, requested us to review DOE's administration of funds disbursed to

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[5]As of November 19, 1984, the Secretary of Energy abolished this assistant secretary position and established the Deputy Under Secretary for Conservation, who is responsible for DOE's conservation program and reports to DOE's Under Secretary.

the states as a result of both section 155, Public Law 97-377, and the individual oil company consent orders. Our objectives were to determine whether:

--DOE accurately computed each state's share of the section 155 distribution.

--DOE had adequate procedures to ensure that the states complied with the provisions of section 155 and/or the individual consent orders.

--The states used the funds for the intended purposes.

We conducted our audit work at DOE headquarters in Washington, D.C.; the state capitals of Arizona, California, Florida, Georgia, Louisiana, New York, Pennsylvania, and Texas; the Virgin Islands; the DOE regional support offices in Atlanta, Dallas, Kansas City, New York, and Philadelphia; and the DOE San Francisco Operations Office.

At DOE headquarters we discussed both the section 155 distributions and the refunds to states resulting from consent orders with ERA officials. We also interviewed Office of State and Local Assistance Programs officials responsible for the four conservation programs specified in section 155. We examined applicable legislation, policies, procedures, regulations, and correspondence pertaining to oil overcharge refunds to the states.

For 26 of the 56 states, we traced the refined petroleum product consumption data ERA used in computing the states' shares back to the source documents to verify that ERA had used the correct data. The 26 states we selected included 22 where ERA had identified errors it had made in computing the states' shares. Also, for the 56 states, we verified that ERA had correctly computed each state's (1) percentage of total refined petroleum product consumption and (2) dollar share of the $200 million.

We selected eight states which we visited to determine whether they were complying with the section 155 provisions and the consent orders. We based our selections on (1) the amount of section 155 and consent order funds they received (we included the top four states) and (2) their geographic location (we selected states from different regions of the country). We interviewed the state officials responsible for section 155 and consent order funds. Also, we examined applicable policies, procedures, correspondence, plans, and financial records pertaining to how the states used the section 155 and consent order funds. However, we did not evaluate the effectiveness of the programs receiving section 155 funds.

In addition to the eight states discussed above, we also visited the Virgin Islands and reviewed Nebraska's plans for using its section 155 funds. We decided to visit the Virgin Islands, after initially selecting the eight states, to follow up on apparent problem areas identified during our work at DOE's Atlanta Support Office. The scope of our work in the Virgin Islands was limited to section 155 funds and did not include funds received as a result of individual oil company consent orders. The Subcommittee agreed with the basis for our selecting the nine states and also expressed interest in a Nebraska section 155 project. As a result, we visited DOE's Kansas City Support Office where we reviewed and discussed Nebraska's section 155 plans. Our review of Nebraska's plans, however, did not include a visit to the state to examine the state's policies, procedures, and financial records. Also, we did not review Nebraska's use of consent order funds.

Because we judgmentally selected the nine states we visited, we cannot project the results of our analysis beyond these nine states. However, the scope of our review permitted us to evaluate DOE's administration of these oil overcharge funds.

At the five DOE regional support offices and the San Francisco Operations Office (the offices responsible for monitoring the 10 states' conservation programs), we interviewed the officials responsible for monitoring the state conservation programs that received section 155 funds. Also, we examined applicable procedures, correspondence, and records pertaining to how DOE monitored states' use of section 155 funds.

When we initiated this review, we were also reviewing the states' implementation of HHS' low-income home energy assistance block grant and subsequently prepared a comprehensive report on the states' progress in implementing this block grant.[6] Therefore, we limited this review to determining which of the nine states we visited had allocated any section 155 funds for this block grant and, if they had, whether they had documentation evidencing such allocation.

At the Subcommittee's request, we did not obtain agency comments on this report, but did discuss the results of our review with DOE program officials. We made our review in accordance with generally accepted government auditing standards.

Our review covered the period from December 1982 through July 1984. The data we obtained on the states' use of the section 155 funds and the interest earned, however, generally were for the period February 1983 (when the states received the funds) through December 1983. We believe that focusing on this 11-month period provided a good perspective not only on how the states planned to and were using these funds, but also on how the states' actions compared with what was anticipated when section 155 was enacted.

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[6]See GAO report entitled <u>States Fund an Expanded Range of Activities Under Low-Income Home Energy Assistance Block Grant</u> (GAO/HRD-84-64, June 27, 1984).

CHAPTER 2

DOE SHOULD IMPROVE ITS MANAGEMENT

OF SECTION 155 FUNDS

Although state plans for using section 155 funds generally comply with the applicable energy conservation program requirements, DOE should improve its management of section 155 funds in the following areas.

--Procedures are needed to assure that states use the interest earned on the section 155 funds for the specified energy conservation programs. Of the nine states we visited, four were using the interest as general revenue, rather than specifically for energy conservation programs.

--DOE has not developed criteria for states to use in determining what documentation is needed to justify energy conservation demonstration projects. We identified three projects in three states which, in our opinion, were not adequately documented as demonstration projects.

In addition to the above two items, DOE made arithmetical and transcription errors and did not use the most representative data in computing the states' shares of the section 155 funds. Correcting the errors would increase 52 states' shares by an average of $6,042 and decrease 4 states' shares by an average of $78,550. ERA plans to correct these errors as part of future oil overcharge refunds to the states but, as of November 16, 1984, had not decided whether to use the most representative data in future oil overcharge refunds.

