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REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES

U.S. Oil Companies' Involvement In The International Energy Program

The Energy Policy and Conservation Act allows U.S. oil companies to participate in the International Energy Program, with Government monitoring to prevent anti-competitive activities.

This report discusses that monitoring during a 1976 test of the Program's system to allocate oil during an emergency.

HRD-77-154

OCTOBER 21, 1977

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

B-178205

The Honorable Benjamin S. Rosenthal
Chairman, Subcommittee on Commerce,
Consumer, and Monetary Affairs
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

In your letter of March 24, 1977, you noted that the Subcommittee is reviewing the Federal Trade Commission's joint role with the Justice Department, in monitoring petroleum companies' activities under a voluntary agreement entered into pursuant to the International Energy Program. You requested that we study the Commission's monitoring role. Specifically you asked for information on the:

--Background of Commission employees assigned to the International Energy Program activity. (See p. 6.)

--Allocation systems test conducted in October and November 1976. (See p. 8.)

--Security of data during the test. (See p. 15.)

--Federal Trade Commission's evaluation of its own monitoring performance. (See p. 24.)

--Benefits and risks of the test. (See p. 22.)

--Classification of documents. (See p. 25.)

Appendix I contains the information you requested. Appendix II is a list of the 31 oil companies that participated in the test.

We noted several areas related to the allocation systems test which deserve congressional attention. We are recommending that the Congress consider the anticompetitive impact of confidential and proprietary data (see p. 27) and clarify the monitoring responsibility of Federal Trade Commission and Justice Department employees (see p. 28).

Certain other information you requested has already been provided to the Subcommittee by separate letter dated October 4, 1977. This information concerned:

--The names of Commission employees responsible for monitoring International Energy Program activity.

--The names and job descriptions of oil company employees who served during the test as members of the Industry Supply Advisory Group.

--The names of Commission and Justice Department employees who monitored the test.

--Leave patterns of Commission employees attending International Energy Program activities in foreign countries.

--Layout of the area where the test occurred.

We interviewed officials of the Federal Trade Commission, the Federal Energy Administration, and the Departments of Justice and State; reviewed Federal Trade Commission files relating to its monitoring responsibility under the voluntary agreement; and reviewed the Federal Energy Administration's "full and complete record" of the allocation systems test as required by the Energy Policy and Conservation Act of 1975. We also wrote to officials of the International Energy Agency and participating oil companies for information not available from U.S. Government sources.

In accordance with your Subcommittee's request, we have not asked the Federal Trade Commission, or any other agency discussed in this report, to formally comment on the matters covered by the report. The report's contents, however, have been discussed with Federal Trade Commission and Federal Energy Administration officials, and their informal comments have been incorporated in the report where appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further

distribution of this report until 30 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Comptroller General
of the United States

APPENDIX I

U.S. OIL COMPANIES' INVOLVEMENT IN THE INTERNATIONAL ENERGY PROGRAM

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ABBREVIATIONS

EPC Act	Energy Policy and Conservation Act
FEA	Federal Energy Administration
FTC	Federal Trade Commission
GAO	General Accounting Office
ICRC	Interagency Classification Review Committee
IEA	International Energy Agency
IEP	International Energy Program
ISAG	Industry Supply Advisory Group
OECD	Organization for Economic Cooperation and Development

U.S. OIL COMPANIES' INVOLVEMENT IN THE INTERNATIONAL ENERGY PROGRAM

INTRODUCTION

On November 18, 1974, the United States and 15 other oil consuming countries entered into an agreement on an International Energy Program (IEP). The agreement was the product of the Washington Energy Conference of 1974, which was held to develop plans for coping with crises such as that accompanying the 1973 Arab oil embargo. The conference's primary aim was to devise a mechanism for sharing oil supplies in the event of future supply disruptions.

The objectives of the IEP are:

--Development of measures to meet future oil supply emergencies through (1) attainment of emergency self-sufficiency in oil supplies, (2) demand restraint programs, and (3) allocation of available oil among member countries.

--Promotion of cooperative relations with oil producing countries and with other oil consuming countries.

--Development of an information system on the international oil market and a framework for consultation with international oil companies.

--Development and implementation of a long-term cooperation program to reduce dependence on imported oil.

There are now 19 signatories to the IEP agreement, and all are members of the Organization for Economic Cooperation and Development (OECD). The agreement also established an International Energy Agency (IEA) to implement the provisions of the IEP. IEA is an autonomous branch of the OECD and is located in OECD's Paris offices.

Industry involvement

The composers of the IEP agreement found that the cooperation and expertise of the international oil companies was essential to the successful functioning of an international allocation system. Accordingly, discussions were held with a number of these companies on ways they could

assist in implementing the IEP. As a result of these discussions, three main industry groups--the Reporting Company Group, the Industry Working Party, and the Industry Advisory Board--were created to provide advice and assistance to the IEA.

By April 1975 IEA had developed a preliminary concept of industry assistance in emergency oil sharing among participating countries. The concept provided for reporting international oil supply data to IEA by about 30 oil companies and voluntary action by these companies under IEA guidance and coordination to assist in allocating available oil. It was estimated that these reporting companies handled 80 to 90 percent of the international trade in free world oil. These companies subsequently formed IEA's Reporting Company Group.

The Industry Working Party was organized to assist in implementing the general information system on the international oil market. Under this system, the participating countries are required to make available to the IEA Secretariat precise data on various subjects relating to oil company operations. The Industry Working Party assists in identifying such data and developing an appropriate reporting system.

The Industry Advisory Board was established to provide advice and consultation on emergency oil sharing and related matters as assigned by the IEA. The board considers policy aspects of these subjects and refers technical questions to one of the board's three subcommittees for study.

In the event of an emergency, an additional industry group--the Industry Supply Advisory Group (ISAG)--would be primarily responsible for carrying out the actual allocation procedures within IEA guidelines and under the direction of the IEA Secretariat.

From the outset, the involvement of the international oil companies in the IEP has raised antitrust questions. The concern relates generally to the industry advisory groups but more particularly to the use of oil company participants on the ISAG to coordinate the actual allocation of oil among participating countries during an emergency. Meetings among competing oil companies for determining market allocations raise significant antitrust questions.

