

REPORT BY THE

Comptroller General

OF THE UNITED STATES

Better Communication Could Have Enhanced Enforcement Of Federal Oil Pricing Regulations

The Justice and Energy Departments could have enhanced their efforts to enforce oil pricing regulations through increased communication and coordination if

- Justice had provided Energy with detailed written information on preliminary decisions to decline prosecution;
- Energy had provided Justice with information, prior to referral, on investigations being conducted by its Office of Special Counsel; and
- Energy had better insured that its district Office of Enforcement officials identified and forwarded to Energy's Office of General Counsel for possible civil action by Justice cases where remedial orders had been issued and complied with.

Justice agreed with the need to provide Energy with information on preliminary decisions to decline prosecution but did not agree that written notification should be made. Energy agreed on the need to insure civil penalties are sought, when appropriate, in cases where remedial orders have been issued and complied with.



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COMPTROLLER GENERAL OF THE UNITED STATES
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The Honorable Howard M. Metzenbaum
United States Senate

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

The Honorable John Conyers, Jr.
Chairman, Subcommittee on Crime
Committee on the Judiciary
House of Representatives

This report addresses opportunities for the Departments of Justice and Energy to enhance their efforts to enforce Federal oil pricing and allocation regulations by communicating more during the enforcement process. It also addresses the need for Energy to take steps to better insure that, when appropriate, civil penalties are sought in cases where remedial orders have been issued and complied with. Chapter 3 contains recommendations to the Attorney General and to the Secretary of the Department of Energy to improve communication and to better insure that civil penalties are sought when appropriate. Although the President discontinued controls on crude oil and refined petroleum products on January 28, 1981, we nonetheless believe such steps are necessary. Both agencies are currently pursuing, within budgetary constraints, legal actions on violations which occurred before the President's action.

This report was initiated pursuant to your requests and subsequent agreements made with your offices. As arranged with your offices, copies of this report are also being sent today to the Departments of Justice and Energy. Unless the contents of this report are publicly announced earlier, we plan no further distribution of the 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.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States

D I G E S T

The Departments of Energy and Justice have shared the responsibility for enforcing the Federal oil pricing and allocation regulations since they were established by the Congress. Both agencies can enhance enforcement efforts through better communication and coordination of their investigative and prosecutive activities. In addition, Energy can help insure that its district Office of Enforcement officials seek civil penalties in all appropriate cases where remedial orders have been issued and complied with.

GAO believes such steps are necessary, even though the President discontinued controls on crude oil and refined petroleum products on January 28, 1981, because both agencies are currently pursuing, within budgetary constraints, legal actions on violations which occurred prior to the President's action.

Between August 1, 1977, and May 31, 1980, Justice received 72 referrals from Energy of alleged criminal violations of the Federal oil pricing and allocation regulations. Of these, as of September 30, 1980, Justice had prosecuted 15 cases, was investigating or had obtained indictments in 32 cases, and had declined prosecution on 25 cases. (See apps. III through VII.)

COMMUNICATION COULD HAVE
BEEN IMPROVED

Improved communication and coordination between the agencies could have helped make enforcement efforts more timely and

efficient. Energy's Office of Special Counsel could have taken steps, similar to those taken by Energy's Special Investigations Division, and kept Justice better apprised of its investigative activities, thereby enabling Justice to request referrals it believed were ready for prosecutive action and to identify matters not worthy of Federal prosecution prior to formal referral. At the completion of GAO's review, Energy's Office of Special Counsel had begun to provide Justice with this information. GAO believes the provision of this information is necessary and should be continued.

Conversely, if Justice had kept Energy's Office of Special Counsel better apprised of the status of referred cases, the Office of Special Counsel could have used this information in making management decisions on future investigations. (See pp. 6 to 11.)

JUSTICE IS MAINTAINING
AND PROVIDING BETTER
INFORMATION ON PROSECUTIVE
DECLINATIONS

Justice recently began to follow its policy requiring all prosecutive decisions on Energy matters to be supported by memoranda and approved by supervisory personnel. It also reached agreement with Energy to provide more detailed information on case declinations. While these are important steps, GAO is concerned that formal prosecutive decisions and subsequent notification may take up to 5 months from the time a staff attorney makes a preliminary decision to decline and the final declination.

Although Justice orally notifies Energy of preliminary declinations, Justice told Energy not to consider a case officially declined until it receives Justice's formal declination letter. Thus, Energy must make decisions concerning ongoing investigations after it has been informed that a

similar case already referred may be declined. GAO believes that Justice should make its official declination decisions as expeditiously as possible and that its preliminary declinations and the reasons for them should be sent to Energy in writing and should be as complete as possible. (See pp. 12 to 14.)

ENERGY SHOULD MAXIMIZE
THE USE OF CIVIL PENALTIES

Because Energy does not have the authority to unilaterally assess civil penalties, it must either negotiate with the alleged violator to voluntarily pay penalties or refer the case to Justice for consideration of civil prosecution.

Energy district Office of Enforcement officials have sometimes been reluctant to pursue civil penalties on cases where remedial orders have been issued and complied with because of a perception that Energy's Office of General Counsel is not willing to refer such cases to Justice for consideration of civil prosecution.

To help insure that civil penalties are sought in all appropriate cases involving issued remedial orders, GAO believes Energy should disseminate a policy statement emphasizing the use of civil penalties and instructing district Office of Enforcement officials to forward all such cases, when civil penalties are appropriate, to the Office of General Counsel for consideration of possible referral to Justice. (See pp. 14 to 20.)

RECOMMENDATIONS

Even though crude oil and refined petroleum products are no longer subject to Federal control, GAO believes that Energy and Justice can enhance communication and coordination

in enforcing cases involving violations which occurred before deregulation.

The Attorney General should provide written and detailed notification of Justice's preliminary prosecutive decisions to Energy so that it has as much information as possible while it awaits Justice's final decision.

To maximize the use of civil penalties, the Secretary of Energy should disseminate a policy statement instructing district Office of Enforcement officials to forward all cases where remedial orders have been issued and where penalties are deemed appropriate to the Office of General Counsel for possible referral to Justice for civil prosecution.

AGENCY COMMENTS AND GAO'S EVALUATION

Both Justice and Energy officials agreed with the factual data presented. Justice officials agreed on the desirability and need to provide Energy with as much information as possible regarding preliminary decisions to decline prosecutions. However, they claimed written notification of such decisions would have the effect of eliminating Justice's internal review procedure and would cause Energy to be misled if the decision is later reversed.

GAO did not suggest that Justice's internal review procedure be eliminated and points out that such procedures are important steps toward providing continuity in the enforcement process. However, because up to 5 months can elapse from the time a staff attorney makes a preliminary decision to Justice's final

declination, GAO believes it is important to provide Energy with documented information to keep it abreast of the status of investigations and possible forthcoming decisions that might affect its workload.

Because Energy officials have stated that they would carefully evaluate a preliminary declination decision prior to terminating any pending investigations, GAO believes that such information would not mislead Energy on Justice's prosecutive position. To the contrary, such written notification could generate a dialogue between the two agencies and help expedite the final disposition of the referral. Further, GAO believes such documentation would assist both agencies in monitoring the timeliness of preliminary and final prosecutive decisions and in making improvements, where necessary. (See pp. 23 to 24.)

Energy officials agreed that cases where remedial orders are issued and complied with, but for which appropriate penalties cannot be negotiated, should be forwarded to its Office of General Counsel for possible referral to Justice for consideration of civil penalty prosecution. Energy officials stated that they will instruct district Office of Enforcement officials to review all remedial orders which have been issued and complied with and identify and forward cases where civil penalties are appropriate. (See p. 24.)

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ABBREVIATIONS

CFR	Code of Federal Regulations
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
OE	Office of Enforcement
OSC	Office of Special Counsel
SID	Special Investigations Division
U.S.C.	United States Code

CHAPTER 1

INTRODUCTION

Violations of Federal oil pricing and allocation regulations have had direct monetary impacts on the American consumer. The regulations, which were designed to address the substantial problems resulting from shortages of petroleum products caused by the oil embargo of 1973 and 1974, were the Congress' attempt to insure equitable allocation of supplies and to prevent price gouging or discrimination. Enforcement of the regulations (15 U.S.C. 751, et seq.) and related statutes of the United States Code is the responsibility of the Department of Justice (Justice) and the Department of Energy (Energy). Currently, Energy refers potential criminal violations to Justice for consideration of criminal prosecution.

In response to a request from the Chairman of the Subcommittee on Antitrust, Monopoly and Business Rights, Senate Committee on the Judiciary, and a related request made jointly by the Chairman of the Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, and the Chairman of the Subcommittee on Crime, Committee on the Judiciary, House of Representatives (see apps. I and II), we reviewed the criminal referrals made to Justice to determine the nature of the alleged violations and the case dispositions. Because Federal oil pricing violations are subject to civil as well as criminal sanctions, we also reviewed the civil actions taken on these cases.

On January 28, 1981, after completion of our review, the President issued Executive Order 12287 which decontrolled and exempted crude oil and refined petroleum products from price and allocation controls adopted pursuant to the Emergency Petroleum Allocation Act of 1973, as amended. Pursuant to the order, the Secretary of Energy was charged with taking action to revoke the necessary price and allocation regulations and to review and modify as necessary all reporting and recordkeeping requirements in effect. Energy and Justice are currently pursuing civil and/or criminal actions for alleged violations which occurred prior to decontrol.

THE DEPARTMENTS OF ENERGY AND
JUSTICE SHARE RESPONSIBILITY
FOR ENFORCING OIL PRICING AND
ALLOCATION REGULATIONS

Both Energy and Justice share the responsibility for enforcing oil pricing and allocation regulations and each has distinct responsibilities for insuring that any potential violations are effectively addressed. By statute Energy is responsible for the formulation of and compliance with its regulations and refers appropriate cases to Justice for criminal and/or civil prosecution. Once it has received a referral from Energy, Justice is responsible for performing the necessary prosecution.

Department of Energy

Energy has established three organizational components to carry out its enforcement responsibilities: the Office of Enforcement (OE); the Special Investigations Division (SID); and the Office of Special Counsel (OSC).

OE is part of Energy's Economic Regulatory Administration which has the responsibility for establishing regulations limiting the price of crude oil and refined petroleum products. OE is responsible for enforcing the pricing, allocation, and import rules and regulations in matters involving all firms with the exception of the 35 major refiners. OE conducts audits to ascertain if firms complied with the regulations. If an audit reveals possible willful violations, the matter is then brought to the attention of SID, which is part of the Office of General Counsel.

SID is responsible for managing the special investigations of all companies other than the 35 major refiners. The investigations represent an additional fact finding step in Energy's determination as to a firm's compliance with the regulations and center on possible willful violations of regulations which may warrant referral to Justice for consideration of criminal prosecution. Cases are referred when the SID staff believes credible evidence of a willful violation exists.

OSC, which is also part of the Economic Regulatory Administration, conducts audits and special investigations

of the 35 major refiners and, where appropriate, refers cases to the Criminal Division of Justice for consideration of prosecutive actions.

Both OE and OSC can seek civil remedies for all violations of oil pricing regulations through Energy's administrative procedures. In addition, OE and OSC, with the approval of Energy's Office of General Counsel, can seek civil penalties through prosecution in Federal court by the Civil Division of Justice. Energy statutes and regulations provide the agency with the authority to issue an enforcement document called a remedial order, which requires the party found in violation to pay back the amount of the determined overcharge. Energy can negotiate and compromise civil penalties once the remedial order is issued. The regulations also permit Energy to enter into compromises on the payment of overcharges plus interest and to negotiate civil penalties prior to the issuance of a remedial order. In this regard, Energy can issue a consent order, which is a negotiated settlement, for the overcharges and any civil penalties. If Energy wants to obtain civil penalties, other than through negotiation, it must refer the case to the Civil Division of Justice for prosecution in Federal court. Under a memorandum of understanding, Justice can authorize Energy to conduct the necessary civil prosecutive activity or prosecute the case itself.