The need to improve the management and distribution of the section 155 funds takes on added significance because significant additional funds could be distributed to the states using the section 155 procedures. In March 1983, a U.S. district court ordered the distribution of about $1.6 billion in Exxon Corporation funds to the states, using the procedures set forth in section 155, as restitution for alleged oil pricing violations. As of October 2, 1984, the appeals court had not ruled on Exxon's appeal of this order.

STATES GENERALLY COMPLIED WITH SECTION 155 REQUIREMENTS

Under section 155, the states were to treat their section 155 funds as if they were received under the five conservation programs specified in the law. Accordingly, the states have been using the section 155 funds for the four DOE conservation programs (see p. 3).[1]

Section 155 prohibits the use of the funds for administrative expenses. DOE informed the states of this prohibition and explained what funds could be used for administering the section 155 funds. We did not identify any problems with how DOE implemented this prohibition and found that the nine states we visited complied with the prohibition.

State plans

The following illustration shows how the nine states we visited planned to use their section 155 funds.

[1]HHS, which administers the low-income home energy assistance block grant, leaves it to each state to determine whether its use of section 155 funds is consistent with its low-income home energy assistance plans.

Illustration 1

States' Planned Use of Section 155 Funds

	Institutional conservation	Weatherization	Low-income home energy assistance	State energy conservation	Energy extension service	Total
Ariz.	$ -	$ -	$ 835,000	$ 745,000	$ 110,000	$ 1,980,600[a]
Calif.	4,782,000	-	6,000,000	6,821,000	1,311,000	18,914,400[b]
Fla.	3,400,000	1,638,000	-	4,067,800	-	9,105,800
Ga.	1,222,576	1,200,000	1,000,000	364,482	520,000	4,374,038[c]
La.	2,982,741	648,902	-	1,622,255	648,902	5,902,800
N.Y.	5,000,000	1,500,000	3,363,000	1,500,400	4,000,000	15,363,400
Penn.	3,533,000	3,533,000	500,000	750,000	850,000	9,166,000
Tex.	1,750,000	8,000,000	4,000,000	3,323,600	-	17,073,600
V.I.	-	300,000	-	500,800	563,000	1,363,800
Total	$22,670,317	$16,819,902	$15,698,000	$19,695,337	$8,002,902	$83,244,438[d]
Percent	27.2	20.2	18.9	23.7	9.6	100[d]

[a]Total does not crossfoot because it includes $290,600 from a cancelled project which the state had not yet reprogrammed to a specific program.

[b]Total does not crossfoot because it includes $400 which the state had not designated for a specific program.

[c]Includes $75,638 interest accrued through June 30, 1983, and programmed for energy conservation programs. Also, total does not crossfoot because it includes $66,980 from a cancelled project which the state had not reprogrammed to a specific program.

[d]Does not crossfoot because amounts to be reprogrammed (see notes a, b, and c) are not included in individual column totals.

The degree to which the states had implemented their plans varied. As of December 31, 1983, Arizona, California, and Louisiana had obligated less than 10 percent; Pennsylvania, Texas, and the Virgin Islands had obligated between 10 and 50 percent; and Florida and Georgia had obligated more than 50 percent of their section 155 funds. As of November 15, 1983 (the latest information we had), New York had obligated about 29 percent of its section 155 funds.

Seven of the nine states had their plans for the section 155 funds approved by DOE. We found that these states' individual program plans appeared to meet the energy conservation program requirements and were supported by detailed objectives and budget estimates. These states submitted plans for each specified conservation program for which funds had been appropriated or allocated. The program plans were generally submitted as an amendment to the basic plans provided to DOE in the states' applications for fiscal year 1983 federal grant assistance.

At the time of our visits, two states--Louisiana and Texas--had not had their plans approved by DOE. On the basis of our review, Texas' draft plan appeared to be adequate and in conformance with the applicable DOE energy conservation program requirements. The Lousiana plan, however, did not appear to meet the energy conservation program requirements.

Louisiana's draft plan called for section 155 funds to be used primarily for the institutional conservation program. Plans for the institutional conservation projects, however, were not supported by the technical analyses and comparisons with other competing projects required by DOE's regulations. Moreover, the Louisiana legislature had not appropriated the necessary matching funds.

In a May 4, 1984, letter, Louisiana informed DOE that it had amended its plans and that it would comply with the statutory provisions of section 155. As of that date, however, the state had not submitted its specific plans to DOE.

Administrative expenses

DOE, in its February 9, 1983, Federal Register notice on the section 155 funds, discussed the section 155 prohibition concerning administrative expenses. DOE specified that section 155 funds could not be used for administrative expenses. Also, DOE noted that section 155 stipulates that the funds shall be used as if such funds were received under the designated conservation programs. Therefore, after the 155 funds are designated for use in an energy conservation program, they are to be treated as appropriated funds, subject to program limitations.

One such limitation applies to administrative expenses. DOE limits the amount of federal appropriated funds the states can use for administrative expenses of the weatherization and institutional conservation programs. Although the energy extension service and state energy conservation program regulations do not limit administrative expenses, for purposes of section 155 funds, DOE limits administrative expenses for these two programs to those levels states historically reported to DOE. Therefore, the effect of combining section 155 funds and appropriated funds is to increase the total funds against which the administrative expense limitation is measured. DOE discussed this in its February 9, 1983, Federal Register notice and concluded that although states cannot use section 155 funds for administrative expenses, they can use federal appropriated funds, subject to the applicable limitations, to pay administrative expenses associated with the section 155 funds.