The U.S. Government found it necessary to adopt antitrust policies that would protect competition and also encourage the cooperative action by U.S. oil companies deemed necessary to achieve the objectives of the IEP. Accordingly, the U.S. oil companies participating in the IEP entered into a voluntary agreement which was developed by the Federal Energy Administration (FEA) and the Department of State in cooperation with the Department of Justice and the Federal Trade Commission (FTC). In exchange for protection from antitrust prosecution, the participating U.S. oil companies voluntarily agreed to certain monitoring and recordkeeping requirements. The agreement was approved on April 2, 1975, under authority of the Defense Production Act of 1950 (50 app. U.S.C. 2061). The act allowed the President to grant limited exemptions from U.S. antitrust laws for the purpose of forming voluntary agreements to further the objectives of the act.

On December 22, 1975, the Energy Policy and Conservation Act (EPC Act) (42 U.S.C. 6201) was enacted because, among other things, Congress believed that effective antitrust oversight would require arrangements beyond those contemplated in the Defense Production Act. Provisions of Section 252 of the EPC Act are more closely tailored to the problems of the IEP. Instead of an antitrust immunity, the EPC Act provides that U.S. oil company participants in a voluntary agreement, and their designated affiliates, have available an antitrust defense. If civil or criminal action is ever initiated under U.S. antitrust laws or similar State laws challenging their actions, the participants will be able to defend such actions as part of developing or carrying out a voluntary agreement or plan of action which is implementing the allocation and information provisions of the IEP.

The EPC Act also required the development of a new voluntary agreement to reflect the expanded antitrust concern. A new voluntary agreement, developed by FEA, the Departments of Justice and State, and FTC, became effective on March 21, 1976. The new voluntary agreement covers oil companies' participation in the IEP but does not, with certain exceptions, cover acts which affect producing, refining, transporting, or marketing petroleum in the United States.

IEA activities

Since its creation IEA has engaged in a number of activities aimed at implementing the IEP. To date a major

result of the Industry Advisory Board's work has been to develop an emergency management manual which contains operating rules and procedures governing the allocation process. This manual also describes the structure of the emergency management organization.

IEA has conducted two tests of its data collection and analysis system. For the first in 1975, IEA obtained, from reporting companies, on a form known as Questionnaire A, data on the companies' actual production, imports and exports, and other oil supply data. The information was categorized by producing country and by IEP participating country for January to June, 1975. IEA conducted the second test in 1976. Data covered June and July 1976. Data submitted to IEA during these tests were made available only to the IEA Secretariat.

The agency also tested its emergency allocation system in the fall of 1976. A detailed discussion of this test begins on page 8.

IEA plans a third test of its data collection and analysis system during the fall of 1977 and another allocation systems test around May 1978.

ROLE OF FTC

The EPC Act gave FTC a number of responsibilities with respect to the IEP. The act requires that the FTC (jointly with the Justice Department):

--Participate in developing, and, when practicable, in carrying out voluntary agreements and plans of action to implement the allocation and information provisions of the IEP.

--Monitor the development and implementation of voluntary agreements and plans of action to promote competition and to prevent anticompetitive practices and effects, while substantially achieving the purpose of the IEP.

--Submit to the Congress and the President, at least once every 6 months, a report on the impact of oil company participation in the IEP on competition and small business.

The act also directs FTC to consult with the Justice Department and FEA regarding (1) developing standards

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and procedures to carry out voluntary agreements or plans of action, (2) approving, modifying, or revoking such agreements and plans, and (3) promulgating rules concerning records' maintenance.

FTC first became involved in the IEP in early 1975. At that time, the Commission provided limited input on developing the original voluntary agreement under the Defense Production Act. With enactment of the EPC Act in December 1975, FTC's involvement increased. FTC participated in drafting the March 1976 agreement and the FEA regulations governing oil company participation in the IEP. Other IEP-related activities of FTC included attending the fall 1976 allocation systems test and IEA-sponsored meetings pursuant to its oversight responsibilities under the EPC Act.

Also, FTC has submitted three reports (September 17, 1976, and March 21 and September 21, 1977) to the Congress and the President assessing the impact of oil company participation in the IEP on competition and small business.

Background of FTC employees assigned to IEP activities

FTC currently has four staff members--an Assistant Director and three staff attorneys--who work part-time monitoring IEP activities. Their involvement in this function varies with the level of IEP activity. Only one of the FTC attorneys had had exposure to international petroleum matters prior to assignment to the IEP activity. Apparently employees were selected as monitors for a variety of reasons. A synopsis of each employee's background follows.

Assistant Director

This employee joined FTC in September 1976, with immediate previous experience in a private law firm in Washington, D.C. His 6 years of experience in the private sector gave him an antitrust background and included some international antitrust matters. These facts weighed in

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his selection. The Director of the Bureau of Competition 1/ said that exposure to international petroleum matters had not been considered in assigning the Assistant Director to head the IEP activity. The Assistant Director is also in charge of many of the Bureau's other energy-related matters, including preparing reports on competition in the energy industry, furnishing advice to the Department of Transportation under the Deepwater Port Act of 1974 (33 U.S.C. 1501), and supervising law enforcement investigations.

Monitor A

This employee has been with FTC in the antitrust field since 1963. Until 1975 he primarily investigated anticompetitive activities of various companies. None of his cases or other matters involved the oil industry as such. Most concerned illegal acquisitions in the food industry.

During the summer of 1975, this monitor was assigned to FTC's energy unit as a liaison with other Federal agencies regarding energy matters. Later he was assigned to be an IEP monitor. He believes that his knowledge of government, experience in monitoring and surveillance, facility in French, general knowledge of European company law, and 10 years prior experience in Paris as an international lawyer all influenced his assignment to the IEP matter.

He participated in the drafting of the March 1976 voluntary agreement as well as the FEA regulations governing oil company participation in the IEP.

Monitor B

This employee has a background in international trade. Specifically hired to participate in the IEP in June 1976, he had previously served as an attorney advisor with the U.S. International Trade Commission. During his 2 1/2 years with that Commission, his major duties included advising the Commissioners on unfair competitive methods and international trade.

