The original documents are located in Box 5, folder: "Confirmation Hearings - Senate (2)" of the Frank Zarb Papers at the Gerald R. Ford Presidential Library.

REVISED ANSWERS

TO

QUESTIONS ASKED

BY THE

SENATE INTERIOR

AND INSULAR AFFAIRS COMMITTEE

DURING THE

CONFIRMATION HEARINGS OF

FRANK G. ZARB

TO BE

ADMINISTRATOR

FEDERAL ENERGY ADMINISTRATION

REVISED: DECEMBER 7, 1974

REVIEWED BY: GENERAL COUNSEL

CONGRESSIONAL AFFAIRS

QUESTION #1

Inasmuch as I was not a central party to the crude equalization rule making procedure I have asked FEA to respond to your specific questions regarding the program.

Experience, however, has taught us that systems of regulations sometimes produce effects other than that originally intended.

Therefore, if confirmed, I will undertake a thorough review of the program. The purpose of the review will be to ascertain if it is achieving a beneficial result on our economy and consuming public without unduly burdening various segments.

If I find the program is not accomplishing the desired goal I will not hesitate to recommend changes.

FEA's response to the specific questions are:

QUESTION:

a. Did FEA study the impact of the proposed "Entitlements" program on all refiners prior to the publication of the proposal?

ANSWER:

a. Yes, the FEA simulated the impact of the Entitlements Program on all refiners a number of times while the proposal was being designed.

QUESTION #1 (Cont.)

QUESTION:

b. Was the study made public?

ANSWER:

b. While certain results were made public at various times, considerations such as confidentiality of data (18 U.S.C. 1905) or potential anti-trust issues prohibited the release of certain specific items developed in this analysis.

QUESTION:

c. Did FEA prepare an Inflation Impact Statement as required by Executive Order 11821?

ANSWER:

c. The FEA studied the extent of the inflationary impact associated with the proposal and has judged it to be negligible.

QUESTION:

d. What is the impact on the consumer, on business, and the effect on competition.

ANSWER:

d. (1) Consumer: It is anticipated that in the aggregate, the impact on the consumer will be negligible. In specific cases, and to a limited extent in specific geographical regions, there may be increases or decreases in consumer prices according to the exact distribution of marketers.

QUESTION #1 (Cont.)

(2) Business: As with the consumer, specific industrial users of petroleum products and their subsequent customers may experience cost increases or decreases as the costs of their respective refiner/suppliers are adjusted by the equalization program. It is anticipated that the nationwide effect will be negligible.

(3) Competition: Since, in theory, all refiners will have roughly equal feedstock costs, refiners who are currently experiencing high costs will be able to reduce their selling prices and, hence, should become more competitive. Similarly, refiners who are now able to undersell the competition because of disproportionately greater access to old oil will be obliged to purchase entitlements and consequently raise their prices for refined products. Thus, with a significantly reduced range of market prices, competition should be considerably enhanced, both in the petroleum industry as well as petroleum dependent sectors of the economy.

QUESTION:

e. What is the impact of the entitlements program in terms of dollars which will be transferred among all refiners?

ANSWER:

e. The extent of the dollar transfer depends upon the exact behavior of the individual participants with regard to

QUESTION #1 (Cont.)

the national average old oil supply ratio. Based upon previous periods, it appears that approximately $4-7 million per day will be transferred among affected firms.

QUESTION:

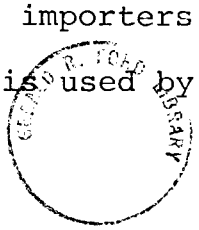
f. Who will be the purchasers and who will be the sellers of entitlements, by company name?

ANSWER:

f. Whether a firm is a seller or purchaser of entitlements depends on its crude runs to stills, the amount of old oil obtained, and the amount of residual fuel oil and distillate imported in a given month. In general, those firms who have large amounts of "old" oil, which is price controlled at $5.25 per bbl., will have to buy entitlements from those firms which have to rely on a large volume of new uncontrolled oil and/or high priced imported crude or finished products. At this point in time, the names of specific companies are not available.

QUESTION:

g. Why are entitlements awarded to East Coast importers who are not refiners and whose product in the main is used by electric utilities?



QUESTION #1 (Cont.)

ANSWER:

g. FEA considers it inequitable that the petroleum costs of one region dependent on imported finished products would not be reduced while the petroleum costs of other regions of the country served by refiners that refine imported crude oil would be covered. Over 75% of the imported refined products used in the U.S. is imported by the East Coast. A substantial volume of this imported product is brought in by independent marketers who are not refiners. To eliminate these marketers from the cost equalization program, would inhibit FEA from fulfilling its responsibility under the allocation act of providing for equitable allocation of crude oil and refined products at equitable prices among all regions of the U.S. and among all users.

QUESTION:

h. What is the impact on consumer prices when some refiners will have to increase product costs as a result of the overall increased price of crude oil by purchasing entitlements?

ANSWER:

h. It is unlikely that there will be increased product prices in the aggregate due to implementation of the cost equalization program. At the present time a considerable amount of competition has returned to the market place. It is mainly the small and independent refiners that are being hurt by this

QUESTION #1 (Cont.)

situation because they are continuing to incur high operating costs resulting from their dependence on high priced new domestic oil and imported crude and product. However, they are unable to raise product prices and remain competitive. The equalization program should lower their operating costs to the extent of the cost differential between "old" oil and higher priced new domestic and imported crude oil.

QUESTION:

i. What effect will the following actions have on gasoline price increases:

(1) abolishing the fixed price of $5.25 per barrel "old oil"?

ANSWER: approximately 3-5¢ per gallon on the average.