Department of Justice

Criminal case referrals which originate at Energy are sent to Justice's Criminal Division. As was indicated in Justice's comments to GAO's report entitled "Improvements Needed In The Enforcement Of Crude Oil Reseller Price Controls" (EMD-79-57, May 29, 1979), in which we recommended that Justice review opportunities to expand informal coordination channels with Energy to include regional level discussions of cases before formal referral, Justice had opted to establish a specialized energy unit within the Fraud Section of the Criminal Division to coordinate the development of energy matters, provide a source of expertise and supplemental manpower to aid U.S. attorneys in staffing such inquiries where needed, and maintain national liaison with Energy. The Fraud Section Chief reviews and makes decisions on the energy unit staff's recommendations for prosecutive action. This includes decisions to initiate criminal investigations by the Federal Bureau of Investigation (FBI), to decline cases for criminal prosecution, or to refer matters to the appropriate U.S. attorney for prosecutive action.

The Federal Programs Branch of the Civil Division receives referrals from Energy to pursue available civil remedies, such as restitution of overcharges, interest, and civil fines.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Chairman, Subcommittee on Antitrust, Monopoly and Business Rights, Committee on the Judiciary, U.S. Senate, requested that we obtain information on the disposition of cases referred by Energy to Justice for consideration of criminal prosecution. In particular, the Chairman requested that for closed cases we review Energy referral reports and obtain reasons for Justice's criminal declinations, and for pending cases we catalogue the dates referrals were received at Justice and the current status of each case. We agreed with the Chairman's office to also examine the communication and coordination which occurred between Justice and Energy during the referral of cases for consideration of criminal prosecutive action. Although the Chairman also initially expressed interest in the adequacy of Justice's legal decisions, we arranged with his office not to attempt to question or evaluate Justice's legal decisions to prosecute or not prosecute cases.

The Chairman, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, House of Representatives, and the Chairman, Subcommittee on Crime, Committee on the Judiciary, House of Representatives, also requested that we review cases referred by Energy to Justice for consideration of criminal prosecution.

During the period August 1, 1977, through May 31, 1980, 72 cases were referred by Energy to Justice for consideration of criminal prosecution. Our review encompassed all 72 cases. As of September 30, 1980, 27 cases were pending prosecution, 5 cases had been prosecuted and were on appeal, and indictments had been returned in 5 other cases. For these 37 cases we agreed with Justice officials not to review sensitive and detailed information which could still be the subject of court litigation. We reviewed Energy and Justice files for the 25 cases declined and the 10 prosecuted cases not on appeal. We obtained information on 13 cases from the FBI. The information obtained for these 72 cases is contained in appendixes III through VIII. We discussed the cases with officials of each agency. Because Justice would not make staff attorneys from its Criminal Division accessible, we had

to restrict our discussions on criminal cases to the chief of the Criminal Division's Fraud Section and to the supervisory attorney of the Fraud Section's energy unit. We questioned these Justice officials about the criminal disposition of all cases and the criminal case referral process. We asked Civil Division officials about the role of Justice in seeking civil penalties. And, finally, we interviewed Energy officials from the Economic Regulatory Administration and the Office of General Counsel about the criminal and civil referral processes.

CHAPTER 2

BETTER COMMUNICATION AND COORDINATION

CAN ENHANCE ENFORCEMENT EFFORTS

Successful enforcement of oil pricing regulations requires close coordination between Energy and Justice. To this end Energy develops and refers possible criminal cases to Justice for prosecutive decisions. In addition, Energy may refer cases to the Civil Division of Justice for civil prosecution or dispose of them administratively.

Our review of 72 criminal cases referred during the period August 1, 1977, to May 31, 1980, showed that procedures and enforcement efforts can be enhanced by (1) improving communication between the two agencies on criminal enforcement activities and (2) insuring the consideration of civil penalties as a sanction against oil pricing violations. We believe these improvements can be achieved by exchanging more information during the criminal referral process and by instructing Energy's district OE officials to forward all cases where remedial orders have been issued and complied with and where civil penalties are appropriate to the Office of General Counsel for consideration of possible referral to Justice for civil prosecution.

On January 28, 1981, after completion of our review, the President signed Executive Order No. 12287, which decontrolled crude oil and refined petroleum products from Federal regulation. To the extent that Justice and Energy continue to pursue, within budgetary constraints, civil and criminal sanctions on those alleged violations occurring prior to decontrol, we believe such improvements will facilitate the enforcement process. In addition, decontrol will not entirely nullify the relationship between Justice and Energy. Justice will continue its responsibility to litigate other criminal and civil matters in Federal court on behalf of Energy and as such, the recognition of the need for and opportunities to increase communication and coordination should enhance these efforts as well.

COMMUNICATION DURING THE CRIMINAL REFERRAL PROCESS NEEDS TO BE IMPROVED

Because enforcement of Federal oil pricing violations is a cooperative effort between Energy and Justice, effective communication is essential. Such communication has been left largely unstructured, thus allowing informal dialogue between

staffs of both agencies on a case-by-case basis. Our review of the 72 referrals of alleged oil pricing violations showed that communication could have been improved and would have helped make enforcement efforts more timely and efficient. In this regard, OSC could have taken steps, similar to those taken by SID, to keep Justice better informed of its current investigative activities to help Justice identify cases that were not worthy of Federal prosecution or to provide other assistance. Our discussions with officials of both agencies showed mutual concerns and interest in improving the communication process, and at the completion of our review, agency officials told us that increased communication between OSC and Justice had begun to take place.

Prereferral communication
can be increased

Prereferral communication between Energy's OSC and Justice could have been increased. Officials of both agencies said that only limited communication had occurred prior to formal referral of a criminal violation. As a result, Justice was not aware of the number or nature of OSC special investigations under review and could not readily identify cases that lacked prosecutive merit. OSC and Justice officials agreed that prereferral communication should be increased, and at the completion of our review, OSC began to provide Justice with information on its investigations prior to formal referral.

As of August 14, 1980, OSC had referred 10 major refiner cases to Justice for prosecutive decisions (7 of these were jointly referred by OSC and SID because nonmajor refiners were also involved and 3 were referred solely by OSC). ^{1/} Of the three cases referred by OSC, two were declined, and one case was pending. One of the declined cases (apps. III and IV, case number 2) illustrates the potential problems which could have been avoided by earlier communication. After a special investigation, OSC referred this case to Justice in November

^{1/}In addition, OSC was investigating 22 other cases either jointly with SID or by itself as of August 14, 1980. In addition, one other case was referred prior to the formation of OSC and was prosecuted by Justice and settled civilly by OSC after its establishment.

1979 and recommended a criminal investigation and possible prosecution of an oil company and some of its employees for willful violations of the Emergency Petroleum Allocation Act of 1973 and other criminal statutes. OSC recommended the investigation in connection with the company's submission of an alleged false request for an increase in the allocation of motor gasoline to one of its branded retailers. Analysis of communication between OSC and Justice showed a disagreement in this case. For example, Justice reviewed and declined the case in November 1979 because there was insufficient evidence that the violation was widespread or was indicative of company policy and because the violation appeared to be an isolated act by a company representative. An Energy official strongly disagreed with this rationale and pointed out in a January 28, 1980, memorandum to Justice that:

"This office deliberately chose not to extend its inquiry beyond the initial determination of criminality of the conduct of the individual employee(s)* * *. Specifically, it had been my understanding that matters should be referred as soon as credible evidence of a criminal violation has been developed."

Neither Justice nor OSC files indicated any further correspondence on this case. An OSC official told us that the criminal case was closed by Energy without further investigation after the above memorandum was sent to Justice. Justice officials said that no further correspondence occurred because they still believed the case was not prosecutable and did not warrant further attention.

In our opinion, earlier communication between the two agencies prior to referral would have facilitated the enforcement process. Justice attorneys could have informed OSC of a potential declination if the violation was only an isolated event and the Energy officials would have been in a better position to decide whether or not to expand the scope of their investigation to determine whether the violation was a widespread practice. Similar problems can occur in future cases as well. Since Energy and Justice are currently continuing enforcement efforts, within budgetary constraints, on matters occurring prior to deregulation, such communication continues to be important and should be improved. As discussed below, SID established communication procedures with Justice and these have proven helpful.

SID has furnished Justice, since April 1979, with the field status reports on all special investigations--which include information on sales prices, purchases, and interview and audit data--as well as a monthly list of projected criminal referrals. Thus, Justice is aware of all possible criminal referrals and the investigative work being conducted. Justice is able to review the special investigative work concluded and the additional audit work scheduled to be completed. From this, the energy unit staff can recommend, in general terms, that a case be referred immediately, or that a referral not be pursued because the case lacks prosecutive merit.

According to Energy officials, these procedures have enabled Justice to request cases believed ready for referral, thereby saving SID investigative time and resources. In one case for example, (app. V, case number 35), Justice already possessed certain information, which, according to Energy officials, SID would have sought through further independent investigation had not Justice been aware of SID's investigative activities. This case was referred upon request to Justice in October 1978, prosecuted in June 1979, and resulted in three individuals pleading guilty to felony charges and a fourth being convicted after trial.

Officials from both OSC and Justice agreed that prereferral communication could prove beneficial. An OSC official did not believe, however, that written status reports like those used by the SID are necessary for the OSC but suggested meetings and/or conferences, held prior to referrals and during the special investigations, as a possible alternative. On February 4, 1981, this official told us that prereferral communication between the OSC and Justice's energy unit had begun to take place and that the OSC is verbally providing Justice with information on current special investigations. A Justice official concurred that more communication was taking place. Although this occurred after the completion of our review and therefore we could not examine the specific steps taken, we believe that providing such information on a routine basis for all current OSC special investigations will assist in avoiding future problems and help make enforcement efforts more efficient.

Postreferral communication can be increased

Communication between Energy's OSC and Justice can also be increased after cases are referred for consideration of criminal prosecution. Justice and OSC officials said no uniform practice is followed and such communication between the OSC and Justice is conducted on an ad hoc basis.

Discussions with Justice and OSC officials revealed that such ad hoc communication has caused problems with some investigations. An OSC official cited two examples where increased communication could have resulted in more timely and efficient enforcement efforts. One case, which was still pending as of November 1980, was referred to Justice in January 1980 and involved false statements made to Energy on refiner pricing information and possible felony violations of other Federal statutes. (See app. VII, case number 72.) Energy received no feedback during the first 2 months after referral. In March 1980, it received some indication from Justice that the case lacked prosecutive merit. However, an Energy official said that as of September 1980, no further communication had occurred between the two agencies on the case's disposition. (Subsequently an Energy official said this case was declined in January 1981.)

In August 1980, an OSC district audit uncovered a matter similar to the above case. However, Energy decided not to initiate a special investigation of this case because it had not received any firm information on the case, which had been pending since January 1980. The OSC official said that Justice's indication that the similar case referred in January lacked merit played a role in OSC's decision not to conduct a special investigation on the new matter. Justice officials said they were unaware of the new matter uncovered by OSC and the decision not to conduct a special investigation. Justice officials stated that the OSC should have asked for a status report on the pending referral to aid it in making the decision on the new matter. The OSC official said better communication and the exchange of more detailed information would have enabled Energy to base the investigative and possible referral decision on Justice's prosecutive criteria, and not on a perception of that criteria and interest, as it did in this case.

A second case which was also pending as of November 1980 also demonstrates the opportunities and need for communication during the enforcement process. (See app. VII, case number 70.)