On the basis of our review of section 155 and its legislative history, we agree with DOE's conclusion. In our visits to the nine states, we found that states were complying with this section 155 prohibition. The states were, however, using different sources of funds for administering the section 155 funds. Six of the states used federal appropriated conservation grant funds to pay these administrative costs. Of the other three states, one provided its own funds, one said that its administrative expenses had not increased as a result of section 155 funds, and the other state had not yet decided how to fund such expenses.

DOE SHOULD ASSURE THAT STATES USE ACCRUED INTEREST FOR THE SPECIFIED ENERGY CONSERVATION PROGRAMS

Although DOE informed the states that interest earned on section 155 funds is to be used for the energy conservation programs specified in section 155, DOE did not require the states to report on their use of such interest. As a result, DOE does not know how much interest the states have earned or how they have used it.

In guidelines to the states for administering section 155 funds, DOE directed that any interest accrued on these funds was to be used ". . . only in the same manner as it [the state] may use the Section 155 funds themselves." In reaching this conclusion, DOE noted that the section 155 funds are not federal funds but are held by it for the benefit of persons injured by alleged violations of price and allocation controls. Until distributed by the government, these funds accrue interest which is to be used for the same purpose as the source funds.

DOE analyzed section 155's legislative history and determined that, although it contained nothing specifically directed to the question of interest accrued by states pending distribution of the funds, it was fair to presume from the history that the Congress recognized that the funds would be deposited in interest-bearing accounts. DOE determined that had the Congress intended the states to return this interest to the escrow account, the Congress would have specifically provided for it, and that by not doing so the Congress expected the states to retain the interest as they do under the Intergovernmental Cooperation Act of 1968, Public Law No. 90-577, 82 Stat. 1103, 31 U.S.C. §6501 _et seq_.[2]

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[2]The purpose of the Intergovernmental Cooperation Act of 1968 was to achieve full cooperation and coordination among various levels of government and thereby, among other objectives, improve the administration of grants-in-aid to states and establish coordinated intergovermental policy and administration of development assistance programs.

Although section 203 of this act also specifies that states not be held accountable for interest earned on grant-in-aid funds, DOE concluded that the Congress did not intend for this provision to apply to section 155 funds, which are not federal funds. DOE concluded, on the basis of both the concern stated by several members of the Congress during the debate on section 155 and the terms of the legislation, that the Congress' intent was that the underlying consent order settlements be followed and that the funds therefore be applied only to purposes and programs likely to benefit injured parties. Because the Congress selected existing programs that it believed would benefit these parties, DOE concluded that the Congress must have intended that the interest also be used for these programs and that section 203 of the act did not apply to section 155 funds. We agree with DOE's analysis and conclusion.

DOE, however, had not required the states to report on their use of the interest earned on section 155 funds. During our visits to the nine states and DOE regional offices, we identified one instance where DOE knew how a state was using such interest. Georgia had voluntarily provided information on its use of such interest in its plans submitted to DOE. Because DOE had not required it, the other eight states had not reported on their use of such interest.

Based on information provided to us by the nine states, we prepared the following illustration which shows the estimated interest accrued on the section 155 funds and the states' plans for using this interest.

Illustration 2

States' Planned Use of Interest Accrued on Section 155 Funds

State	Estimate of accrued interest	Use of accrued interest: Conservation programs	General use
Ariz.	$ 184,000[a]	X	
Calif.	2,000,000[a]		X
Fla.	707,580[b]	X	
Ga.	297,538[b]	X	
La.	418,000[b]	X	
N.Y.	1,279,000[c]	X	
Penn.	943,000[d]		X
Tex.	1,200,000[e]		X
V.I.	123,000[f]		X
Total	$7,152,118		

[a]Through January 31, 1984.

[b]Through December 31, 1983.

[c]Accrued from April 1, 1983, through March 31, 1984.

[d]Through February 7, 1984.

[e]Through August 31, 1983.

[f]For year ending February 1, 1984.

As shown in the illustration, Arizona, Florida, Georgia, Louisiana, and New York officials plan to use this interest only for the authorized conservation programs. However, California, Pennsylvania, Texas, and Virgin Islands officials considered their interest income (an estimated $4,266,000) to be general revenue. Texas officials said that because they do not consider the section 155 funds to be federal funds, they are not required to use the interest for the specified energy conservation programs. In contrast, California, Pennsylvania, and Virgin Islands officials considered section 155 funds to be federal funds and said that using the interest earned on these funds exclusively for the specified conservation programs would be contrary to their policy of using interest income as general revenue.

DOE SHOULD DEVELOP CRITERIA FOR DOCUMENTATION NEEDED TO JUSTIFY ENERGY CONSERVATION DEMONSTRATION PROJECTS

DOE's energy extension service and state energy conservation program regulations allow states to include demonstrations of commercially available energy conservation techniques or technologies under either or both of these programs. These regulations, however, prohibit use of funds simply for weatherizing or otherwise improving the energy conservation of buildings. To qualify, the project must be a demonstration. States were planning to use section 155 funds for such demonstrations. DOE, however, had not developed criteria for states to use in determining what documentation is needed to justify these demonstration projects. As a result, the state plans reviewed and approved by DOE regional support office staff have not always contained the necessary documentation.

The purpose of these demonstration projects is to convince energy users to invest in energy conservation techniques and/or technologies. Projects which involve only weatherizing or otherwise improving the energy conservation aspects of a building do not qualify for funding under these two programs because they are not demonstrations.