1/The Director of FTC's Bureau of Competition at the time of our field work is no longer with the Commission. His resignation was effective June 30, 1977. All references to statements by the Bureau Director refer to the former Director.

He has monitored most IEA-sponsored meetings and other activities in foreign countries.

Monitor C

In his employment with the Commission since 1975, this monitor has dealt with energy-related matters. Before the IEP assignment, his FTC experience had exposed him to matters addressed by the IEP. For example, one of his major responsibilities at FTC was to report on competitive problems associated with applications for licenses under the Deepwater Port Act of 1974. In this connection, he reviewed materials relating to international oil supply patterns and tanker logistics which, according to this FTC employee, increased his familiarity with competitive issues raised by oil companies' actions under the IEP.

His other responsibilities have involved developing FTC staff reports on the coal and solar photovoltaic energy industries, analyzing legislation concerning the energy industry, and presiding at investigational hearings involving utility and diversified energy company witnesses.

As the most recently assigned staff member of the IEP activity, to date he has reviewed pertinent documents and attended various IEA-sponsored meetings. This official also speaks fluent French and German.

Monitor training and FTC staffing plans

The FTC monitors have not been trained for their IEP responsibilities. The Director of the Bureau of Competition said that the FTC attorneys assigned as IEP monitors need not be experts in international petroleum matters to conduct their responsibilities effectively. He believed that antitrust background and experience coupled with intelligent and logical reasoning are sufficient qualifications.

Although the Assistant Director wants to increase the staff, the Bureau Director said that FTC has no plans to do so. He believes the present staff is performing adequately. He pointed out that IEP activity has now leveled off, and existing staff can handle the workload effectively.

ALLOCATION SYSTEMS TEST

The allocation systems test was conducted in Paris from October 4 to November 18, 1976, to assess IEA's ability to respond to an emergency supply disruption. Specifically,

the test's two main purposes were to assess certain aspects of the data systems' procedures and rules relating to allocation and to evaluate the proposed emergency management organization with respect to the roles of the ISAG, IEA Secretariat, and IEA Allocation Coordinator. Limited testing was conducted of communications between reporting companies and the IEA Secretariat and the ISAG and of the physical facilities within the IEA's Paris headquarters.

Although the allocation systems test was largely designed by the Industry Advisory Board, the IEA Secretariat had overall responsibility for conducting the test. In an actual emergency, the Secretariat would activate the emergency system. A member of the Secretariat's staff served as the IEA Allocation Coordinator during the test and was responsible for supervising and guiding the allocation process.

During an emergency, the ISAG would coordinate, under the Secretariat's guidance, the allocation of oil among participating countries. For testing purposes, a mock ISAG was created and staffed with seven oil company participants, who were all considered supply experts. Four U.S. and three foreign firms were represented. 1/ Before the test was completed, a total of nine industry participants had served as ISAG members. The two additional participants, however, came from two of the seven companies already represented on the ISAG. All of the ISAG members had been involved in designing the test.

Generally, the mock ISAG's responsibilities were the same as during a real emergency--carrying out actual allocation procedures under the guidance of the IEA Secretariat. One ISAG member served as manager, and the others were assigned a group of participating countries and reporting oil companies for which they were responsible throughout the test. On the average each member had three participating countries and four to seven reporting

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1/The oil companies represented on the ISAG were Exxon Corp., Mobil Oil Corp., Phillips Petroleum Co., Texaco, Inc. (all U.S.), British Petroleum Co. Ltd., (Great Britain), VEBA - CHEMIE A.G. (West Germany), and Shell International Petroleum Co. Ltd. (Holland).

companies. Members were primarily responsible for maintaining communications with their respective reporting companies on such matters as submission of Questionnaire A data and reporting company actions to allocate oil supplies. Appendix II is a list of the 31 reporting companies participating in the test.

The ISAG manager chaired group meetings and coordinated individual member's work. The manager also monitored the test to insure its smooth and efficient operation.

Limitations of the test

A key objective of the test was to concentrate on the basic elements of the allocation system but keep the test simple. To meet this objective, various parameters of the system were reduced.

For example, the test consisted of three 2-week cycles, each representing 1 calendar month, which is the length of an actual emergency cycle as contemplated in the emergency management manual. The IEA Secretariat also involved as few people as possible in the test. During an emergency, about 20 ISAG members would be involved as opposed to the seven to nine mock ISAG members involved during the test. Furthermore, IEP participating countries did not participate in the test as they normally would by submitting Questionnaire B, a form used for reporting generally the same type of information as contained in Questionnaire A, but on a country basis. Other aspects of the allocation systems and procedures were not subjected to the test, such as liaison between reporting companies and their affiliates in participating countries and communications among non-ISAG reporting companies. Additionally, test limitations prohibited meaningful simulation of all supply restrictions.

A final factor which limited the test was the modification of Questionnaire A data submitted by reporting companies during the test. Data received were generally modifications of the same Questionnaire A data submitted to IEA during the 1975 data collection and analysis system test. According to U.S. Government monitors, the data had little, if any, commercial sensitivity because they were nearly 1 1/2 years old at the time of the test, and were modified to conduct the test.

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Mechanics of the allocation process

Most data for the allocation systems test concerned worldwide oil supply and demand for January to June 1975. Within this 6-month period, each reporting company submitted data (on Questionnaire A) about its production, imports, and exports as these factors related to IEA countries. The current reporting month and reporting period covered varied with each cycle. For example, the first cycle had January as the current month and covered arrivals (i.e., imports) in the first 3 months of 1975. The second cycle had February as the current month and covered the first 4 months of 1975. March was the current month for the third cycle which covered the 5-month period between January and May 1975.

A few weeks before the test began, the IEA Executive Director and the Chairman of the Industry Advisory Board established simulated supply disruption constraints which were to be introduced at the beginning of each 2-week test cycle. The constraints were designed so as to be of sufficient magnitude to activate the IEP's emergency sharing system. In a real emergency, the system would be activated based on the IEA Secretariat's findings--and subsequent confirmation by the Governing Board (the ruling arm of the IEA)--that a supply disruption had reduced normal flow of oil to any participating country by a preestablished percentage. The severity of disruption constraints varied with each cycle. Additional constraints, such as destination and routing restrictions, tonnage of ships available, pipeline throughput limitations, and other obstacles and mandates, were also incorporated in each disruption scenario.