This case involved possible violations of Energy regulations and Federal statutes. The case was jointly referred by SID and OSC in March 1980. In September 1980--6 months after the case was referred--Energy and Justice attorneys met to discuss the case and how it related to similar cases under investigation by Energy. An OSC official said that up until the meeting some communication had occurred but nothing substantial enough to clearly indicate the direction of Justice's investigative and prosecutive effort. Since other similar violations were being investigated by Energy, this official believed it necessary to determine the status of the case and its potential impact on similar pending investigations. According to this Energy official, the meeting answered his questions regarding Justice's prosecutive activities. This official also stated that the meeting could have been held earlier than 6 months after referral. Justice officials told us that earlier discussions in a case like this could prove beneficial and said whenever Energy officials desire such a meeting they should contact Justice. We believe that this case demonstrates that more routine communication should occur and could enhance the enforcement process.

Both Justice and OSC officials stated that there is a need to increase the "dialogue" between the two agencies after cases are referred. In addition, a Justice official indicated a willingness to provide Energy with status reports on cases referred. ^{1/} An OSC official suggested that Energy and Justice staffs discuss referrals after they are reviewed and analyzed by the Justice attorneys to assure that the intent of the referrals is understood by both agencies before a criminal investigative strategy is developed. Officials of both agencies told us that, since the completion of our review, such discussions have taken place on referred cases.

^{1/}In discussing the contents of our draft report, Justice officials pointed out to us that such communications would be subject to the secrecy provisions of Rule 6(e) of the Federal Rules of Criminal Procedure, which preclude Justice from providing certain information on grand jury investigations, and this would affect postreferral communication. Justice also pointed out that since Energy sometimes has parallel civil and administrative investigations, care must be taken that information obtained in the criminal investigative process is not used improperly in the investigation of civil or administrative matters.

JUSTICE IS MAINTAINING AND
PROVIDING BETTER INFORMATION
ON PROSECUTIVE DECLINATIONS

During our review, Justice began to conscientiously follow its policy requiring that all prosecutive decisions on energy matters be supported by memoranda and concurred in by the Assistant Attorney General for the Criminal Division. It also reached an agreement in December 1980 to provide Energy with more specific reasons for declinations. These efforts, in our opinion, will help insure uniform enforcement of oil pricing violations and provide for better documentation of the reasons cases are declined.

Justice's policy requiring written memoranda and review of prosecutive decisions on energy related matters was established in November 1978. Although the energy unit assumed the responsibility for maintaining and reviewing the prosecutive decisions, our analysis of 27 case files which Justice closed between January 1, 1979, and May 31, 1980, showed that written prosecutive memoranda were not prepared for 15 cases. Justice officials acknowledged that earlier practices did not always result in written documentation but pointed out that all cases were discussed with and reviewed by the Criminal Division's Fraud Section Chief, who had been delegated the responsibility to approve prosecutive decisions. They also agreed that their policy calling for written documentation should be complied with and said that documentation had been prepared for cases more recently closed. Because of a lack of documentation, we could not verify whether the earlier cases had been reviewed and discussed with the Section Chief. However, our review of the seven more recently closed cases (those either declined or prosecuted and not appealed between May 31, 1980, and September 30, 1980), showed that the policy calling for more documentation was being followed.

In addition, in December 1980, after the completion of our review, Justice also began to provide Energy with more detailed letters stating the reasons for declinations of criminal referrals. Such information, in our opinion, will provide Energy with a permanent record of case disposition and further insure an understanding of whether a case was declined for such reasons as insignificance, technical problems, or simply lack of evidence.

Justice's previous practices provided for a form letter informing Energy of the case declination. These letters,

however, were usually general and provided little information regarding the reasons for declination. In addition, they were not written and forwarded to Energy in a timely manner--Energy usually received the letters months after the actual decision to decline. For example, we were able to locate declination letters for 21 of the 25 cases declined as of September 30, 1980. Of these, 20 were form letters while only 1 contained detailed information. The form letters either simply indicated that the cases were declined and gave no reason or stated that the cases "lacked prosecutive merit." In addition, 11 of the 20 form letters were not sent by Justice until months after the decision to decline the case was made. Justice officials said that such delays were caused by the low priority given to writing the formal memoranda after the decision to decline had been made.

One Energy official believed more detailed reasons for declinations would be helpful. He said that, if requested, Energy usually received more detailed reasons orally, but he believed that detailed letters would help (1) provide a permanent written record, (2) facilitate notifying district staffs of case disposition, and (3) respond to any congressional or public inquiries. According to this official, the more detailed declination letters sent by Justice since December 1980 will better fulfill these needs.

Fraud Section officials said their established procedures for written documentation of prosecutive decisions and notification to Energy involves a review at the branch level as well as at the section level. A Justice official said that although Energy officials will still receive oral notification of the initial decisions made by staff attorneys, they have been told not to consider a case officially declined until the Section Chief approves the staff decision and a declination letter is sent. This official agreed that the review process could, however, take as long as 5 to 6 months to complete, as it did for case number 21 cited in appendix III. Such delays can be caused by conflicts in schedules between the branch chief and the Fraud Section Chief. The result could be a possible 5-month delay between Justice's preliminary decision and final notification to Energy by means of the declination letter.

Although we agree that Justice should follow its policy of documenting prosecutive decisions and we believe that review and approval by the section and branch chiefs will help insure uniformity of prosecutive policy, we are concerned

about the potential delays of up to 5 months before Justice officially declines cases. Such delays, in our opinion, could place Energy in the position of having to make management decisions involving potential investigations after being informed preliminarily that a similar case already referred may be declined because it lacks merit or other reasons to justify prosecution. Also, because Federal law requires that an indictment by a Federal grand jury generally must be returned within 5 years of the date of the offense, some cases could be adversely affected if the statute of limitations is near expiration. For these reasons, we believe that Justice should make its official declination decisions as expeditiously as possible. In addition, Justice's preliminary notification of a declination should be as informative as possible and should be in written rather than oral form. Such steps will better insure that Energy has well documented and as complete information as possible while awaiting final prosecutive decisions by Justice.

ENERGY NEEDS TO INSURE THAT
CIVIL PENALTIES ARE USED TO
THEIR MAXIMUM

In addition to being subject to criminal prosecution, violators of Federal oil pricing regulations are also subject to civil sanctions. Although such provisions can be useful, there is no assurance that they are currently applied to their fullest potential in cases for which remedial orders have been issued and complied with. Because Energy does not have the authority to unilaterally assess civil penalties, it either must negotiate with the violator to voluntarily pay penalties or refer the case to Justice for civil prosecution. Energy's district OE officials, however, have not always forwarded cases where remedial orders have been issued and complied with to the Office of General Counsel for civil prosecution of penalties because of a perception that it is not willing to refer such cases to Justice for prosecution. To insure civil penalties are sought in all appropriate cases, where remedial orders have been issued and complied with, we believe Energy should instruct district OE officials to forward such cases to the Office of General Counsel for consideration of possible referral to Justice for civil prosecutive action.

Energy's enforcement manual states that civil penalties are designed for "* * * retribution and a deterrent against future noncompliance with Energy regulatory requirements."

It further states that such penalties can be sought either before completing the administrative process by settling the matter by consent order or after the administrative process is completed. The initial decision to seek civil penalties as well as settle cases lies with Energy's district OE officials.

If Energy chooses to complete the administrative process, it first issues a remedial order for restitution of overcharges. Energy's policy states that at this stage, and after confirmation that the firm does not intend to appeal, a solicitation letter be sent concerning the firm's civil penalty liability. The civil penalty is then negotiated. The manual also provides that these cases may be referred to Justice for imposition of civil penalties through Federal court.

We discussed the use of civil penalties with OE officials from three district offices. Officials from two of the offices told us they have not always referred such cases where remedial orders have been issued and complied with because of a general perception of disinterest on the part of Energy's Office of General Counsel. Although these officials were not able to tell us the number of instances where penalties were warranted but not sought, they cited two examples to demonstrate their point. In addition, an official from the third district told us that in determining whether or not to accept a company's offer to pay a lesser penalty than deemed appropriate, he would have to consider the possibility that the Office of General Counsel would not prosecute the case for greater penalties, if referred.

In one case Energy issued a remedial order in February 1977 requiring a crude oil producer to repay \$236,214 in overcharges. The company refunded that amount but refused to agree to pay any civil penalty over \$100. District OE officials believed a \$12,000 penalty was warranted and therefore forwarded the case in August 1977 to Energy's Office of General Counsel for referral to Justice for civil prosecution. This case was never referred to Justice and, according to records of the Office of General Counsel, was closed in August 1980. An Office of General Counsel official told us he could not explain why the case was not acted on earlier. An Energy district OE official told us that the district office was not told why the case was never referred to Justice and consequently has not pursued the penalty issue. The official also cited this case as illustrative of the general

perception that the Office of General Counsel is not interested in pursuing civil penalties in such cases in Federal court.

Another case involved a company which violated Energy's stripper well regulations and overcharged on sales of domestic crude oil by \$291,809. The firm made restitution and agreed to pay a penalty of \$5,000. A district Office of Enforcement official stated, however, that this civil penalty was too small and a \$50,000 penalty would have been more appropriate. He told us that the \$5,000 penalty was accepted, however, because of the belief that Energy's Office of General Counsel and Justice would not have pursued a larger penalty in Federal court. He pointed out, for example, that other cases of regulatory violations had been forwarded in the past, but litigative action had been slow and that the district office had not always been notified of their status or disposition.

We could not determine the magnitude of remedial orders issued and complied with where penalties were deemed appropriate but were not obtained or were negotiated for less than what was warranted. However, Energy's statistics do show that penalties were negotiated in only 26 of the 122 remedial orders issued and complied with as of November 25, 1980. As illustrated on the following page, the amounts of penalties obtained ranged from 1 percent to 11.7 percent of the amount the company overcharged.

<u>Range of overcharges</u>	<u>Number of cases (note a)</u>	<u>Range of actual penalties obtained by Energy</u>	<u>Range of penalties as percent of overcharges (percent)</u>
Greater than \$200,000	3	\$5,000 - \$25,000	1.7 - 11.7
\$199,999 - 100,000	3	\$5,000 - \$20,000	4.1 - 10.3
\$99,999 - 50,000	5	\$1,000 - \$5,000	1.8 - 5.2
\$49,999 - 20,000	5	\$ 250 - \$2,000	1.0 - 9.1
\$19,999 - 10,000	4	\$ 250 - \$1,000	1.3 - 5.2
Less than \$10,000	2	\$ 100 - \$ 250	1.1 - 4.9

a/ The schedule provides data for 22 of the 26 remedial orders issued and complied with as of November 25, 1980, for which penalties were obtained by Energy. These 22 involved overcharges which required restitution. Because the remaining four remedial orders did not involve overcharges, they were not included in the schedule. The 22 cases presented include: 13 crude oil producers; 1 small refiner; 4 propane retailers; 1 propane reseller; and 3 gasoline retailers.

The largest penalty received was \$25,000, which represented 11.7 percent of the overcharge. This case involved a company which overcharged \$213,302 and violated Energy's stripper well regulations. After complying with the remedial order and during discussions regarding a civil penalty, the company offered to pay a penalty of \$10,000. District OE officials believed this to be insufficient and informed the company they were planning to forward the case for civil penalties. According to a district OE official, this served as an incentive for the company to agree to pay a larger penalty of \$25,000 rather than the \$10,000 originally offered. This official also acknowledged, however, that in retrospect, he is not sure whether he would have forwarded the case even if the company had steadfastly refused to pay a penalty of over \$10,000. He said among his considerations

would have been the possibility that either the Office of General Counsel would not have referred the case to Justice or that Justice would have refused to authorize litigation if referred.

We discussed district OE officials' reluctance to forward such cases for civil penalties with officials from Energy's Office of General Counsel and from Justice's Civil Division. Energy officials said they were not aware of the perception by district OE officials that such cases should not be forwarded. The Office of General Counsel officials said that if district OE officials believe penalties are appropriate they should send the cases forward for possible referral to Justice. Similarly, Justice attorneys told us they would give such cases serious consideration, if referred.