States asked DOE whether they could use section 155 funds for weatherization and energy conservation improvement projects under the energy extension service and state energy conservation programs. DOE replied that because these two programs' regulations do not permit funding of such projects, states could not use section 155 funds for such projects. DOE said that the purpose of the programs is to provide small-scale energy users with information and technical assistance on available energy conservation techniques and technologies and not to provide funds solely for building weatherization or other energy conservation improvements. DOE did state, however, that projects demonstrating weatherization or other energy conservation techniques would be eligible for funding under these two programs.

Although DOE's regulations specifically distinguish between energy conservation demonstration projects and weatherization and/or other energy conservation improvement projects, DOE has not developed criteria for states to use in determining what documentation is needed to qualify a proposed project as a demonstration and thus eligible for funding. We believe such criteria should address

--the need to demonstrate the benefits of the project to the intended target audience,

--the specific plans for analyzing the results of the project and disseminating them to the intended audience, and

--the estimated cost effectiveness of the total demonstration effort.

Without such criteria, determining whether the state's documentation submitted to justify a demonstration project is adequate is left to the judgment of the state officials and the DOE regional office staff responsible for reviewing and approving state plans.

We identified three projects, one in each of three states, with a total estimated cost of $457,000 that the states classified and DOE regional office staff approved as demonstrations but that, in our opinion, were not adequately documented as demonstrations. The plans for these projects generally did not show how the demonstrations would be accomplished, their estimated cost, or the potential target audiences. For example, DOE approved a Georgia project with an estimated cost of $320,000 to demonstrate the use of a computer to regulate the heating and cooling systems of a state administrative building. However, the state's plan did not document the conservation benefits of the project and did not identify the amount and source of funds for evaluating and disseminating the results of the project. Another example is a $100,000 Nebraska energy extension service project to demonstrate the energy conservation features of trees. The state intended the project to demonstrate that trees can help reduce heating and cooling costs and to instill in students an enthusiasm for tree planting by having them participate in developing tree planting proposals and planting trees. The project description reviewed and approved by DOE, however, did not specifically explain how the planting of trees would demonstrate to the students the energy conservation attributes of trees.

In addition to the projects discussed above, DOE approved a $1.5 million New York project to demonstrate cost-effective energy improvements in multi-family public housing projects. Although the state documented how the demonstration would be accomplished and identified the potential target audiences, the state did not document the amount and source of funds for evaluating and disseminating the results of the project.

STATES ARE ENTITLED TO PRO RATA SHARES OF SECTION 155 FUNDS

In computing each state's share of the $200 million, ERA made arithmetical and transcription errors and used incorrect factors. In addition, due to an oversight, ERA used estimated petroleum product consumption amounts in computing Guam's, Puerto Rico's, and the Virgin Islands' shares rather than more representative amounts available from the Energy Information Administration (EIA). ERA officials told us that they plan to correct the errors by making adjustments to the states' future shares of oil overcharge refunds. However, they do not plan to make such adjustments for not using the more representative consumption figures for the three territories because they believed they were using the best available data at the time they made the computations.

Errors in computing states' shares of section 155 funds

Section 155 required that each state's share of the $200 million be based on its pro rata share of the total refined petroleum products consumed within all states during the period September 1, 1973, to January 28, 1981. For example, if a state's consumption was 1 percent of the 56 states' total consumption, it should have received $2 million. Section 155 defined refined petroleum products as gasoline, kerosene, distillates (including Number 2 fuel oil), liquefied petroleum gases (other than ethane), refined lubricating oils, diesel fuel, and residual fuel oil, but excluded ethane and refinery feedstocks.

In computing the 50 states' and the District of Columbia's shares, ERA utilized EIA's State Energy Data Report dated July 1982. This report contains the amount of each states' and the District's consumption of energy by type for the years 1960-80.[3] For the five territories (American Samoa, the Northern Marianas, Guam, Puerto Rico, and the Virgin Islands), ERA used other sources of information. For American Samoa, ERA used petroleum product consumption amounts supplied by its Governor. For the Northern Marianas, ERA estimated its consumption based on its population size compared to American Samoa. For Guam, Puerto Rico, and the Virgin Islands, ERA used total estimated petroleum product consumption amounts provided by EIA and adjusted these amounts for the products required to be excluded by section 155, that is, ethane and refinery feedstocks.

In computing the states' shares, ERA made arithmetical and transcription errors and used incorrect factors. The most prevalent error was in computing how much of the liquefied petroleum gases consumption was ethane, a product required to be excluded by section 155. For 14 of the states, ERA incorrectly computed their September through December 1973 refined petroleum product consumption, which resulted in these states' shares being understated. For 7 of these 14 states, ERA also made other computational errors, as it did for 8 other states. The errors in these 15 states' shares included transcribing an incorrect number from a detailed workpaper schedule to a summary schedule, incorrectly adding and subtracting numbers, and using the incorrect factor to compute the products to be excluded from three states' total consumption amounts.

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[3] DOE included .076503 of 1980 total consumption as consumption for January 1-28, 1981. This factor was derived from dividing 28 days by 366 days in 1980 (leap year).

These errors changed not only the 22 states' shares which were incorrectly calculated, but all of the other states' shares. According to section 155, each state's share was to be based on its pro rata share of the 56 states' total consumption, which ERA computed by totaling the 56 individual amounts. Therefore, if one state's total consumption was miscalculated, then the 56 states' total consumption was incorrect, unless there was another compensating error.

Appendix I shows the effect on each individual state's share if ERA were to correct the errors. As shown in the first adjustments column of appendix I, if ERA were to make these corrections, 52 of the 56 states would receive additional section 155 funds of between $200 (American Samoa and Northern Marianas) and $41,400 (Louisiana), an average increase of $6,042. The other four states' shares would be reduced anywhere from $1,600 (Guam) to $170,600 (Virgin Islands), an average decrease of $78,550.