At the beginning of each cycle, mock ISAG members and representatives of the IEA Secretariat attended a meeting--which was monitored by U.S. Government employees 1/--to discuss the supply disruption scenario and the constraints and underlying assumptions relating to it. After resolving any issues arising during this meeting, the disruption scenario was transmitted via telex to the 31 reporting companies.

1/Employees from FTC, FEA, and the Departments of Justice and State monitored the test. The EPC Act specifically assigned antitrust monitoring to FTC and the Department of Justice.

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The hypothetical supply disruptions established for the test were production or export restrictions imposed by various producing countries on various types of crude oil and assumed destination restrictions (for example, a requirement that crude oil produced in one country not be exported to another country).

Based on the constraints outlined in the disruption scenario, each reporting company completed a Questionnaire A and telexed it to the IEA Secretariat. These data were disaggregated (i.e., the data could be related to individual reporting companies).

During each cycle, ISAG members had access to incoming, modified Questionnaire A data from the reporting companies. Before the data could be further reviewed and used by the IEA Secretariat, the members reviewed their respective Questionnaire As for consistency and obvious errors. Throughout the test, the mock ISAG members were "middle men" between the IEA Secretariat and reporting oil companies.

Having undergone the mock ISAG review, the Questionnaire A forms were furnished to the IEA Secretariat for use--along with other IEA reports and statistics 1/--in computing allocation rights or obligations of participating countries. The first step in this process was computing each participating country's supply right, using a formula involving prior oil consumption, emergency reserves, and demand restraint measures. If a participating country's supply right exceeded its total normal domestic production plus actual net imports (i.e., its available supplies), that country was designated to have an allocation right, that country's entitlement during the test. If a country's supply right was less than its available supplies, the country had an allocation obligation--the amount it would have to supply to other participating countries during the test.

Once the IEA Secretariat determined the allocation rights and obligations of participating countries, the information was relayed via telex through the mock ISAG to the reporting companies. These companies were then asked to reallocate

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1/Other reports and statistics include Questionnaire B--normally submitted by participating countries, but devised by IEA for test purposes and Questionnaire D--Quarterly Oil and Gas Questionnaire--which give details of a country's historical supply and demand elements.

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their supplies, or more specifically, to balance the allocation rights and obligations. This exercise involved a series of (1) voluntary offers by reporting companies to either divert oil shipments from one destination to another or to receive shipments offered by other companies, and (2) rearrangements within individual companies' supply systems. The IEA Secretariat, assisted by the mock ISAG, evaluated, accepted, or rejected these offers as necessary to balance the participating countries' allocation rights and obligations. Additional offers were solicited as necessary (the second and third cycle Questionnaire As reflected the accepted offers of the preceding cycle or cycles). This process continued until the rights and obligations were balanced maximally. This completed the allocation process.

Monitoring the test

During the allocation systems test, ISAG members held formal group meetings, communicated with each other by telephone or interpersonally, worked individually in their offices, and communicated with their assigned reporting companies by telex and telephone. Section 252(c)(3) of the EPC Act states:

> "A full and complete record, and where practicable a verbatim transcript, shall be kept of any meeting held, and a full and complete record shall be kept of any communications (other than in a meeting) made, between or among participants or potential participants, to develop, or carry out a voluntary agreement or a plan of action * * *."

The antitrust defense called for in section 252(f)(1) does not apply if full and complete records are not kept. To satisfy this recordkeeping requirement, the entire allocation systems test was considered one meeting.

Before the test, the verbatim transcript was deemed unpracticable. Recognizing this limitation, the FEA, in cooperation with FTC and Justice, developed a document entitled "Guidelines for Recordkeeping by U.S. Companies Participating in the Allocation Systems Test." This document accompanied the FEA Administrator's letter to an oil company approving its participation in the test.

The guidelines gave U.S. Government employees responsibility for keeping full and complete records of each formal meeting. Adequate proceedings' monitoring required that test activities be limited, where possible, to assigned offices and conference rooms. The guidelines further provided that U.S. Government records of formal meetings be supplemented by other records. These were to be prepared by U.S. oil company participants for telephone or personal communications which had not been monitored by a U.S. Government employee. U.S. Government monitors devised a form--Daily Record of Telephone and Direct Oral Communications of Test ISAG Members--specifically for recording such unmonitored communications.

The mock ISAG, including the three non-U.S. members, agreed to keep and submit such records to U.S. Government monitors. Additionally, all telexes and communications involving a U.S. company were to be incorporated in the U.S. Government record. Regarding discussions in monitored meetings of confidential data about foreign companies or countries, U.S. monitors agreed, within the limitations of their statutory responsibilities, to minimize the inclusion of precise data in U.S. records.

The U.S. Government intended to use the test for evaluating its own monitoring procedures. Thus, U.S. Government representatives present at the test were allowed discretion in using alternative recordkeeping procedures, subject to FEA regulations and the EPC Act.

Section 252(c)(1)(B) of the EPC Act requires that a regular full-time Federal employee be present at meetings for developing or implementing a voluntary agreement or plan of action pursuant to the IEP. FEA recordkeeping guidelines do not require the presence of a U.S. Government employee at each exchange involving a U.S. company ISAG member. However, U.S. monitors had the option of being present at any communication involving such company participants. Also, to permit better monitoring, the guidelines requested that all communications among U.S. ISAG members be conducted, to the extent practicable, within OECD headquarters.

Two types of formal ISAG meetings occurred during the test--regularly scheduled daily meetings and impromptu meetings called by one or more ISAG members to discuss particular problems. According to Government monitors, if a Federal employee was not immediately available to monitor an impromptu meeting, the meeting was delayed until one was available. The full ISAG was not represented at all meetings.

Section 252(c)(3) of the EPC Act also requires that the "full and complete record" kept on any meetings held pursuant to developing or carrying out a voluntary agreement or plan of action be submitted to the FEA Administrator. Accordingly, U.S. Government records of the test have been submitted to the FEA. We reviewed records of meetings held during the test. They disclosed that at least one U.S. Government representative (and often two or three) were present at every formal ISAG meeting. In addition to U.S. Government representatives, members of the IEA Secretariat also attended most of the ISAG meetings.