In addition, as indicated by the 22 remedial orders cited where civil penalties were obtained through negotiations, the size of the penalties varied from 1 percent to 11.7 percent of the amount overcharged. OE officials told us that there are no specific guidelines on what constitutes an appropriate penalty. While Energy's enforcement manual lists several factors to be considered, such as the financial harm to consumers and the need to deter future violations, the amount of the penalty negotiated is left to the discretion and judgment of district OE officials. Since such judgments can vary, we are concerned about Energy's ability to insure that civil penalties are negotiated on a consistent basis. For example, in discussing the issue of civil penalties with both district and headquarters OE officials the following comments were made:

- One official said that as a general rule, penalties should be approximately 10 percent of the amount overcharged.
- One official said he would look favorably on a company if it cooperated during the audit.
- One official said that he believes he is in a poor position to negotiate penalties but nevertheless tries to obtain, where appropriate, penalties that have at least minimal deterrent value.

--One official said he considers the factors set forth in Energy's enforcement manual but acknowledged that the size of the penalty is basically a subjective decision.

We believe such views show that civil penalties can be looked at differently by different officials and consequently may vary in size for similar violations.

Because civil penalties can play a role in enforcing Federal oil pricing regulations, we believe that Energy should resolve, as soon as possible, the reluctance on the part of some district OE officials about forwarding for civil penalties cases where remedial orders have been issued and complied with. In this regard, we believe Energy should disseminate a policy statement emphasizing the use of civil penalties and instructing district OE officials to forward all appropriate cases for consideration for possible referral to Justice for prosecutive action.

Because it is important for civil penalties to be negotiated with alleged violators on as consistent a basis as possible, we also informed Energy in our draft report that it could better insure such consistency by providing more specific guidance to district OE officials in determining an appropriate civil penalty. In discussing our draft report, Energy officials said that they agree with the concept that civil penalties should be negotiated on as consistent a basis as possible. They pointed out, however, that without the authority to unilaterally assess civil penalties on either remedial orders or consent orders, it could be counterproductive to establish specific dollar guidelines on the amounts of civil penalties to accept during negotiations. For instance, since Energy has the authority and does compromise the amount of overcharges and interest on alleged violations during consent order negotiations, specific guidelines on penalties, such as dollar threshold amounts or percentages of overcharges, could be counterproductive since they might limit an Energy official's capability to negotiate and obtain repayment of the overcharge itself, which by the dollar size is Energy's primary concern. Energy officials stated that in light of decontrol their primary emphasis will be on administratively settling cases whenever possible by consent order and that these will be reviewed by headquarters. They also pointed out that, pursuant to the proposal in our draft report, Energy's headquarters staff will instruct its district OE officials to review approximately 70 cases where remedial orders

have been issued and complied with to determine if civil penalties are appropriate and if so, what size penalty to obtain. Where civil penalties are appropriate, such cases will be forwarded to headquarters OE officials for review and possible referral to the Office of General Counsel and Justice for consideration of civil prosecution.

Due to the combination of the President's recent decision to decontrol crude oil and petroleum products from Federal regulation and the fact that Energy may face budget as well as time constraints in completing ongoing enforcement efforts, we recognize that it may not be practical at this time for Energy to establish detailed and specific guidelines regarding the size of civil penalties to accept during negotiations. We also believe that the intent of the point made in our draft report that steps can be taken to better insure consistency in negotiating civil penalties can be achieved through Energy's headquarters review of all cases settled, including civil penalties.

CHAPTER 3

CONCLUSIONS, RECOMMENDATIONS, AGENCY

COMMENTS AND OUR EVALUATION

CONCLUSIONS

The shared responsibility of the Departments of Energy and Justice for enforcing Federal oil pricing regulations necessitates close coordination. Such coordination can be improved through increased communication between the agencies. OSC can be kept better apprised of the status of referred cases and reasons for Justice's decisions not to prosecute potential criminal violations and can use this knowledge in making management decisions on pending investigations. Conversely, Justice can be kept better apprised of current investigative activities by Energy's Office of Special Counsel. This would enable Justice to request referrals it believes are ready for prosecutive decisions as well as identify matters which are inappropriate for Federal prosecution. The latter decision would thus eliminate unnecessary investigative work by Energy auditors. Both agencies share a mutual interest and willingness to increase the communication channels between their staffs. In fact, OSC and Justice officials told us they had recently begun to routinely confer on potential cases both prior to and after formal referral. Because the increased communication between the two agencies occurred after we completed our review, we did not evaluate how effective the increased communication is on case disposition. We believe, however, that the providing of more information on a routine basis is an important step forward and should be continued.

Justice recently began to comply with its policy of requiring all prosecutive decisions to be supported by memoranda and approved by supervisory personnel. It also reached agreement to provide Energy with greater information on the reasons particular referrals are declined. While these are beneficial steps, we are concerned about Justice's estimate that the process may require up to 5 months between the time Energy is orally notified of a staff attorney's preliminary decision to decline a case and the time it is finally declined. Because Energy may be faced with management decisions regarding ongoing investigations similar to a case being considered by Justice, it is important that preliminary decisions be as informative as possible and in writing, rather than orally transmitted, and that Justice make its official declination decisions as expeditiously as possible. Written

notification of preliminary decisions will, at a minimum, insure that Energy has as well documented and as complete information as possible on which to base its management decisions while awaiting final prosecutive action by Justice.

Energy can also take steps to better insure that civil penalties are sought on all appropriate violations. Energy's district OE officials have sometimes not referred cases for civil penalty consideration after remedial orders have been issued and complied with because of a perception that Energy's Office of General Counsel was not interested in such civil prosecution. Because officials from Energy's Office of General Counsel and Justice's Civil Division have stated that they would seek civil penalties in appropriate cases, we believe Energy should disseminate a policy statement instructing district OE officials to forward all cases where civil penalties are deemed appropriate to the Office of General Counsel for consideration of possible referral to Justice for civil prosecution.

The need to improve communication and coordination between Justice and Energy as well as the need to insure the maximum use of civil penalties is not diminished by the recent decision to decontrol crude oil and refined petroleum products. Currently, Justice and Energy are pursuing, within budgetary constraints, civil and/or criminal sanctions for those alleged violations which occurred prior to deregulation and consequently share enforcement responsibilities on these cases. In addition, decontrol will not entirely nullify the relationship between Justice and Energy. Justice will continue its responsibility to litigate other criminal and civil matters in Federal court on behalf of Energy and, as such, the recognition of the need for and opportunities to increase communication and coordination should enhance those efforts as well.

RECOMMENDATIONS

We recommend that the Attorney General improve Justice's communication with Energy on criminal prosecutive actions by providing written and detailed notification of Justice's preliminary prosecutive decisions in order to provide Energy with as much information as possible while it awaits Justice's final decisions.

In order to maximize the use of civil penalties, we recommend that the Secretary of Energy disseminate a policy statement instructing district OE officials to forward all cases where remedial orders have been issued and complied with, and where civil penalties are deemed appropriate, to the Office of General Counsel for possible referral to Justice for civil prosecution.

AGENCY COMMENTS AND OUR EVALUATION

Justice Department officials agreed with the factual data presented in our report and believed the report to be balanced and fairly presented. While they agreed with the desirability and need to provide Energy with as much information as possible regarding staff attorneys' preliminary decisions to decline prosecution, they disagreed with our recommendation that Justice provide Energy with written detailed notification of its staff attorneys' preliminary decisions. Justice officials claimed that written notification would have the effect of eliminating Justice's internal review procedure prior to the official declination and pointed out that preliminary decisions could be reversed upon review, thus causing Energy to be misled on Justice's position regarding the referral.

We do not agree that the provision of written and detailed preliminary declinations to Energy would eliminate Justice's review procedures. As indicated on page 13, we believe Justice's procedures are important steps toward providing continuity in the enforcement process. However, because such decisions can take up to 5 months, we believe that Justice should provide detailed and documented information to Energy to keep it abreast of the status of investigations and possible forthcoming decisions that may affect Energy's ongoing investigations. We also believe this information can be provided without misleading Energy if Justice's staff decisions are later reversed.

Indeed, Energy officials pointed out that written notification would be useful and that they would carefully evaluate a Justice staff attorney's preliminary notification prior to reaching extensive resource or other management decisions

concerning similar ongoing investigations. As a result, Energy would be in a position to facilitate the enforcement process in an instance where Justice preliminarily notifies it of a decision to decline a case similar to one under investigation. Energy could immediately request a meeting to discuss the preliminary decision with higher level Justice officials and make management or resource decisions on the current investigation on the basis of that exchange of information.

Further, written preliminary notification would assist management of both agencies in future reviews of the referral process by documenting decision points. During our review we noted there was an absence of documentation regarding when Energy was initially notified orally of either preliminary or official declinations. Justice officials have said that notification of final prosecutive decisions has not always been written and forwarded to Energy in a timely manner. In fact, Energy has received letters months after the actual prosecutive decision had been made. We believe that written preliminary notification made expeditiously would be beneficial in documenting that point in the decisionmaking process and would enable management of both agencies to review the timeliness of decisions and make improvements, where necessary.

Energy officials agreed with the factual data presented in the report. They agreed with our recommendation that all cases where remedial orders are issued and complied with, but for which appropriate penalties cannot be negotiated, should be forwarded to Energy's Office of General Counsel for possible referral to Justice for consideration of civil prosecution. They said that district Office of Enforcement officials will be instructed to forward all appropriate cases where remedial orders have been issued and complied with and where civil penalties are appropriate.

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HERMAN SCHWARTZ
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

March 13, 1980

The Honorable Elmer B. Staats
Comptroller General of the
United States
GAO Office Building
441 G Street, N. W.
Washington, D. C. 20548

Dear Comptroller General Staats:

In recent months, at least nine cases involving allegations of criminal violations of federal oil pricing regulations have been referred by the Department of Energy to the Energy Section of the Fraud Division of the Department of Justice. Several of these cases have been rejected by the Division and others have not been acted upon.

While I have no reason to question the integrity of the Justice Department's review process, I must admit some degree of disappointment over the paucity of Justice's output. A story in the December 17, 1979, edition of the Washington Post raises serious questions about Justice's rejection of the DOE referral in one of these cases (Texaco-Sun), and equally serious questions have been raised elsewhere regarding at least one other case, Citronelle-Mobile (Citmoco).

I am sure that you will agree that public confidence in the regulatory process is of overriding importance and that this confidence may have been eroded by press reports regarding Justice's rejection of these cases.

Consequently, I would appreciate your agency's performing an audit of all such criminal cases referred to Justice by the DOE's Office of Special Counsel in 1978, 1979, and thus far in 1980.

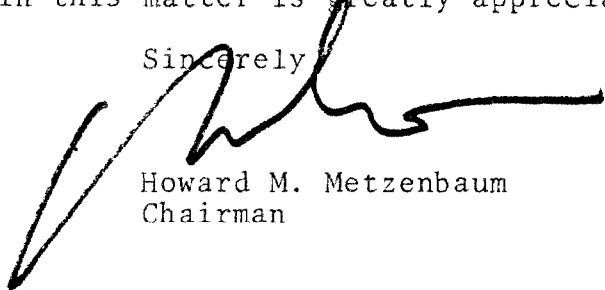
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Your audit of closed cases should include, but not be limited to, summaries of the DOE referrals, reasons for Justice Department rejection and your own evaluation of the Justice Department's decisions. With respect to open cases, please catalogue the dates that the referrals were received at Justice, the reasons for inaction, and the current timetable for Justice Department decisions on acceptance or rejection of the cases.

If your staff has any questions regarding my request, please address them to James Phillips of the Antitrust, Monopoly and Business Rights Subcommittee staff at 224-7493.

Your cooperation in this matter is greatly appreciated.