ERA identified these errors after the states were paid. ERA officials told us that they planned to correct these errors by adjusting the 56 states' shares of future oil overcharge refunds. For example, if a state was overpaid, its share of a future OHA-ordered distribution would be adjusted to offset the overpayment of section 155 funds.

State shares were not based on representative petroleum product consumption amounts

In addition to the computational errors previously described, ERA did not use the most representative refined petroleum product consumption amounts in computing Guam's, Puerto Rico's, and the Virgin Islands' shares. ERA started with the total refined petroleum product consumption amounts provided by EIA for these three entities. Because these were total amounts and included products which section 155 required to be excluded, ERA estimated the amounts to be excluded by using a factor based on the 50 states' and the District of Columbia's consumption data. ERA calculated the percentage of total consumption excluded for these 51 entities and used this same percentage in computing Guam's, Puerto Rico's, and the Virgin Islands' net consumption amounts. ERA used this factor because, according to ERA officials, they did not know that individual data on excluded products were available for these three entities.

After the $200 million was distributed in February 1983, ERA learned that consumption amounts for all specific refined petroleum products except liquefied petroleum gases were available for these three entities. Using these actual amounts and estimates for liquefied petroleum gases, ERA recomputed these three entities' shares of the $200 million. The net effect was an overall decrease of $423,400, with Puerto Rico's (-$165,800) and the Virgin Islands' (-$290,200) shares decreasing and Guam's (+$32,600) increasing. These changes are shown in appendix I, as are the commensurate changes to 51 of the other 53 entities' pro rata shares of the $200 million.[4] The combined effect of these changes and those needed to correct the errors discussed beginning on page 15 is that 53 states would receive increases averaging $14,468 and 3 states would have their shares reduced by an average of $255,600.

ERA officials told us that ERA did not plan to adjust the states' shares based on the more representative consumption data for the three entities. They said that ERA believed it was using the best available data at the time the computations were made and that the distributions were reasonable. We do not object to ERA's position on past calculations because section 155 states that the calculations were to be based on "...estimates by the Secretary from reasonably available information." ERA's Solicitor told us that, as of November 16, 1984, ERA had not yet addressed the question of whether it would use the more representative data in any future oil overcharge distributions made in accordance with section 155 provisions, such as the Exxon Corporation case discussed in the next section.

POTENTIAL IMPACT OF EXXON CORPORATION CASE

In addition to the $200 million distribution to the states under section 155, it is possible that additional funds will be distributed to the states using the section 155 procedures. In March 1983, the U.S. District Court for the District of Columbia ordered the Exxon Corporation, as restitution for alleged oil pricing overcharges, to remit about $1.6 billion to the U.S. Treasury.[5] This sum would then be distributed to the states in accordance with section 155 procedures. This would mean that the states could spend the $1.6 billion only for the five programs cited in the law and in accordance with any restrictions imposed by the law. For example, the funds could not be used for administrative expenses and would have to be used as if received under one or more of the five programs.

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[4]American Samoa's and the Northern Marianas' shares would not change because their consumption is quite small compared with the other states.

[5]United States v. Exxon Corporation, 561 F. Supp. 816 (TECA 1983). Exxon Corporation has appealed this decision to the Temporary Emergency Court of Appeals, which, as of October 24, 1984, had not yet ruled on the appeal.

If this $1.6 billion were so distributed, the result of our evaluation of DOE's administration of the section 155 funds would be more significant. Rather than being applicable to only a $200 million, one-time distribution, the results of our evaluation would also apply to the $1.6 billion distribution.

CONCLUSIONS

The nine states we visited are generally using their section 155 funds for authorized purposes. Although Louisiana did not adhere to DOE's regulations in preparing its initial plan for using the section 155 funds, it subsequently stated that it would follow DOE's regulations in revising its plan.

We believe there are three areas in which DOE could have better managed the section 155 funds, thereby assuring that the funds were effectively utilized. First, DOE has not implemented procedures to monitor states use of the interest they earn on the section 155 funds. Without such procedures, DOE cannot ensure that states are using such interest for the specified energy conservation programs. In fact, four of the nine states we visited did not plan to use such interest as directed by DOE.

Second, DOE approved three state plans which, in our opinion, did not adequately document the proposed energy conservation demonstration projects. The plans did not adequately address the need for the demonstrations, the projected target audience, the energy effectiveness, nor the funding needed to accomplish the demonstration. These plans discussed how the projects would be constructed and operated but did not specify how the energy conservation techniques would be demonstrated. We believe DOE's conservation program regulations should be amended to include criteria for what documentation is needed to justify energy conservation demonstration projects.

The significance of the above two conclusions takes on added importance when considering the distribution under section 155 procedures of an additional $1.6 billion to the states that could result from the Exxon Corporation case. If this distribution does occur, we believe our conclusions should be viewed from the broad perspective of not only the $200 million which has already been distributed, but also the potential distribution of an additional $1.6 billion.

In addition to improving its management of the section 155 funds, DOE should follow through with its plans to adjust the states' shares of future oil overcharge refunds to compensate for the errors made in calculating the states' section 155 shares. In addition, ERA should use the most representative data in calculating any future oil overcharge refunds made in accordance with section 155 provisions.

RECOMMENDATIONS TO THE SECRETARY OF ENERGY

To improve DOE's management of both the section 155 funds and any other funds which may be distributed under section 155 procedures, we recommend that the Secretary of Energy

--require the states to report on the interest earned on section 155 funds and certify that it is used for authorized energy conservation programs and

--develop criteria for states to use in determining what documentation is needed to justify energy conservation demonstration projects.