Communication among ISAG members

The primary means of communication among ISAG members were direct (face-to-face) contacts and, to a lesser extent, interoffice telephone conversations within the OECD headquarters. The FEA test records also showed that limited communications were achieved informally by memoranda or notes, usually handwritten, from one ISAG member to another. Individual ISAG members and their assigned reporting companies communicated by long-distance telephone and telex/cable transmissions.

These communications--both within ISAG and between ISAG and reporting companies--covered many topics, including the disruption scenario, the validity of certain data items (that is, production, imports, and so forth) given in Questionnaire A forms, allocation rights and obligations of participating countries, and logistical problems associated with a reporting company's voluntary offers.

Data control

Section 5(b)(2) of the voluntary agreement provides that the exchange of confidential or proprietary data between participants shall be subject to prior written approval of the FEA Administrator, after consultation with the Secretary of State and with concurrence of the Attorney General, who shall have consulted with FTC. It provides further that such data can be exchanged disaggregately only upon determination by the Administrator, after consulting the same officials, that such exchange or disclosure is necessary to develop, prepare, or test emergency allocation measures. Section 5(b)(4) of the voluntary agreement and FEA guidelines prohibit an oil company participant in ISAG from communicating competitively sensitive data about another company to his own company.

In a letter to participating oil companies dated September 14, 1976, the FEA Administrator approved, pursuant to section 5(b)(2) of the voluntary agreement, providing certain confidential and proprietary data necessary for the fall test. Although during the test U.S. reporting companies were not authorized to exchange confidential information with each other or foreign oil companies, ISAG members were allowed to exchange such information. Approval covered the following information:

--Disaggregated first-half 1975 Questionnaire A or B data (modified as necessary for the test).

--Physical capability and operating schedule of a refinery, pipeline, or terminal to receive, store, process, or throughput specific crude oils; physical capability of installations of all types to receive and store products.

--Physical capability of a refinery or installation to receive various sized vessels.

--Main characteristics of crude oil grades and product types.

--Historical and projected crude oil and natural gas liquid production data by country, and information on supply restrictions and embargoes which may occur during an emergency.

--Such additional information or data necessary to implement the oil allocation procedures of the emergency management manual, including but not limited to (1) limitations to allocations resulting from specific company commercial or marketing practices, (2) supply or transportation considerations, not including calculations or examples of specific costs, or (3) affiliate, third-party, or concessional contractual arrangements, without disclosing price or other financial arrangements.

FEA determined that this data could be provided and exchanged disaggregately to carry out the test.

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The approval did not cover:

--Confidential or proprietary crude oil or product prices.

--Costs or market shares of crude oil or products (other than described in Questionnaire A or B).

--Individual company information regarding overall or long-term investment, divestment, refining, operating, transportation, or marketing programs.

The FTC offered no objections to the Attorney General's approving the exchange of data as provided in the FEA approval letter. FTC based its concurrence on the following:

--Activities proposed were appropriate and necessary.

--The test would enable antitrust agencies to develop recordkeeping requirements.

--The data provided would not represent actual company information for the first half of 1975.

--Any proprietary or confidential information was subject to specific limitations regarding exchange or use by participants.

--Since no commercial transactions were involved in the test, no actual adverse effects on competition could result.

The FTC Assistant Director in charge of IEP activities said that because FEA had approved the exchange, the data should not be considered confidential for the purposes of the test. The Assistant Director also said that other publicly available data should not be considered confidential.

The FEA approval letter to reporting oil companies prohibited U.S. ISAG members or employees from supplying parent companies with confidential or proprietary information about any other oil company which was obtained through membership in ISAG. Industry participants were reminded of this prohibition several times during the test. FTC monitors are considering a requirement for future tests that U.S. ISAG members submit affidavits affirming that they have not disseminated confidential or proprietary data to their home companies.

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The principal source of information available to ISAG members was modified Questionnaire A data, which Government monitors did not consider competitively sensitive. However, various safeguards were used during the test to restrict the use of the Questionnaire A data. In commenting on the test, FTC's former Assistant Director for the IEP activity wrote to the Commission that:

> "Even though the test involves only mock transactions the ISAG members will be in constant communication with each other and in frequent communication with Reporting Companies on subjects which would be antitrust-sensitive if the transactions were real. * * *"

During the test's first week, ISAG members requested actual 1975 Questionnaire A data to verify the accuracy of modified data submitted during the allocation systems test. Government monitors denied the request because anticompetitive risks outweighed the need for access to the data.

All data received by the IEA from reporting companies, both during the allocation systems test and in previous data tests, were stored in the same computer system at IEA's headquarters. However, allocation systems test-related data were recorded and maintained on a separate computer disc.

The computer room was located on the second floor of the OECD building and staffed by members of the OECD Data Processing Division. Printouts were delivered to ISAG members by IEA Secretariat staff. ISAG members were not allowed access to the computer room. A fixed number of printout copies was made and distributed to oil company participants. The same number of copies was verified after the test. According to an IEA Secretariat official, spare copies were generally not made, but any that were made were subsequently destroyed.

There were two cathode ray tube terminals operating on the second floor during the test, but as with the computer room, ISAG members did not have access to them. A terminal room on the third floor was used during the test for storing computer discs.

At certain stages of the test, three industry telex operators--non-ISAG members from non-U.S. firms--were available for assisting in weekend transmissions. According to the IEA Secretariat, these operators handled only outgoing telex transmissions, concerning participating countries' allocation rights or obligations and their total imports.

U.S. Government monitors believe that ISAG members followed all guidelines and legal requirements during the test. In addition, evidence in FEA test records indicates that information needed by ISAG members was kept to the barest minimum.

Nature of records maintained

Three major types of records were maintained for communications and events relating to the allocation systems test: (1) U.S. Government records of meetings, (2) the Daily Record of Telephone and Direct Oral Communications of Test ISAG Members, and (3) the ISAG Systems Test Cable Log.