Sincerely

A handwritten signature in black ink, appearing to read 'H. Metzenbaum', written over the word 'Sincerely'.

Howard M. Metzenbaum
Chairman

HMM:jpi

Congress of the United States
House of Representatives
Washington, D.C. 20515

October 29, 1979

The Honorable Elmer B. Staats
Comptroller General of the United States
U. S. General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

Dear Mr. Staats:

As you know, the adequacy of the Government's handling of the enforcement of petroleum price control legislation is of serious concern to both the Subcommittee on Energy and Power and the Subcommittee on Crime.

As a result of your staff's very excellent testimony before our Subcommittees on May 30, 1979, and other testimony we received on that date and on June 4, 1979, it is clear to us that there is a need for a comprehensive examination of the adequacy, efficiency, and effectiveness of the Government's efforts to (1) ensure compliance with petroleum price control legislation, and (2) invoke sanctions against those individuals and companies not in compliance. Special attention should be given to the adequacy of the Government's efforts to prosecute or otherwise punish those individuals who willfully violated the price control laws and regulations.

We are jointly requesting that you undertake this comprehensive review. In addition to other issues which may develop during your investigation, we would like you to address the following questions:

(1) How effective has the Department of Energy (DOE) and its predecessor agencies been in ensuring compliance with the petroleum price control laws and regulations? If they were not effective, why not?

(2) How does DOE enforce its regulations and are its resources adequately allocated to ensure across-the-board enforcement?

(3) Are there internal DOE problems between the Economic Regulatory Administration, Office of Special Counsel, and Offices of Special Investigations which reduce the effectiveness of DOE's enforcement program?

The Honorable Elmer B. Staats
October 29, 1979
Page Two

(4) What is the current status of DOE's relationship with the Department of Justice (DOJ), Federal Bureau of Investigation (FBI), U. S. Attorneys, Internal Revenue Service (IRS), Securities and Exchange Commission (SEC), Interstate Commerce Commission (ICC), and other relevant Federal agencies with regulatory or other jurisdiction over matters involving possible criminal activity coming under the review of the DOE?

(5) How efficient are DOE's procedures in handling possible criminal cases, particularly those involving major oil companies, and what improvements have taken place since your report regarding the handling of criminal cases involving crude oil resellers (EMD-79-57, May 29) in ensuring compliance with the petroleum price control laws and regulations? If they were not effective, why not?

(6) Is DOE adequately auditing the major oil companies for compliance with the price control laws and regulations?

(7) Is the Department of Justice adequately handling possible criminal cases through vigorous investigation and prosecution?

(8) How effective are other Federal agencies, such as IRS, SEC, and the ICC, in pursuing possible violations of law relating to matters uncovered by DOE relating to petroleum pricing violations?

(9) What is the status of DOE's and DOJ's implementation of the recommendations made in your report dealing with crude oil resellers (EMD-79-57, May 29)?

(10) How effective is the DOE process for responding to and resolving regulatory questions that are identified by DOE regional offices, headquarters personnel, and others?

In addition to the above questions, we would like you to examine all of these kinds of cases referred to DOJ and, using sampling methods, follow these cases through the system to identify the processes, procedures, and timeliness in each case. Also, we would like you to examine all cases designated as "special investigations" in both the Office of Special Counsel and the Economic Regulatory Administration since the price control program began in 1973. Again, using sample analysis, follow these cases through the system from selection for audit, to final disposition, to identify the adequacy, effectiveness, and efficiency of the handling of such cases.

The Honorable Elmer B. Staats
 October 29, 1979
 Page Three

With regard to the handling of non-criminal audit cases, we would like you to select a sample of audit cases and perform a detailed examination of the policies, procedures, audit techniques, and processing of each of these cases. We are interested in a determination of the adequacy of DOE audits, their scope, and their effectiveness toward ensuring compliance with petroleum price control laws and regulations.

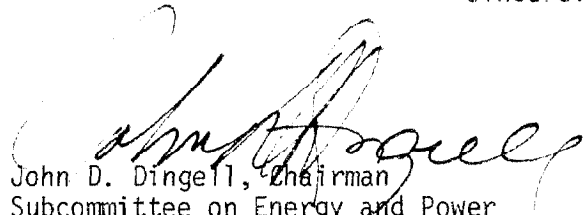
We expect your review to be comprehensive. Numerous allegations have been made concerning misfeasance on the part of Government officials regarding the implementation of petroleum price control laws and regulations. We are looking to you for a definitive analysis of the Government's ability to implement the mandate of the Congress in this area. We are aware that this could be a potentially controversial issue, but have the utmost confidence in the ability of the GAO to provide Congress with a meaningful report directed to the heart of this national problem.

We request that unless you consider it essential to identify the Federal Energy Office and the Federal Energy Administration throughout the report, all references in your report to DOE should be assumed to include its predecessor agencies.

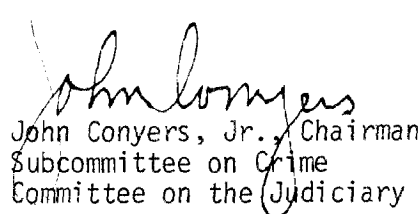
If you have any questions, please feel free to contact either of us, or have your staff personnel contact either of the following Subcommittee staff members: Mr. Peter Stockton, Subcommittee on Energy and Power at 225-1030, or Mr. Steve Raikin, Subcommittee on Crime at 225-1695.

Our respective staffs can work together to further define this request and establish a reasonable schedule for production of this report.

Sincerely,



John D. Dingell, Chairman
 Subcommittee on Energy and Power
 Committee on Interstate and
 Foreign Commerce



John Conyers, Jr., Chairman
 Subcommittee on Crime
 Committee on the Judiciary

GAO Note: This report addresses questions 7 and 9, and a portion of question 4, as they relate to the relationship between Justice and Energy in referring possible violations for prosecutive decisions as well as the prosecutive actions taken by Justice. Other aspects of the request will be the subject of a separate GAO study.

DATA ON INDIVIDUAL CASES DECLINED FOR
CRIMINAL PROSECUTION AS OF SEPTEMBER 30, 1980

Case number	Summary of Energy's Referral Reports				Justice's Actions		
	Nature of violation	Potential U.S. Code violation (note a)	Potential overcharges	Month referred to Justice	Location of attorney-in-charge	Agency used to investigate	Month Justice declined (note b)
1	False certification to justify "stripper" status	18 U.S.C. 1001 18 U.S.C. 1341 18 U.S.C. 371	\$2,200,000	June 1978	Los Angeles, Calif.	FBI	July 1979
2	False statement to Energy	18 U.S.C. 1001 18 U.S.C. 1341 18 U.S.C. 371	Not applicable	Nov. 1979	Washington, D.C.	None	Nov. 1979
3	Refusal to provide Energy with requested information	15 U.S.C. 754	Not applicable	Nov. 1979	Washington, D.C.	Energy	Dec. 1979
4	Diesel fuel pricing violation	18 U.S.C. 1341 18 U.S.C. 1001	\$ 189,000	Dec. 1978	Washington, D.C.	Energy FBI	Feb. 1980
5	Retail service station pricing violation	18 U.S.C. 1001	\$ 40,000	Nov. 1978	Washington, D.C.	None	Apr. 1980
6	Retail service station pricing violation	15 U.S.C. 754	Not available	May 1979	Los Angeles, Calif.	None	Oct. 1979
7	Retail service station pricing violation	18 U.S.C. 1001 18 U.S.C. 371	\$ 8,866	Feb. 1979	Washington, D.C.	None	July 1979
8	Retail service station pricing violation	18 U.S.C. 1001	\$ 2,257	Dec. 1978	Washington, D.C.	None	Aug. 1979
9	Product reseller/false invoices	18 U.S.C. 1001	\$ 20,402	Sept. 1978	Washington, D.C.	None	July 1979
10	Product reseller/false statements	18 U.S.C. 1001 15 U.S.C. 754	\$ 500,000	June 1979	Washington, D.C.	Energy	Oct. 1979
11	Inflation of prices through "Daisy Chain"	18 U.S.C. 1341 18 U.S.C. 1001 18 U.S.C. 1343 15 U.S.C. 754 18 U.S.C. 371	\$1,500,000	Dec. 1978	Washington, D.C.	FBI	Nov. 1979

Case number	Nature of violation	Summary of Energy's Referral Reports			Justice's Actions		
		Potential U.S. Code violation (note a)	Potential overcharges	Month referred to Justice	Location of attorney-in-charge	Agency used to investigate	Month Justice declined (note b)
12	Retail service station pricing violation	18 U.S.C 1001	\$ 66,395	Aug. 1978	Denver, Colo.	Energy	Apr. 1980
13	Submission of false statements to Energy	18 U.S.C 1001	\$ 351,000	June 1979	Washington, D.C.	None	July 1979
14	Submission of falsified documents to Energy	15 U.S.C. 754 18 U.S.C. 371 18 U.S.C. 1001 18 U.S.C. 1341 18 U.S.C. 1343	\$ 93,000	July 1979	Hartford, Conn.	Customs	Feb. 1980
15	Circumvention of pricing regulations through export of product	18 U.S.C. 1001 18 U.S.C. 1510 18 U.S.C. 1341 18 U.S.C. 371	\$8,000,000	June 1978	Washington, D.C.	None	June 1978
16	Violation of set-aside program	18 U.S.C. 1001 15 U.S.C. 754	Not available	Apr. 1979	Washington, D.C.	FBI	Feb. 1980
17	Falsification of documents to allow unlawfully high prices	18 U.S.C. 1341 18 U.S.C. 1343 18 U.S.C. 1001 18 U.S.C. 371 15 U.S.C. 754	\$1,800,000	Dec. 1978	Washington, D.C.	FBI	Oct. 1979
18	Submission of false documents to Energy	18 U.S.C. 1001 18 U.S.C. 1341	\$ 14,371	Aug. 1978	Roanoke, Va.	None	May 1979
19	Violation of allocation regulations	18 U.S.C. 371 18 U.S.C. 1001 18 U.S.C. 1341	Not available	Oct. 1979	Washington, D.C.	Energy	Mar. 1980
20	Retail service station pricing violation	18 U.S.C. 371 18 U.S.C. 1001 18 U.S.C. 1505 15 U.S.C. 754	\$ 16,000	Sept. 1978	Washington, D.C.	None	July 1979

Case number	Summary of Energy's Referral Reports				Justice's Actions		Month Justice declined (note b)
	Nature of violation	Potential U.S. Code violation (note a)	Potential overcharges	Month referred to Justice	Location of attorney-in-charge	Agency used to investigate	
21	Retail service station pricing violation	18 U.S.C. 1001 15 U.S.C. 754	\$ 25,000	Feb. 1980	Washington, D.C.	None	Aug. 1980
22	Unlawfully increasing the price of oil by adding an illegal bonus charge	18 U.S.C. 1341 18 U.S.C. 1343 18 U.S.C. 1001 15 U.S.C. 754 18 U.S.C. 371	\$ 932,482	July 1979	Los Angeles, Calif.	FBI Energy	Sept. 1980
23	Failure to certify oil causing unlawfully high prices	18 U.S.C. 1341 18 U.S.C. 371 15 U.S.C. 754	\$21,000,000	Aug. 1979	Joint: Washington, D.C. Houston, Tex.	FBI	Aug. 1980
24	Inflation of prices through "Daisy Chain"	18 U.S.C. 371 18 U.S.C. 1341	\$ 1,000,000	Jan. 1979	Houston, Tex.	FBI	Sept. 1980
25	Submission of false documents to Energy	18 U.S.C. 1001 18 U.S.C. 1341 15 U.S.C. 754 18 U.S.C. 371	\$ 218,000	Nov. 1978	Washington, D.C.	FBI	Aug. 1980

a/ See page 63 for description of U.S. Code violations.

b/ Dates of Justice's declinations were obtained from the formal declination memoranda sent to Energy and from other agency records. As discussed on pages 12 to 14, Justice's written memoranda have oftentimes been prepared months after a decision to decline prosecution has been made. Consequently, these dates do not necessarily reflect the actual length of time it took to conduct an investigation and/or reach a declination decision.