We also believe that, as provided in section 155 legislation, each state should receive its pro rata share of the $200 million. Therefore, we recommend that the Secretary of Energy have the ERA Administrator

--implement the plans to correct the errors made in calculating the states' shares of the section 155 funds by adjusting the states' future shares of oil overcharge refunds and

--use the most representative petroleum product consumption data in calculating states' shares of future oil overcharge refunds made in accordance with section 155 provisions.

CHAPTER 3

DOE NEEDS TO ENSURE THAT OIL OVERCHARGE DISTRIBUTIONS RESULT IN RESTITUTION TO INJURED PARTIES

When parties injured by oil companies' overcharges are not readily identifiable, ERA is required by DOE's regulations to refer these cases to OHA, which is responsible for allowing potentially harmed parties to file a claim for a refund. If funds remain after all eligible claims are made, OHA can make payments to states. ERA, however, has bypassed OHA and has issued four consent orders that provide for oil companies to make direct payments to states without prior efforts to identify those overcharged and the amount of the overcharges. ERA did refer six other cases to OHA as required by DOE's regulations.

In these consent orders, ERA has agreed to several types of distributions as settlement of the oil companies' alleged violations. Some of the orders have involved payments to institutions, such as state governments, that were not actually injured by the overcharges. The decision by the Comptroller General of the United States (62 Comp. Gen. 379 (1983)) concluded that ERA was in these cases improperly using the consent orders by making, or allowing the oil companies to make, distribution of overcharge refunds without prior efforts to identify those overcharged and the amount of the overcharges.

DOE maintains that its regulations are not mandatory and that it has the authority to take such actions. As discussed in this chapter, we disagree and believe that DOE should follow its mandatory regulations and assure that the injured parties receive the benefit of the oil overcharge distributions.

The following illustration shows, as of July 18, 1984, the four ERA consent orders and six OHA decisions and orders which resulted in payments to states. (The illustration in appendix II shows the payments that the eight states had received as of July 18, 1984, as a result of these orders and decisions. As discussed on page 6, we did not review the Virgin Islands' use of funds received as a result of individual oil company consent orders.)

Illustration 3

ERA Consent Orders and OHA Decisions and Orders Which Resulted in Payments to States as of July 18, 1984[a]

Company distributions ordered by ERA	Authorized uses of the funds	Amount[b]
Chevron	--Highways and bridge maintenance and repair --Ridesharing (i.e. vanpool and carpool) programs --Public transportation projects --Residential or commercial building energy audits --Grant or loan programs for weatherization or other energy conservation equipment installation --Energy assistance programs --Airport maintenance or improvement --Reduction in airport user fees --Energy conservation or energy research offices and administration	$25,000,000
Standard Oil Company (Ohio)	Although DOE encouraged the states to use the funds for energy-related projects, DOE intended to provide maximum flexibility to the states in determining appropriate uses of the funds	10,000,000
Imperial Refineries Corporation	--Same as Sohio	600,000
Site Oil Company of Missouri and Flash Oil Corporation (Site and Flash)	--Energy-related purposes	450,000
Total ERA-approved distributions		$36,050,000
Distributions ordered by OHA		
Palo Pinto Oil and Gas	--Energy-related plans	266,904
PVM Oil Associates, Inc.	--Projects to benefit heating-oil customers in New York City	67,961

Illustration 3 (Cont'd.)

Worldwide Energy Corporation	--Projects to benefit natural gas liquids users in Oklahoma and Texas	49,400
Armstrong and Associates	--Projects to benefit parties injured by overcharges (Tex.)	9,863
Standard Oil Company (Indiana)	--Projects to benefit class of persons injured by the overcharges--consumers of motor gasoline and middle distillates	24,000,000
Belridge Oil Company	--Projects to benefit those citizens most likely affected by overcharges	95,821
Total OHA-ordered distributions		24,489,949
Total		$60,539,949

[a]Does not include payments to any state which, as a customer of the oil companies whose alleged violations were settled by terms of a consent order, qualified for a refund as a purchaser of petroleum products.

[b]Amounts shown are the payments to the states specified in ERA's consent orders and OHA's decisions and orders and do not include any interest which DOE may have required the companies to pay.

ERA-ORDERED DISTRIBUTIONS MAY NOT RESULT IN RESTITUTION TO INJURED PARTIES

The first four companies listed in the illustration are those which ERA ordered to make payments totaling $36 million to the states to settle alleged overcharges. The requirement for these payments was contained in the consent orders ERA and the companies signed in settling the companies' alleged overcharges. We believe that ERA has improperly used these consent orders because the payments were made without giving overcharged customers an opportunity to present their claims through DOE's established procedures. Also, the authorized uses of the funds were so general that there was little assurance that the funds would be used for restitutionary purposes.

DOE's regulations (10 C.F.R. Part 205, Subpart V), promulgated pursuant to the Emergency Petroleum Allocation Act of 1973, establish procedures for distributing oil overcharge refunds when those overcharged and the amounts of the overcharges cannot be readily identified. These procedures are designed to protect the rights of overcharged consumers and require ERA to refer overcharge cases to OHA when ERA cannot readily identify the parties injured by the oil companies' overcharges. OHA then is responsible for obtaining public comments on its proposed method of making refunds and allowing potentially injured parties to file a claim for a refund. These procedures were followed for the last six companies listed in the illustration.