EPC Act requirements and FEA's recordkeeping guidelines give U.S. Government monitors responsibility for recording all formal ISAG meetings held during the test. The record summarizes matters discussed during each meeting. Specifically, the record contains the date of each meeting, beginning and closing times, list of attendees, the substance of the meeting, and the Federal employee keeping the record. Our review of these records in the FEA files showed 236 formal ISAG meetings were held during the test. Some were as short as 1 minute.

Responsibility for compiling U.S. Government records of meetings was rotated among the Federal employees present at each test cycle. During the test these records were made available to ISAG members attending the meeting, the ISAG legal counsel, 1/ and the Secretariat which inspected them for accuracy.

The Daily Record of Telephone and Direct Oral Communications of Test ISAG Members was prepared by industry participants for recording unmonitored communications. Each ISAG member who engaged in unmonitored communications was to complete this record, indicating his name and company affiliation, the date and approximate time of the contact, the other party involved and that person's company affiliation, whether contact was direct or by telephone, the subject matter, and whether confidential or proprietary data were discussed. Three hundred and thirty-eight Daily Records were prepared for the entire test.

1/Two attorneys from an international law firm attended the test. Although their firm formally represented only five of the seven ISAG companies, they assisted the entire group throughout the test in interpreting U.S. law.

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A Daily Record was not required for contacts with the IEA Secretariat or administrative personnel or for incomplete communications--for example, incomplete telephone calls or those completed only to a secretary during which no substantial message was transmitted.

The Daily Records of ISAG members maintained in the FEA files showed ISAG members made 1,191 unmonitored communications during the test--480 1/ by telephone and 711 by direct contact. By comparison, 236 monitored ISAG meetings of oil company participants occurred during the test.

Notations made in the ISAG members' Daily Records indicated that confidential or proprietary data were discussed on about 171 2/ separate occasions or during about 14 percent of their unmonitored communications. 3/ Of the 171 instances, about 71 percent were telephone calls to reporting companies and the remaining 29 percent were contacts with other ISAG members. Approximately 69 percent of the unmonitored communications concerning possible confidential or proprietary data involved a discussion of Questionnaire A or B data as compared to 31 percent for the remaining categories of confidential or proprietary data.

The ISAG Systems Test Cable Log was maintained by U.S. Government monitors and contained a listing of all cables between the IEA Secretariat or ISAG and reporting companies. The log indicated the IEA file number for the cable, the transmitting and receiving parties and, except for cables to or from non-U.S. reporting companies, the subject matter. Copies of all cables to and from U.S. reporting companies were attached to the log.

1/Only 22 of these calls were between ISAG members. The rest were between ISAG and reporting companies.

2/FEA records included copies, not originals, of the Daily Records. For 29 of the 338 Daily Records, the column reflecting whether confidential or proprietary information was communicated was illegible.

3/This does not necessarily mean that confidential or proprietary data were discussed in 171 instances. ISAG members emphasized that such notations in the daily records do not indicate that the information discussed was in fact confidential or proprietary, but only that it might be regarded as such.

Other records of the test contained in the FEA files include informal memoranda and notes among ISAG members, various U.S. Government memoranda for the record, IEA Secretariat memoranda, and miscellaneous schedules, tables and charts prepared by members of the ISAG and Secretariat.

Verification of accuracy of records

The Daily Records were collected by the ISAG legal counsel either at the close of the day during which the communications occurred or in the morning of the following day. The legal counsel reviewed the records for completeness (that is, to assure that records were submitted by all ISAG members) before submitting them to the Government monitors, who usually received the records no later than the close of business on the day following the communication. In reviewing these records, the monitors focused on data which appeared incongruous or irrelevant to the test.

According to one Government monitor, the substance of the Daily Records rarely raised antitrust questions. Since the monitors' presence at meetings throughout the test gave them an understanding and knowledge of the matters being discussed by ISAG members, the monitors generally did not attempt to contact the industry participants to verify the substance of matters discussed. For the same reason, they usually did not attempt to ascertain the precise nature of confidential or proprietary data noted in the records.

FTC and Justice Department monitors said they were assured that a complete record of the test was maintained because

--Federal employees monitored all formal ISAG meetings,

--Federal employees prepared appropriate test records,

--ISAG members were required to record all unmonitored communications,

--FTC and Justice Department monitors designed the Daily Record form for unmonitored communications, and

--FTC and Justice Department monitors also helped to develop FEA's recordkeeping guidelines.

FTC and Justice Department monitors, in conjunction with other Federal employees and IEA Secretariat, periodically

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reviewed test records, including the U.S. Government records of meetings, Daily Records of ISAG members, and all telex transmissions, for accuracy and completeness. With respect to the telex transmissions, one Justice Department monitor questioned in the first week of the test whether U.S. Government employees were receiving all telexes for review. An FTC monitor attributed this concern to the general confusion and "start-up" problems surrounding the beginning of the test--Government monitors were literally inundated with test records. Once the "start-up" problems were overcome, however, Government monitors were able to verify with the IEA Secretariat (who received all incoming telexes) that they were receiving all telexes and to review any telexes which were not reviewed during the first week of the test.

Government monitors had no way of knowing the extent of unmonitored ISAG communications and events during the test which were not recorded. They stated, however, that the behavior of the test ISAG members was exemplary and that they adhered strictly to EPC Act requirements and FEA's record-keeping guidelines. The monitors cited the lack of an antitrust defense under the EPC Act, admonitions from the ISAG legal counsel, and the almost constant presence of U.S. Government monitors in the test rooms to deter industry participants from not recording all communications.

Benefits vs. risks of the test

According to the Director of FTC's Bureau of Competition, FTC's second report to the Congress and the President on the IEP is a useful vehicle for evaluating the benefits and risks of the test. While this report does not directly address the benefits of the test, it concludes that implementing the IEP during the covered reporting period (which included the test) was unlikely to have caused significant adverse effects on competition or small businesses.

The Director said that the Congress, in passing the EPC Act, made the legislative determination that the benefits to be derived from oil company participation in the IEP are sufficient to risk any anticompetitive effects. He, therefore, believed that the antitrust defenses should be continued subject to continuation of existing controls.

An FEA monitor, who was present for most of the test, believed that the test was a success. Recognizing that it was limited, she felt that it gave a good assessment of some of the allocation provisions in the emergency management manual and emphasized areas needing improvement.