REASONS CASES WERE DECLINED FOR CRIMINAL
PROSECUTION AS OF SEPTEMBER 30, 1980 (note a)

<u>Case number</u>	<u>Reason for declination</u>
1	The action which was the subject of the alleged violation was initiated 1 year prior to the enactment of the regulation supposedly violated, therefore making willful intent impossible to prove. In addition, the FBI investigation generated expert testimony which further weakened any attempt to prove willfulness beyond a reasonable doubt.
2	The alleged violation was committed by a low level employee of the company, and there was no evidence that the violation was reflective of the company's policy. In addition, the public was not injured in any way and there was no other identifiable effect upon Energy's regulatory system, therefore making criminal and malicious attempt difficult to prove.
3	There was no fraud involved in the case.
4	A grand jury investigation did not show any unlawful conduct on the part of the company involved.
5	The case lacked national deterrent value because it was an isolated incident involving a retail gas station.
6	The individual involved was shot and killed during a robbery attempt before trial.

Case numberReason for declination

- 7 The case lacked national deterrent value because it was an isolated incident involving a retail gas station.
- 8 The case lacked national deterrent value because it was an isolated incident involving a retail gas station.
- 9 Evidence could not be developed to prove intent to commit a criminally willful act. In addition, the investigated party paid back the overcharges before the case was referred for criminal prosecution.
- 10 The company did not commit the acts delineated in Energy's referral report. Energy's evaluation of the facts was inaccurate.
- 11 The base year selling price used to calculate current maximum prices allowable by law could not be determined. In addition, Justice's investigation was unable to uncover any criminally fraudulent misrepresentation to the consumer.
- 12 The case was presented to the grand jury which did not return a bill of indictment. The case was not resubmitted to the grand jury.
- 13 The individual being investigated was convicted in State court for stealing oil, the same oil which Energy claimed he overcharged for. The case was declined in light of the State conviction.

Case numberReason for declination

- 14 Justice claimed there was no injury to the public and the false affidavit responsible for the allegation was detected before any other party was affected. In addition, the company officials being investigated were acting on legal advice therefore it would have been impossible to prove criminally willful intent beyond a reasonable doubt.
- 15 The company being investigated applied and received an export license from the Department of Commerce for the oil which was exported. This made it impossible to prove criminally willful intent to circumvent Energy's pricing regulations by exporting oil because the export scheme was made known to and approved by a Federal agency.
- 16 An extensive investigation revealed that no false statements were made. Also, no parties were injured as a result of the propane acquired by the company investigated.
- 17 The base year selling price used to calculate maximum prices allowable by law could not be determined. In addition, the Justice investigation found no documents or witnesses to support the argument formulated by Energy in the referral.
- 18 The individual being investigated was convicted and sentenced to jail at the State level on charges of possession of stolen property. In light of the state conviction, the case was declined.

Case numberReason for declination

- | | |
|----|--|
| 19 | The company investigated made no false statements at the time the documents in question were filed. The company's failure to update the information on these documents, originally filed correctly, did not constitute willful intent to violate the law. |
| 20 | The case lacked national deterrent value because it was an isolated incident involving a retail gas station. |
| 21 | Justice officials believed that at the time of referral the case lacked the evidence needed to prove willful intent beyond a reasonable doubt. Justice decided that the case did not warrant the resources which were needed to complete an intensive investigation before the expiration of the statute of limitations. |
| 22 | The Justice investigation did not uncover the evidence needed to prove willful intent beyond a reasonable doubt. |
| 23 | The Justice investigation did not uncover the evidence needed to prove willful intent beyond a reasonable doubt. |
| 24 | The Justice investigation did not uncover the evidence needed to prove willful intent beyond a reasonable doubt. |
| 25 | The Justice investigation did not uncover the evidence needed to prove willful intent beyond a reasonable doubt. |

a/Reasons for declinations were provided by the Chief of the Justice Department's Criminal Fraud Section, and verified with prosecutive memoranda where made available by Justice. Justice edited these memoranda to remove sensitive information, and consequently, verification was limited to unedited portions.

INFORMATION ON CRIMINAL PROSECUTIONS
OCCURRING ON OR BEFORE SEPTEMBER 30, 1980

Case number:	26
Month of referral:	May 1979
Nature of violation:	Submission of false documents to Energy
Potential overcharges delineated in Energy referral:	\$200,000
Location of attorney in charge:	Denver, Colorado
Indictment or information:	Indictment
Original charges per indictment or information <u>a</u> /:	6 counts 18 U.S.C. 1001
Potential monetary fines from indictment or information:	\$10,000 maximum per count
Potential jail sentence:	5 years maximum per count
Resources used to investigate:	Energy auditors
Final charges:	1 count 18 U.S.C. 1001
Type of prosecutive action:	Nolo contendere plea
Summary of plea agreement:	To drop 5 counts of 18 U.S.C. 1001 in return for nolo contendere plea
Final criminal judgment of court--counts enforced:	Accept nolo contendere plea to 1 count of 18 U.S.C. 1001

APPENDIX V

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Sentence imposed:

\$1,000 fine and 2 years
probation

Month of prosecutive
action:

November 1979

Case number:	27
Month of referral:	November 1978
Nature of violation:	Sale of "old" oil as stripper oil to obtain an unlawfully high price
Potential overcharges delineated in Energy referral:	\$276,000
Location of attorney in charge:	Joint prosecution: Washington, D.C. Oklahoma City, Okla.
Indictment or information:	Information
Original charges per indictment or information <u>a</u> /:	10 counts 15 U.S.C. 754
Potential monetary fines from indictment or infor- mation:	\$5,000 maximum per count
Potential jail sentence:	None
Resources used to investigate:	FBI Energy auditors
Final charges:	Same as original charges
Type of prosecutive action:	Plea agreement
Summary of plea agreement:	The defendants agreed to plead guilty to the criminal infor- mation and to settle civil as- pects by repaying \$500,000 in overcharges and a \$50,000 pen- alty. In return, Justice agreed that no further criminal charges would be brought.

Final criminal judgment
of court--counts
enforced:

No criminal fine in light
of civil settlement and
penalty paid by the firm

Sentence imposed:

None

Month of prosecutive
action:

April 1980

Case number:	28
Month of referral:	July 1979
Nature of violation:	Submission of false documents to Energy
Potential overcharges delineated in Energy referral:	\$347,225
Location of attorney in charge:	Washington, D.C.
Indictment or information:	Information
Original charges per indictment or information <u>a/</u> :	1 count 15 U.S.C. 754
Potential monetary fines from indictment or information:	\$5,000 maximum per count
Potential jail sentence:	None
Resources used to investigate:	Energy auditors Customs agents
Final charges:	Same as original charges
Type of prosecutive action:	Plea agreement
Summary of plea agreement:	The defendant plead guilty and also agreed to refund the amount of the determined overcharge. In return Justice agreed not to use the plea agreement as evidence in any further matter, or initiate any further criminal charges with regard to 4 specific transactions.

Final criminal judgment
of court--counts
enforced:

1 count 15 U.S.C. 754

Sentence imposed:

\$5,000 fine

Month of prosecutive
action:

December 1979

APPENDIX V

APPENDIX V

Case number:	29
Month of referral:	November 1978
Nature of violation:	Falsely labeling oil as stripper well oil
Potential overcharges delineated in Energy referral:	\$767,684
Location of attorney in charge:	Joint prosecution: Washington, D.C. Topeka, Kansas
Indictment or information:	Information
Original charges per indictment or infor- mation <u>a</u> /:	7 counts 15 U.S.C. 754
Potential monetary fines from indictment or infor- mation:	\$5,000 maximum per count
Potential jail sentence:	None
Resources used to investigate:	Energy auditor Postal inspector
Final charges:	2 counts 15 U.S.C. 754
Type of prosecutive action:	Plea agreement
Summary of plea agreement:	The defendant agreed to plead guilty to two counts. In return, Justice dismissed counts III through VII of the information and agreed to not use the plea agree- ment as evidence in further civil or criminal proceedings.

Final criminal judgment
of court--counts
enforced:

2 counts 15 U.S.C. 754

Sentence imposed:

\$10,000 fine

Month of prosecutive
action:

December 1979

Case number:	30
Month of referral:	November 1978
Nature of violation:	Illegally increasing oil prices by reselling through a "Daisy Chain"
Potential overcharges delineated in Energy referral:	Amount not delineated
Location of attorney in charge:	Joint prosecution: Washington, D.C. Brooklyn, New York
Indictment or information:	Indictment against 3 parties
Original charges per indictment or information <u>a</u> /:	1 count of 18 U.S.C. 371 against 3 parties; 2 counts of 15 U.S.C. 754 against 3 parties; 1 count of 6 CFR 150 against 3 parties; 1 count of 18 U.S.C. 1001 against 3 parties; and 1 count of 18 U.S.C. 1001 against 2 parties
Potential monetary fines from indictment or information:	\$10,000 maximum per count of 18 U.S.C. 371 and 1001; \$5,000 maximum per count of 15 U.S.C. 754; \$5,000 maximum per count of 6 CFR 150
Potential jail sentence:	5 years maximum per count of 18 U.S.C. 371 and 1001
Resources used to investigate:	FBI Energy auditors
Final charges:	2 counts of 15 U.S.C. 754 against 3 parties; 1 count of 18 U.S.C. 1001 against 3 parties; and 1 count of 18 U.S.C. 1001 against 2 parties
Type of prosecutive action:	Bench trial on 2 counts and plea agreements on 2 counts

Summary of
plea agreement:

The defendants agreed to plead guilty to 2 counts and Justice agreed to dismiss 2 other counts. In addition the company and Energy entered into a consent order and the company agreed to repay \$215,000 of overcharges.

Final criminal judgment
of court--counts
enforced:

Acquittal after bench trial on 2 counts of 18 U.S.C. 1001; and guilty pleas by all parties on 2 counts of 15 U.S.C. 754

Sentence imposed:

\$30,000 fine

Month of prosecutive
action:

March 1979

APPENDIX V

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Case number:	31
Month of referral:	August 1977
Nature of violation:	Price violations caused by false invoicing
Potential overcharges delineated in Energy referral:	Amount not delineated
Location of attorney in charge:	Houston, Texas
Indictment or information:	Indictment against 3 parties
Original charges per indictment or information <u>a/</u> :	1 count of 18 U.S.C. 1001 and 1 count of 6 CFR 130 against 1 party; 1 count of 18 U.S.C. 1001 against 1 party; and 1 count of 6 CFR 150 against 1 party
Potential monetary fines from indictment or information:	\$10,000 maximum per count of 18 U.S.C. 1001; \$5,000 maximum per count of 6 CFR 130 and 150
Potential jail sentence:	5 years maximum per count of 18 U.S.C. 1001
Resources used to investigate:	FBI
Final charges:	Same as original charges
Type of prosecutive action:	Nolo contendere pleas by all 3 parties

Summary of
plea agreement:

To not bring to trial certain transactions which occurred between the companies involved and to settle civil aspects of case through a consent order.