ERA bypassed these procedures for the first four companies listed in the illustration. The consent orders for those companies did not present potentially injured parties an opportunity to file claims. Rather, payments went directly to the states without prior efforts to identify those overcharged and the amounts of overcharges.

We have previously brought this matter to DOE's attention in two opinions and two decisions of the Comptroller General of the United States.[1] In these documents, we said that DOE is legally bound to follow its own regulations, which require that the administrative procedures discussed above be followed in determining appropriate restitutionary distribution mechanisms. Consequently, we have concluded that DOE does not have the authority to avoid its subpart V regulations by agreeing to consent order provisions that distribute funds directly, without prior efforts to locate injured parties.

DOE has maintained that it has the authority under the Emergency Petroleum Allocation Act of 1973 to take any action necessary to eliminate or compensate for the effects of a violation of its petroleum pricing and allocation regulations. In its May 25, 1984, Federal Register ruling, DOE said that it is not required by its regulations or statute to use the administrative procedures. Rather, DOE asserts that it has the authority to employ various forms of indirect restitution, including refunds to the miscellaneous receipts of the U.S. Treasury and payments to state governments.

Based on our research of the applicable court decisions,[2] we believe DOE's authority is limited to making refunds to overcharged customers and to those likely to have been injured by the overcharges. We also believe that DOE has not been expressly granted any authority to promote the interests of consumers in general through direct payments to them or through grants made on their behalf to states or other entities. Therefore, we believe DOE did not have the authority to agree to consent order provisions such as the four discussed above.

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[1]Comptroller General of the United States Opinions B-200170 Apr. 1, 1981, and 60 Comp. Gen. 15 (1980); and Decisions 62 Comp. Gen. 379 (1983) and 63 Comp. Gen. 189 (1984).

[2]See 62 Comp. Gen. 379, 382-383,386-387 (1983).

In addition to not following the subpart V procedures for these four cases, ERA has agreed to settlement terms which may not provide for restitution to injured parties. As shown in the illustration on page 22, the states can use these four settlement distributions for purposes such as highway and bridge maintenance and repair, airport maintenance or improvement, energy conservation or energy research offices and administration, and energy-related projects. Based on our review of these four consent orders and the Federal Register notices announcing them, we did not find any provisions therein which would enable ERA to ensure that these refunds would result in direct restitution to injured parties.

Even though a state may be complying with the provisions of the consent order, it might not be using the funds for restitutionary purposes. For example, Pennsylvania funded basic and applied research on energy use, New York funded its state energy office, and Georgia funded airport improvement projects. Texas, which as of July 18, 1984, had received $798,858 as a result of four consent orders (Chevron, Standard Oil (Ohio), Site and Flash, and Armstrong and Associates[3]) appropriated these funds to its Bureau of Economic Geology, University of Texas at Austin. The Deputy Director of the Bureau told us that they plan to use the funds for the following two research projects:

--identifying, classifying, and researching methods to enhance the recovery potential of existing Texas oil reservoirs and

--identifying and classifying Texas' lignite deposits and researching the economic recovery factors which would make exploration feasible.

In our opinion, these two projects would directly benefit energy producers. Energy consumers would only indirectly benefit, and then only if the research resulted in the production of sufficient additional oil and/or lignite to help stabilize consumer prices of products produced from these resources.

OHA's PROCEDURES FOR ENSURING THAT STATES PROPERLY USE OIL OVERCHARGE DISTRIBUTIONS

Although OHA ensures that states properly use the distributions which it orders, prior to March 1984 it had not ensured that

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[3]The Armstrong and Associates consent order accounted for only $14,232 ($9,863 refund plus $4,369 of interest) of the $798,858 and was the only one of these four which OHA handled, under DOE's subpart V procedures. As discussed in the next section, OHA usually approves states plans before disbursing the refunds. Because the Armstrong and Associates case involved only a small amount of funds, OHA did not require such approval in this case.

the states were using the interest earned on these distributions in accordance with OHA-approved state plans. After we brought this matter to OHA's attention in March 1984, it began to require the states to use such interest in accordance with state plans.

For five of the six OHA-ordered distributions, OHA required the states to have their planned uses of the funds approved by OHA before the states received the funds. Also, for these five cases the states are required to submit a follow-on report to OHA on how they have used the funds.

For the sixth case, Armstrong and Associates, OHA did not require either an approved plan or a follow-on report. OHA decided that in view of the small amount of funds ($9,863), it would not be cost effective to require the state to channel these funds to specific segments of the population who were most affected by the overcharges. Rather, OHA decided to deposit the $9,863 in Texas' escrow account established to hold such funds pending the state legislature's approval of how the funds would be used.

We discussed this case with an OHA official, particularly because, in the Worldwide Energy Corporation case ($49,400 in May 1983), OHA required a plan and follow-on report from Oklahoma even though its share was only $8,828. The OHA official said that Armstrong and Associates was the first of these distributions (Jan. 1983) to the states. Since that time, OHA has been requiring a plan and follow-on report irrespective of the amount of the refund.

Although OHA monitored five of the six refunds to the states, prior to March 1984 it did not monitor the states' use of the interest earned after they received these refunds. Of the eight states we visited, four (California, Georgia, Pennsylvania, and Texas) were using the interest they had earned on both the ERA-ordered and OHA-ordered distributions for general purposes, rather than for the same purposes as the refunds themselves. Arizona and New York were appropriately using their earned interest for the same purposes as their refunds. Florida officials had not yet decided how to use the interest and Louisiana officials could not provide adequate documentation on how they have used or will use their interest.