In this regard, the comments of the IEA Secretariat closely paralleled those of the FEA monitor. Acknowledging that more work needs to be done, the Secretariat identified two benefits of the test:

--It proved that the emergency allocation system is workable.

--It showed that data reporting by oil companies and the processing of that data can function properly.

A test appraisal report was prepared by the ISAG following completion of the test. The report, dated November 18, 1976, outlined several problems, observations, and recommendations relating primarily to technical aspects of the test, such as timing of the first submission of Questionnaires A and B during an emergency. The IEA Secretariat concurred with all recommendations and comments contained in the appraisal report. As a consequence, the Secretariat is preparing a composite and comprehensive set of proposed amendments to the emergency management manual.

U. S. Government monitors believed that the test had little, if any, anticompetitive impact. This belief is based largely on the nature of the data communicated during the test. A Justice Department monitor estimated that about 90 percent of the data communicated were Questionnaire A data--the only data which aroused any antitrust concerns during the test. 1/ However, both FTC and Justice Department monitors believe that the Questionnaire A test data were not competitively sensitive because, as already noted, they were dated and modified for test purposes. Hence, they concluded that the test had no discernible effect on competition.

The possibility of industry participants extrapolating actual 1975 Questionnaire A data from modified data was considered by the antitrust monitors. They concluded that extrapolation could not be made without awareness of the method used to compute the hypothetical supply disruptions and, even if ISAG members wanted to try, the time constraints and volume of work during the test would have precluded such attempts.

1/Most of the Questionnaire A communications must have occurred in monitored ISAG meetings because FEA records showed that only 118 of 1,191 unmonitored communications (9.9 percent) concerned Questionnaire A or B data (see p. 20.)

FTC and the Justice Department monitors believe that the mock ISAG members may have gained an improved understanding of international oil markets as a result of their participation, but this result is an unavoidable consequence of oil company involvement in the IEP. They pointed out that in the event of a real emergency in which current, commercially sensitive data would be exchanged there could conceivably be some adverse effects on competition.

Because the test did not represent a real emergency in several important ways, the competitive impact of U.S. oil company participation in the emergency allocation system cannot be fully or accurately measured.

FTC evaluation of its monitoring performance

FTC has not evaluated its monitoring performance during the allocation systems test nor do any plans exist to examine this particular aspect of its responsibility. It may, however, be subjected to review, along with other energy-related activities of FTC. On May 26, 1977, for example, the IEP activity was cursorily evaluated during FTC's review of its energy programs. Although discussion during this review extended to IEP monitoring, it generally centered on assigning monitoring responsibility between FTC and the Justice Department.

Antitrust implications of the 1978 allocation systems test

The IEA Secretariat is planning at least two additional tests over the next year--another data system test this fall and another allocation systems test around May 1978. The Secretariat, oil company participants, and U.S. Government monitors are currently considering the propriety of using the Questionnaire A data which will be collected during the fall 1977 data system test as the data base for the allocation systems test next year. If such data were used, the age of the Questionnaire A data for next year's test would be only about 6 months as compared to nearly 18 months for the data used during the fall 1976 test.

FTC staff are concerned with the antitrust implications of using the more current data in future allocation systems tests and are studying (1) how quickly data of the type submitted on Questionnaire A become public, (2) how much of the data used in the next test would be real, and (3) what

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additional steps (including further modification of the data) could be taken to reduce the antitrust risks without ruining the test.

CLASSIFICATION OF DOCUMENTS

The preamble to Executive Order 11932, dated August 4, 1976, outlines certain criteria used to justify classifying certain IEA data. The Executive order is entitled "Classification of Certain Information and Material Obtained From Advisory Bodies Created to Implement the International Energy Program." The preamble states:

> "[The International Energy] Program is a substantial factor in the conduct of our foreign relations and an important element of our national security. The effectiveness of the Agreement depends significantly upon the provision and exchange of information and material by participants in advisory bodies created by the International Energy Agency. Confidentiality is essential to assure the free and open discussion necessary to accomplish the tasks assigned to those bodies."

Authority to classify

Two Executive orders gave the State Department authority to classify data generated by the IEA. The first Executive order 1/ defines security classification categories and limits those officials to whom classification authority may be delegated. It was implemented by a National Security Council directive 2/ which established an Interagency Classification Review Committee (ICRC) to monitor the Government's classification activities.

The second order, Executive Order 11932, assigned the Secretary of State the responsibility to classify material obtained from IEA advisory groups. Under this order, the following material could be classified:

1/Executive Order 11652, dated March 8, 1972, entitled "Classification and Declassification of National Security Information and Material."

2/Directive of May 17, 1972, governing the classification, downgrading, declassification, and safeguarding of national security information; 37 F.R. 10053, May 19, 1972.

--Records of meetings between or among participants or potential participants for developing or carrying out the voluntary agreement or plan of action.

--The voluntary agreement and plan of action.

--Other records the Attorney General may require participants to keep.

In the order, the President stated that he had consulted the Attorney General concerning the "handling and safeguarding of information and material in the possession of the United States which has been obtained pursuant to the program." During ICRC's review of the proposed Executive order, the Justice Department approved the order's form and legality. 1/ A Justice Department representative to the ICRC told us that the Department had considered possible anticompetitive effects of the order but felt that the national security benefits to be gained outweighed any such anticompetitive effects. Justice did not consult FTC about the Executive order.

On March 25, 1977, the State Department proposed regulations 2/ to implement its responsibilities under Executive Order 11932 and asked for public comment. Neither FTC nor the Justice Department was consulted on the proposed regulations before their publication in the Federal Register, and neither provided formal comments.

National security benefits

State Department officials had discussed various aspects of the IEP with several congressional committees. (See testimony of the Deputy Assistant Secretary for Economic and Business Affairs before the Subcommittees on International Organization and Movements and on Foreign Economic Policy of the House Foreign Affairs Committee, December 18, 1974; and of the Assistant Secretary for Economic and Business Affairs before the Subcommittee on Energy and Power of the House Interstate and Foreign Commerce Committee, February 17, 1975.) They explained the United States' involvement in the IEP as follows:

1/Memorandum to ICRC from the Deputy Assistant Attorney General for Legal Counsel, June 30, 1976.