Final criminal judgment
of court-counts
enforced:

Court accepted nolo
contendere pleas

Sentence imposed:

\$30,000 fine

Month of prosecutive
action:

August 1978

Case number:	32
Month of referral:	February 1979
Nature of violation:	Submission of false documents to Energy
Potential overcharges delineated in Energy referral:	Not applicable
Location of attorney in charge:	Denver, Colorado
Indictment or information:	Indictment
Original charges per indictment or information <u>a/</u> :	42 counts 18 U.S.C. 1001
Potential monetary fines from indictment or information:	\$10,000 maximum per count
Potential jail sentence:	5 years maximum per count
Resources used to investigate:	Energy auditors
Final charges:	Same as original charges
Type of prosecutive action:	Jury trial
Summary of plea agreement:	Not applicable
Final criminal judgment of court--counts enforced:	Jury acquitted defendant on all charges
Sentence imposed:	None
Month of prosecutive action:	December 1979

Case number:	33
Month of referral:	March 1978
Nature of violation:	Illegally labeling "old oil as "new" oil in order to obtain higher prices
Potential overcharges delineated in Energy referral:	Amount not delineated
Location of attorney in charge:	Houston, Texas
Indictment or information:	3 informations against 6 parties
Original charges per indictment or information <u>a/</u> :	1 count of 18 U.S.C. 1001 against 1 party; 1 count of 18 U.S.C. 1001 against 2 parties; 1 count of 15 U.S.C. 754 against 3 parties
Potential monetary fines from indictment or information:	\$10,000 maximum per count, per party for 18 U.S.C. 1001; \$40,000 per count, per party for 15 U.S.C. 754
Potential jail sentence:	5 years maximum per count, per party for 18 U.S.C. 1001; 1 year per count, per party for 15 U.S.C. 754
Resources used to investigate:	FBI
Final charges:	Same as original charges
Type of prosecutive action:	5 plea agreements and 1 nolo contendere plea

Summary of
plea agreement:

The defendants agreed to plead guilty and agreed to enter into a consent order requiring the repayment of \$18 million of overcharges and \$2 million of civil penalties. In return Justice agreed to decline prosecution of criminal and civil liabilities pertaining to certain transactions.

Final criminal judgment
of court--counts
enforced:

Same as original charges

Sentence imposed:

\$150,000 fine

Month of prosecutive
action:

January 1980

Case number: 34

Month of referral: November 1977

Nature of violation: Illegally increasing oil prices by reselling through a "Daisy Chain"

Potential overcharges delineated in Energy referral: \$4,400,000

Location of attorney in charge: Tampa, Florida

Indictment or information: Indictment against 7 parties

Original charges per indictment or information a/: 1 count 18 U.S.C. 1341 and 371 against 7 parties; 6 additional counts 18 U.S.C. 1341 against 6 parties; and 5 counts 18 U.S.C. 1343 against 6 parties

Potential monetary fines from indictment or information: \$10,000 maximum per count for 18 U.S.C. 371; \$1,000 maximum per count for 18 U.S.C. 1341 and 1343

Potential jail sentence: 5 years maximum per count

Resources used to investigate: FBI
Energy auditors

Final charges: Same as original charges

Type of prosecutive action: 5 convictions, 1 guilty plea, and 1 acquittal after trial; the convictions were being appealed as of September 30, 1980

Summary of plea agreement: Not applicable

Final criminal judgment
of court--counts
enforced:

1 count of 18 U.S.C. 371 and
6 counts of 18 U.S.C. 1341
against 5 parties; 1 count
of 18 U.S.C. 1341 against 1
party

Sentence imposed:

A 3-year sentence for each
of 7 counts, to be run con-
currently for 5 defendants
(all 3-year sentences on
appeal); and one 5-year sen-
tence for 1 defendant to be
suspended after 6 months,
upon repayment of \$91,000
in overcharges.

Month of prosecutive
action:

March 1979; April 1979;
August 1979

Case number:	35
Month of referral:	October 1978
Nature of violation:	Falsification of allocation documents
Potential overcharges delineated in Energy referral:	Not delineated
Location of attorney in charge:	Joint prosecution: Washington, D.C. Oklahoma City, Okla.
Indictment or information:	Indictment and informations
Original charges per indictment or information <u>a</u> /:	Indictment on 3 counts 18 U.S.C. 1001 and 4 counts 18 U.S.C. 1341 against 1 party; 1 information on 1 count 18 U.S.C. 371 against 2 parties; and 1 information on 1 count 18 U.S.C. 371 against 1 party
Potential monetary fines from indictment or information:	\$10,000 maximum per count of 18 U.S.C. 371 and 1001; \$1,000 maximum per count of 18 U.S.C. 1341
Potential jail sentence:	5 years maximum per count
Resources used to investigate:	FBI
Final charges:	Same as original charges
Type of prosecutive action:	3 guilty pleas and 1 conviction; the conviction was being appealed as of September 30, 1980

Summary of
plea agreement:

To drop potential charges of
18 U.S.C. 1341 and 1001 against
2 defendants in return for
their cooperation.

Final criminal judgment
of court-counts
enforced:

1 count of 18 U.S.C. 371
against 3 parties; and 1 count
of 18 U.S.C. 1001 and 1 count
of 18 U.S.C. 1341 against 1
party

Sentence imposed:

Indictment resulted in convic-
tion for 2 year prison term
and \$11,000 fine on 1 count
18 U.S.C. 1001 and 18 U.S.C.
1341; and the 3 informations
resulted in 3 sentences of 3
years probation on 18 U.S.C.
371

Month of prosecutive
action:

June 1979

Case number:	36
Month of referral:	February 1979
Nature of violation:	Price violations through "Daisy Chain" in order to obtain higher than lawful prices
Potential overcharges delineated in Energy referral:	\$4,639,732
Location of attorney in charge	Joint prosecution: Washington, D.C. Oklahoma City, Okla.
Indictment or information:	Informations
Original charges per indictment or information <u>a/</u> :	1 information for 3 counts 15 U.S.C. 754 against 2 parties 1 information for 23 counts 15 U.S.C. 754 against 1 party; and 1 information for 20 counts 15 U.S.C. 754 against 1 party
Potential monetary fines from indictment or information:	\$5,000 maximum per count
Potential jail sentence:	None
Resources used to investigate:	FBI Energy auditors
Final charges:	Same as original charges
Type of prosecutive action:	2 guilty pleas with agreements; and 2 guilty pleas

Summary of
plea agreements:

To file 1 information against
2 of the defendants on only 3
counts of 15 U.S.C. 754 and
to not prosecute for alleged
violations against the 2 in-
dividuals; the defendants
agree to disclose all knowl-
edge of potential illegal
activity.

Final criminal judgment
of court--counts
enforced:

Same as original charges

Sentence imposed:

\$260,000 fine

Month of prosecutive
action:

October 1979 and July 1980

Case number:	37
Month of referral:	July 1978
Nature of violation:	Miscertifying oil as being of higher quality and defrauding customers
Potential overcharges delineated in Energy referral:	Not delineated
Location of attorney in charge:	Joint prosecution: Washington, D.C. Houston, Texas
Indictment or information:	Indictment
Original charges per indictment or information <u>a</u> /:	24 counts of 18 U.S.C. 1341 against 2 parties; 1 count of 18 U.S.C. 371 against 2 parties
Potential monetary fines from indictment or information:	\$1,000 maximum per count of 18 U.S.C. 1341; and \$10,000 per count of 18 U.S.C. 371
Potential jail sentence:	5 years maximum per count
Resources used to investigate:	FBI
Final charges:	Same as original charges
Type of prosecutive action:	2 trial convictions which were being appealed as of September 30, 1980
Summary of plea agreements:	Not applicable

Final criminal judgment
of court--counts
enforced:

Same as original charges

Sentence imposed:

6-month sentences for 2
defendants; \$68,000 fine

Month of prosecutive
action:

November 1979

Case number:	38
Month of referral:	May 1978
Nature of violation:	Retail service station violation
Potential overcharges delineated in Energy referral:	Not delineated
Location of attorney in charge:	Los Angeles, California
Indictment or information:	Indictment
Original charges per indictment or information <u>a</u> /:	7 counts 15 U.S.C. 754
Potential monetary fines from indictment or information:	\$10,000 maximum per count
Potential jail sentence:	1 year maximum per count
Resources used to investigate:	Energy auditors
Final charges:	Same as original charges
Type of prosecutive action:	Trial conviction which was being appealed as of September 30, 1980
Summary of plea agreement:	Not applicable
Final criminal judgment of court--counts enforced:	Same as original charges
Sentence imposed:	3 years probation
Month of prosecutive action:	January 1980

Case number:	39
Month of referral:	June 1979
Nature of violation:	Falsification of price information
Potential overcharges delineated in Energy referral:	\$81,202
Location of attorney in charge:	Boston, Massachusetts
Indictment or information:	Indictment
Original charges per indictment or information <u>a</u> /:	28 counts 15 U.S.C. 754
Potential monetary fines from indictment or information:	\$10,000 maximum per count
Potential jail sentence:	1 year maximum per count
Resources used to investigate:	Energy auditors
Final charges:	Same as original charges
Type of prosecutive action:	Trial conviction which was being appealed as of September 30, 1980
Summary of plea agreement:	Not applicable
Final criminal judgment of court--counts enforced:	Same as original charges
Sentence imposed:	\$9,450 fine and 1-year sentence; 30 days to be served and the rest dismissed when fine is paid
Month of prosecutive action:	April 1980

Case number:	40
Month of referral:	December 1979
Nature of violation:	Falsification of allocation documentation
Potential overcharges delineated in Energy referral:	Not delineated
Location of attorney in charge:	Denver, Colorado
Indictment or information:	Indictment
Original charges per indictment or information <u>a/</u> :	7 counts of 18 U.S.C. 1001; 1 count of 18 U.S.C 1341
Potential monetary fines from indictment or information:	\$10,000 maximum per count of 18 U.S.C. 1001; and \$1,000 maximum per count of 18 U.S.C. 1341
Potential jail sentence:	5 years maximum per count
Resources used to investigate:	FBI Energy auditors
Final charges:	1 count 18 U.S.C. 1001
Type of prosecutive action:	Plea agreement
Summary of plea agreement:	The defendant agreed to plead guilty to 1 count and Justice to drop all other counts in indictment.
Final criminal judgment of court--counts enforced:	1 count 18 U.S.C 1001
Sentence imposed:	\$7,500 fine
Month of prosecutive action:	September 1980

a/ U.S. Code and other citations.

- 15 U.S.C. 754 - Violations of Energy regulations
- 18 U.S.C. 371 - Conspiracy
- 18 U.S.C. 1001 - False statements
- 18 U.S.C. 1341 - Mail fraud
- 18 U.S.C. 1343 - Wire fraud
- 18 U.S.C. 1505 - Obstruction of proceedings before departments, agencies and committees
- 18 U.S.C. 1510 - Obstruction of criminal investigations
- 18 U.S.C. 1621 - Perjury
- 18 U.S.C. 1622 - Subornation of perjury
- 18 U.S.C. 1623 - False declarations before grand jury or court
- 18 U.S.C. 1951 - Interference with commerce by threats or violence
- 18 U.S.C. 1962 - Racketeer influenced and corrupt organizations
- 18 U.S.C. 2314 - Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting
- 6 CFR 130 - Cost of living council regulations
- 6 CFR 150 - Cost of living council regulations

INFORMATION ON CASES WHICH
WERE UNDER INDICTMENT AS OF SEPTEMBER 30, 1980

<u>Case number</u>	<u>Month of referral</u>	<u>Nature of violation</u>	<u>Location of attorney-in-charge</u>	<u>Month of indictment</u>	<u>Counts in indictments (note a)</u>	<u>Resources used in Justice investigation</u>
41	Dec. 1978	False documents to increase allocations	Joint: Washington, D.C. Miami, Florida	Jan. 1980	1 count 18 U.S.C. 371 5 counts 18 U.S.C. 1341	FBI Energy auditors
42	July 1978	Certification manipulation	Joint: Washington, D.C. Houston, Texas	Oct. 1979	1 count 18 U.S.C. 371 21 counts 18 U.S.C. 1001	FBI Energy auditors
43	May 1979	Stripper certification manipulation	Washington, D.C.	Apr. 1980	1 count 18 U.S.C. 371 6 counts 18 U.S.C. 1341 8 counts 18 U.S.C. 1343 1 count 18 U.S.C. 1962	FBI Energy auditors
44	Oct. 1979	Supply manipulation	Buffalo, N. Y.	June 1980	3 counts 18 U.S.C. 1341 2 counts 18 U.S.C. 1001 3 counts 15 U.S.C. 754	None
45 (note b)	June 1978	Oil certification manipulation	Houston, Texas	Mar. 1979	2 counts 18 U.S.C. 1962 32 counts 18 U.S.C. 1341 26 counts 18 U.S.C. 1343 24 counts 18 U.S.C. 1001	FBI Energy auditors

a/See page 63 for description of U.S. Code violations.

b/Indictment quashed and appellate brief filed April 1980.
Action is pending in court of appeals.