After our discussion with an OHA official in March 1984, OHA began requiring states to use the interest earned on these refunds in accordance with the OHA-approved state plans. We agree with this requirement because we believe that the states' use of the interest earned as a result of these oil overcharge refunds should be monitored and controlled by DOE.

CONCLUSIONS

Under DOE's subpart V procedures, ERA is supposed to refer oil overcharge cases for which it is difficult to readily identify the injured parties to OHA for resolution. ERA, however, has not followed these procedures in all cases. As a result, the ERA-approved distributions of oil overcharge funds to the states may not have resulted in restitution to the injured parties. Rather, ERA has approved distributions to the states without ensuring that the distributions are directly related to those who were injured by the overcharges. To provide adequate assurance that the injured parties receive the benefit of the oil overcharge refunds, we reiterate the Comptroller General of the United States' opinions and decisions that the Secretary of Energy comply with DOE's mandatory procedures to identify injured parties.

STATES' SHARES OF SECTION 155 FUNDS

State	Feb. 1983 refund	Adjustments: For computation errors	Adjustments: By using more representative data	Adjustments: Total adjustments	Adjusted refund
Alabama	$ 2,963,400	$ 3,000	$ 6,400	$ 9,400	$ 2,972,800
Alaska	795,600	1,000	1,600	2,600	798,200
Arizona	1,980,600	2,000	4,400	6,400	1,987,000
Arkansas	2,152,200	2,200	4,600	6,800	2,159,000
California	18,914,400	19,200	40,800	60,000	18,974,400
Colorado	2,063,200	2,000	4,600	6,600	2,069,800
Connecticut	3,292,400	3,400	7,000	10,400	3,302,800
Delaware	912,800	1,000	1,800	2,800	915,600
District of Columbia	466,000	400	1,000	1,400	467,400
Florida	9,105,800	9,400	19,600	29,000	9,134,800
Georgia	4,298,400	4,400	9,200	13,600	4,312,000
Hawaii	1,380,400	2,000	3,000	5,000	1,385,400
Idaho	917,400	-129,200	1,800	-127,400	790,000
Illinois	9,016,200	28,000	19,400	47,400	9,063,600
Indiana	4,717,400	11,200	10,200	21,400	4,738,800
Iowa	2,462,200	5,400	5,200	10,600	2,472,800
Kansas	2,103,600	7,000	4,600	11,600	2,115,200
Kentucky	2,570,200	2,600	5,600	8,200	2,578,400
Louisiana	5,902,800	41,400	12,800	54,200	5,957,000
Maine	1,450,000	2,000	3,000	5,000	1,455,000
Maryland	3,575,800	5,200	7,800	13,000	3,588,800
Massachusetts	6,645,800	36,800	14,400	51,200	6,697,000
Michigan	6,558,000	11,600	14,200	25,800	6,583,800
Minnesota	3,283,000	3,400	7,000	10,400	3,293,400

APPENDIX I

Mississippi	2,379,200	2,400	5,200	7,600	2,386,800
Missouri	3,731,800	3,800	8,200	12,000	3,743,800
Montana	867,800	1,000	1,800	2,800	870,600
Nebraska	1,377,400	1,400	3,000	4,400	1,381,800
Nevada	773,400	800	1,600	2,400	775,800
New Hampshire	890,400	800	2,000	2,800	893,200
New Jersey	7,490,600	12,600	16,400	29,000	7,519,600
New Mexico	1,191,400	4,000	2,600	6,600	1,198,000
New York	15,363,400	15,600	33,200	48,800	15,412,200
North Carolina	4,310,600	4,400	9,200	13,600	4,324,200
North Dakota	696,200	2,000	1,400	3,400	699,600
Ohio	7,117,000	7,200	15,400	22,600	7,139,600
Oklahoma	2,365,200	2,400	5,200	7,600	2,372,800
Oregon	1,962,200	2,000	4,200	6,200	1,968,400
Pennsylvania	9,166,000	9,400	19,800	29,200	9,195,200
Rhode Island	766,400	800	1,600	2,400	768,800
South Carolina	2,336,800	2,200	5,200	7,400	2,344,200
South Dakota	668,200	600	1,400	2,000	670,200
Tennessee	3,171,400	3,200	7,000	10,200	3,181,600
Texas	17,073,600	17,600	36,800	54,400	17,128,000
Utah	1,123,000	1,000	2,400	3,400	1,126,400
Vermont	457,600	400	1,000	1,400	459,000
Virginia	5,075,400	5,000	11,000	16,000	5,091,400
Washington	3,115,800	3,200	6,600	9,800	3,125,600
West Virginia	1,168,800	1,200	2,400	3,600	1,172,400
Wisconsin	3,341,000	3,400	7,200	10,600	3,351,600
Wyoming	783,200	800	1,600	2,400	785,600
American Samoa	33,000	200	-	200	33,200
Guam	256,600	-1,600	32,600	31,000	287,600
Northern Marianas	17,000	200	-	200	17,200
Puerto Rico	2,038,200	-12,800	-165,800	-178,600	1,859,600
Virgin Islands	1,363,800	-170,600	-290,200	-460,800	903,000
Total	$200,000,000	-	-	-	$200,000,000

APPENDIX I

PAYMENTS RECEIVED BY EIGHT STATES FROM ERA CONSENT ORDERS AND OHA DECISIONS AND ORDERS AS OF JULY 18, 1984

State	Amount
Arizona	$ 858,552
California	6,652,755
Florida	2,677,288
Georgia	2,450,909
Louisiana	67,467
New York	2,022,088
Pennsylvania	1,690,036
Texas	798,858
Total	$17,217,953

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