2/42 F.R. 17142, March 31, 1977.

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"The lesson of last winter's oil embargo and the subsequent quantum increase in world oil prices made clear the need for a coordinated approach by the major oil consuming countries to reduce their political and economic vulnerability resulting from a growing dependence on imported oil. The uncoordinated and go-it-alone response by most industrialized countries to last winter's oil crisis was extremely costly. It caused serious economic disruptions in consuming nations, including our own, and it seriously strained the fabric of political, economic, and security ties within the industrialized world. * * *

"The security and well-being of our nation as well as that of our partners requires that these [IEP] initiatives be implemented and developed to their full potential."

OBSERVATIONS AND RECOMMENDATIONS

We noted several areas related to the allocation systems test and IEA's emergency management system in general which may pose future problems. These include (1) the anticompetitive impact of confidential and proprietary data, (2) the monitoring responsibility of FTC and Justice Department employees, and (3) U.S. Government recordkeeping requirements. The areas are important because they directly affect the ability of FTC and the Justice Department to fulfill their major EPC Act responsibility--monitoring oil company participation in the IEP to prevent anticompetitive effects, while substantially achieving the purpose of the IEP.

Confidential and proprietary data

The Director of FTC's Bureau of Competition stated that the Congress, in passing the EPC Act, judged the benefits of U.S. oil company participation in the IEP to outweigh ti- competitive consequences caused by sharing confidenti or proprietary data. The Congress had made some assumptions about the role the oil companies would play and the amount of confidential material which would be exchanged during an emergency and during an allocation systems test. The recent test provides the Congress an opportunity to reexamine some of those assumptions.

In judging anticompetitive risks of oil company involvement in an emergency or in future tests, we believe the Congress should consider the competitive sensitivity of

Questionnaire A data, whether actual or modified. Although the data exchanged at the last test were not considered competitively sensitive because they were 18 months old, FTC is now studying how quickly such data loses its competitive sensitivity (i.e., becomes public).

FTC and Justice Department monitoring of ISAG meetings

FEA records did not show whether FTC or Justice Department monitors were present at over a third of the ISAG meetings 1/ held during the test. Instead, FEA and/or State Department officials monitored these meetings. The absence of FTC and Justice Department monitors does not conflict with section 252(c)(1)(B) of the EPC Act, which only requires the presence of a regular full-time Federal employee at any meetings held to develop or carry out a voluntary agreement or plan of action. However, section 252(e)(1) of the act specifically assigns the antitrust monitoring responsibility--to promote competition and to prevent anticompetitive practices and effects--to FTC and the Attorney General.

In our opinion, the legislative intent of these sections is unclear. Is the presence of a full-time Federal employee at all meetings intended to satisfy the recordkeeping requirements (section 252(c)(3)) of the act, the requirement relating to promoting competition and preventing anticompetitive practices and effects, or both? Further, does section 252(e)(1) require FTC and Justice Department employees to monitor all formal meetings of oil company participants? It could be argued that FTC and Justice Department monitors satisfied the requirements of this section during the test by reviewing the records of meetings which they did not attend.

We believe that the Congress should clarify the roles of the four Federal agencies in monitoring the tests and other oil company activities in the IEP, especially considering the anticompetitive risks discussed above.

1/U.S. Government monitors said that during the second and third cycles of the test the Federal employees completing the record did not always indicate whether other Federal employees were present. About 70 percent of the meetings where records did not indicate that FTC or Justice Department monitors were present occurred during the second and third cycles.

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U.S. Government
recordkeeping requirements

The ISAG concluded that the FEA recordkeeping guidelines in effect during the test were burdensome. To some extent they also inhibited the free flow of its work. The consensus among ISAG members was that the recordkeeping requirements would be unworkable in a real emergency. The primary target of its criticism was the requirement that exchanges of routine procedural or administrative information had to be recorded. It, therefore, suggested in its appraisal report that this requirement be dropped.

Although FTC and Justice Department monitors believe that FEA's recordkeeping guidelines were adequate for the test purposes, they also expressed doubt concerning the guidelines' viability during a real emergency. FTC staff are currently working with the other agencies to refine the guidelines. Under consideration is the ISAG suggestion that routine procedural or administrative exchanges not be subject to the recording rules. The guidelines have not been modified to date, however, due to the problem of defining what constitutes a procedural communication vis-a-vis a substantive communication.

FTC staff is also considering whether in some respects the recordkeeping guidelines should be more strict. This consideration is based on the fact that there would be more ISAG members during an actual emergency and, consequently, more activities (communications) subject to recordkeeping requirements. However, FTC officials emphasized that any guidelines finally adopted not be too cumbersome.

It is important that this problem be resolved. The success of IEP's emergency allocation system depends on efficient functioning of the ISAG. On the other hand, ISAG activities should not circumvent antitrust laws. Thus, any refinement of existing recordkeeping guidelines should achieve a satisfactory balance between facilitating the free flow of ISAG work and insuring compliance with U.S. antitrust requirements.

APPENDIX II

LIST OF THE 31 REPORTING OIL COMPANIES PARTICIPATING IN THE ALLOCATIONS SYSTEMS TEST

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United States	European	Japanese
Amerada Hess Corporation	Axel Johnson & Co., A.B.	Indemitsu Kosan Co. Ltd.
Ashland Oil, Inc.	British Petroleum Co. Ltd.	Maruzen Oil Co. Ltd.
Atlantic Richfield Company	Ente Nazionale Idrocarbure	
Caltex Petroleum Corporation	Hispanoil S.A.	
Continental Oil Company	OMV Aktiengesellschaft	
Exxon Corporation	Petrofina S.A.	
Getty Oil Company	Shell International Petroleum Co. Ltd.	
Gulf Oil Corporation	Statoil	
Marathon Oil Company	VEBA - CHEMIE A.G.	
Mobil Oil Corporation		
Murphy Oil Company		
Occidental Petroleum Corporation		
Phillips Petroleum Company		
Shell Oil Company		
Standard Oil Company of California		
Standard Oil Company of Indiana		
Standard Oil Company of Ohio		
Sun Oil Company		
Texaco, Inc.		
Union Oil Company of California		