INFORMATION ON PENDING CRIMINAL CASE
REFERRALS AS OF SEPTEMBER 30, 1980 (note a)

<u>Case number</u>	<u>Type of allegation</u>	<u>Month case referred to Justice</u>	<u>Potential U.S.C. violation (note b)</u>	<u>Location of attorney-in-charge</u>	<u>Investigative resources being utilized</u>	<u>Current status (note c)</u>
46	False filing to increase allocation	Nov. 1978	18 U.S.C. 1001	San Francisco Calif.	Energy auditors	Investigating and evaluating referral
47	False filing for improper allocation	Dec. 1978	18 U.S.C. 371 18 U.S.C. 1001 18 U.S.C. 1951	Washington, D.C.	FBI Energy auditors	Grand jury is investigating
48	False certification as stripper	June 1979	18 U.S.C. 1001 18 U.S.C. 1341	Joint: Washington D.C. Oklahoma City, Okla.	FBI	Grand jury is investigating
49	False submission of documents	March 1979	18 U.S.C. 1001	Boston, Mass.	FBI	Grand jury is investigating
50	False certification	June 1978	18 U.S.C. 1001	Joint: Washington D.C. Houston, Tex.	FBI	Grand jury is investigating
51	Certification manipulation	July 1978	18 U.S.C. 1001 18 U.S.C. 1341	Houston, Tex.	FBI Energy auditors	Evaluating prosecutive merit
52	Certification manipulation	July 1978	18 U.S.C. 1001 18 U.S.C. 1341	Houston, Tex.	FBI Energy auditors	Investigation continuing
53	Certification manipulation	July 1978	18 U.S.C. 1001 18 U.S.C. 1341	Houston, Tex.	FBI Energy auditors	Prosecution being considered in another district
54	False certification	June 1979	18 U.S.C. 1001 18 U.S.C. 1341	Dallas, Tex.	FBI	Investigation continuing
55	Pricing violations and misrepresentation of product quality	June 1979	18 U.S.C. 1001 18 U.S.C. 1341 15 U.S.C. 754	Washington, D.C.	FBI Energy auditors	Investigation continuing
56	Supply manipulation and misrepresentation of product quality	June 1979	18 U.S.C. 1001 15 U.S.C. 754	Brooklyn, N.Y.	FBI Energy auditors	Investigation continuing

<u>Case number</u>	<u>Type of allegation</u>	<u>Month case referred to Justice</u>	<u>Potential U.S.C. violation (note b)</u>	<u>Location of attorney-in-charge</u>	<u>Investigative resources being utilized</u>	<u>Current status (note c)</u>
57	False certification	July 1979	18 U.S.C. 1001 18 U.S.C. 1341	Washington, D.C.	FBI	Investigation continuing
58	False certification of product	July 1979	15 U.S.C. 754	Salt Lake City, Utah	None	Investigation continuing
59	Falsification of price information	July 1979	18 U.S.C. 1001 15 U.S.C. 754	Washington, D.C.	FBI Energy auditors	Investigation continuing
60	Falsification of product	Sept. 1979	15 U.S.C. 754 18 U.S.C. 1001	Oklahoma City, Okla.	FBI Energy auditors	Investigation continuing
61	Irregularities in the sale of gasoline	Sept. 1979	15 U.S.C. 754	Joint: Boston, Mass. Washington, D.C.	FBI	Investigation continuing
62	Possible circumvention of pricing regulations	Sept. 1979	18 U.S.C. 1001 15 U.S.C. 754	Tampa, Fla.	FBI	Court decision on subpoena now on appeal in 5th circuit
63	Use of paper companies to circumvent pricing regulations	Nov. 1979	18 U.S.C. 1001 15 U.S.C. 754	Washington, D.C.	FBI	Investigation continuing
64	Illegal reselling of crude oil	Nov. 1979	18 U.S.C. 1001 18 U.S.C. 1341	Washington, D.C.	FBI	Investigation continuing
65	Scheme to avoid entitlements program	Dec. 1979	18 U.S.C. 1001 18 U.S.C. 1341	Washington, D.C.	FBI Energy auditors	Venue under review
66	Futures trading of a controlled product	Feb. 1980	18 U.S.C. 1341	Los Angeles, Calif.	Energy auditors	Investigation continuing

66

<u>Case number</u>	<u>Type of allegation</u>	<u>Month case referred to Justice</u>	<u>Potential U.S.C. violation (note b)</u>	<u>Location of attorney-in-charge</u>	<u>Investigative resources being utilized</u>	<u>Current status (note c)</u>
67	Falsification of pricing information	Nov. 1979	18 U.S.C. 1001	Philadelphia, Pa.	FBI	Investigation continuing
68	Pricing violations	March 1980	18 U.S.C. 1001	Washington, D.C.	FBI	Matter under review
69	Manipulation of certification information	Feb. 1980	18 U.S.C. 371 18 U.S.C. 1341 18 U.S.C. 1001 15 U.S.C. 754	Los Angeles, Calif.	FBI	Matter under review
70	Irregularities under the entitlements program	March 1980	18 U.S.C. 1001 18 U.S.C. 1341 15 U.S.C. 754	Washington, D.C.	FBI Energy auditors	Matter under review
71	Improper certification	March 1980	18 U.S.C. 1001 18 U.S.C. 1341 15 U.S.C. 754	Washington, D.C.	FBI Energy auditors	Matter under review
72	Pricing violations	Jan. 1980	15 U.S.C. 754 18 U.S.C. 1001	Washington, D.C.	None	Matter under review

a/Of the 27 cases pending at Justice as of September 30, 1980, 10 were pending for less than 1 year, 13 were pending for over 1 year, and 4 were pending for over 2 years. Because of limitations on access to information relating to open cases as discussed on page 4, we did not review the actions taken by Justice during the investigations.

b/See page 63 for description of U.S. Code violations.

c/Justice officials would not provide an estimated date for disposition.

ADMINISTRATIVE STATUS OF CLOSED CRIMINAL CASES
AS OF AUGUST 28, 1980 (note a)

<u>Case number</u>	<u>Current status</u>
1	No administrative action taken. No overcharge involved.
2	Matter was closed on August 19, 1980, with no administrative action taken.
3	A notice of probable violation was issued by the Office of Special Counsel on December 14, 1979, claiming \$2,000,000 in illegal overcharges. The accused company responded in writing on April 17, 1980. Matter is pending.
4	Matter was closed on August 5, 1980, with no administrative action taken.
5	Case was closed on April 25, 1980. No administrative action taken due to the subject's death.
6	A proposed remedial order was issued for \$8,866 in paybacks on December 28, 1979. Objection received and case was at Energy's Office of Hearings and Appeals.
7	Matter was closed on May 6, 1980, with no administrative action taken. <u>b/</u>

<u>Case number</u>	<u>Current status</u>
8	Consent orders were issued on June 5, 1978, and August 20, 1979, for a combined \$78,897.23 in paybacks. Civil penalties totaled \$6,500.
9	A notice of probable violation was issued on May 27, 1980, for \$924,440.56 in paybacks. Matter is pending.
10	The matter was closed on August 27, 1980, and consolidated with another case involving the same company.
11	A remedial order was issued on June 10, 1976, for \$66,578 in rollbacks. The case was referred on July 25, 1979, to Justice for enforcement of the remedial order. District court ruled that the rollback was not an appropriate remedy and set a hearing for penalties. Justice is seeking a \$200,000 civil penalty.
12	A proposed remedial order was drafted on June 18, 1980, for \$351,671 in paybacks. Matter is pending.
13	The matter was closed on March 16, 1979, because of the low dollar amount of the violation and a low annual sales volume of \$75,000. <u>b/</u>

Case numberCurrent status

- 14 Administratively, a small violation was found during the entitlements audit. However, it was resolved by the company filing amended reports. The case was closed on May 21, 1980.
- 15 A civil violation pursued in district court by Justice, which first became involved when the accused company filed a complaint against Energy. The civil violation was addressed in Justice's counterclaim to the suit filed against Energy, and since that time (June 1978) Justice has been pursuing all civil violations. District court ruled on September 15, 1980, that the accused company was to refund the overcharges (the amount to be negotiated) to the U.S. Treasury, but that a penalty was not appropriate. Final disposition is pending.
- 16 A notice of probable violation was issued on February 12, 1980, for \$2,256,107 in paybacks. Matter is pending.
- 17 The matter was closed September 6, 1979, because of the low dollar amount of the violation and a low annual sales volume of \$1,320,000. b/
- 18 The matter was closed on January 14, 1980, because of the low dollar amount of the violation and a low annual sales volume of \$300,000. b/

<u>Case number</u>	<u>Current status</u>
19	Audit work completed. Matter is pending action.
20	The matter was closed on May 12, 1980, because of the low dollar amount of the violation and a low annual sales volume of \$2,500,000. <u>b/</u>
21	A notice of probable violation was issued on January 19, 1979, for \$990,304 in paybacks. Matter is pending.
22	A notice of probable violation was issued on September 7, 1979, for \$25,434,839. Matter is pending.
23	A notice of probable violation was drafted on May 9, 1980, for \$3,685,994. Matter is pending.
24	The matter was closed on May 31, 1980, because of a low annual sales volume of \$1,224,000. <u>b/</u>
25	The matter was remanded back to the OE district office for additional audit work and review for possible administrative action. Matter is pending.
26	Audit work continuing at the OE in preparation for administrative action.
27	A notice of probable violation was issued on July 24, 1979, for \$1,165,616. Matter is pending.
28	A district OE office was drafting an amended proposed remedial order of \$428,512 in paybacks.

<u>Case number</u>	<u>Current status</u>
29	A proposed remedial order was drafted on June 18, 1980, for \$315,246 against one defendant. Matter is pending. Consent order issued for \$215,000 against the other defendant on June 29, 1979.
30	Consent orders were issued on August 11, 1978, for \$2,000,000 in paybacks to the U.S. Treasury, and \$1,070,000 in civil penalties.
31	A consent order was issued on April 8, 1979, for a \$500,000 overcharge repayment plus interest and a \$50,000 civil penalty.
32	A notice of probable violation was issued on April 10, 1980, for \$231,765. Matter is pending.
33	Consent orders were issued on January 11, 1980, for \$18,000,000 in paybacks, and \$2,000,000 in civil penalties.
34	Justice is proceeding with civil litigation.
35	Consent orders were issued on July 17, 1980, for \$25,250,000 and a civil penalty of \$500,000.
36	A notice of probable violation was drafted on August 21, 1980, for \$1,808,726 in paybacks. Matter is pending.
37	Matter is under review.

<u>Case number</u>	<u>Current status</u>
38	A remedial order was issued on July 10, 1979, for \$77,406 in paybacks. The remedial order was appealed on August 13, 1979. Matter is pending.
39	Administrative action under review. Matter is pending.
40	A notice of probable violation was drafted on April 27, 1979, for \$10,494,884. Administrative action pending.

a/Case numbers assigned in this appendix do not correspond to case numbers in preceding appendixes.

b/These cases were closed for administrative action by Energy because of either low dollar amount of violations or low annual sales volumes. This is in accordance with Energy's "small case policy" as delineated in the Federal Register June 27, 1978.

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