(2) requiring refiners to purchase an "entitlement" ticket at a cost of $6 per barrel?

ANSWER: negligible (in the aggregate)

QUESTION:

j. What is the impact of the program on a refiner with a high percentage of "old" oil on a high composite cost of all oil run?

ANSWER:

j. A refiner having a high percentage of "old" oil should not have a high composite cost of all oil run.

QUESTION #1 (Cont.)

QUESTION:

k. What is the chance of having small refiners exempt from the crude equalization program? (Small refiners producing 175,000 B/D or less).

ANSWER:

k. The equalization program is designed to benefit small and independent refiners overly dependent upon high cost foreign or uncontrolled domestic feedstocks. The small refiners further benefit from additional entitlements issued under the "bias." Further steps to deal with the special problems of small refiners are under active consideration for future implementation.

QUESTION #2

QUESTION:

a. Recent studies by the Ford Foundation say that the poor and the elderly are particularly hard hit by the rising cost of energy. What policy programs will you request to assure that these groups do not carry a disproportionate share of the burden? The Senate Committee on Aging has already received disturbing reports that many elderly are already forced to decide whether they can eat or heat. We have even heard of desperate older persons seeking help from the local police department in a vain effort to find the wherewithal for heating fuel.

ANSWER:

a. I am aware of the undue hardships placed on the elderly, as well as the handicapped and the low-income consumer due to the increased cost of energy. Presently FEA does not have funds or the Congressional mandate to establish specific programs to alleviate these problems; however, the Office of Consumer Affairs/Special Impact in FEA has identified the target population which is adversely affected, and has established an Interagency Task Force (with twelve human-resource related agencies participating) to coordinate efforts on behalf of the financially disadvantaged, to

QUESTION #2 (Cont.)

analyze ongoing assistance programs which have the potential to alleviate the energy related problems of the poor, coordinate interagency efforts, and avoid duplication. FEA's function is to provide information regarding the price and availability of all energy forms, as well as information regarding the impact of energy policies on the poor, the aged, and the handicapped and to assist human resource agencies with program experience and funds in analyzing such information.

QUESTION:

b. The Committee on Aging has also been concerned about the function and adequacy of the FEA's Consumer Affairs/Special Impact Office. What role would you see for this office if you became FEA director? How many staff persons are now in that office? What number would you consider adequate?

ANSWER:

b. The responsibilities of the Office of Consumer Affairs and Special Impact (CA/SI) cover a wide variety of energy issues, with major emphasis on policy analysis. Some of the major facets of this function are: the review and analysis of the impact of agency policies on consumers of

QUESTION #2 (Cont.)

all income levels, dissemination of information concerning FEA policies and regulations to Federal, State and local governmental agencies and to private organizations that represent consumer and special impact concerns, and the review of policies of other Federal agencies and State and local agencies, both governmental and private, to determine if those policies have the potential for either alleviating or compounding energy-related problems of consumers, the poor, the handicapped and the elderly. I endorse the present role of the Office of Consumer Affairs and Special Impact within FEA.

There are staff members in the Office of Consumer Affairs and Special Impact. If confirmed I will reassess the adequacy of the staffing pattern of the CA/SI office; if it is necessary to increase the staff to more adequately evaluate the impact of Federal energy policies on the aged, the handicapped, and the low-income consumer, and the consumers in general, I will take steps to do so.

QUESTION:

c. How do you react to suggestions that an "energy stamp" or "fuel voucher" program be established to offset the impact of rising energy costs among low-income Americans?

ANSWER:

c. I believe that any program which would lessen the impact on those Americans who can least sustain the burden of increased costs of energy is worthy of serious consideration. The Office of Consumer Affairs/Special Impact in FEA is now participating in an energy stamp feasibility study which is being circulated to appropriate Federal agencies for comment. When this study is complete, it will be forwarded to the Senate Interior and Insular Affairs Committee, as well as the Senate Special Committee on Aging and Senator Mathias who has requested that FEA and HEW conduct such a study.

December 7, 1974

Alternate Version for Question #2

~~PART~~ TAKE WAIT #1

QUESTION #2

QUESTION:

a. Recent studies by the Ford Foundation say that the poor and the elderly are particularly hard hit by the rising cost of energy. What policy programs will you request to assure that these groups do not carry a disproportionate share of the burden? The Senate Committee on Aging has already received disturbing reports that many elderly are already forced to decide whether they can eat or heat. We have even heard of desperate older persons seeking help from the local police department in a vain effort to find the wherewithal for heating fuel.

ANSWER:

a. I understand FEA has established an interagency task force to analyze existing federal assistance programs to identify those which are susceptible to alleviating the energy problems of the poor and elderly. If this effort reveals that additional programs are necessary, I will not hesitate to recommend them to the President and the Congress.

QUESTION:

b. The Committee on Aging has also been concerned about the function and adequacy of the FEA's Consumer

QUESTION #2 (Cont.)

Affairs/Special Impact Office. What role would you see for this office if you became FEA director? How many staff persons are now in that office? What number would you consider adequate?

ANSWER:

b. I perceive the role of the Consumer Affairs/ Special Impact Office to be the voice of the consumer and the disadvantaged in FEA. I understand there are _____ persons in that office; if confirmed I will be in a position to evaluate the adequacy of its staffing level.

QUESTION:

c. How do you react to suggestions that an "energy stamp" or "fuel voucher" program be established to offset the impact of rising energy costs among low-income Americans?

ANSWER:

c. I understand FEA is participating with HEW in an energy stamp feasibility study, and when I have reviewed its results I will be able to assess this means of dealing with the energy problems of the low-income consumer.

QUESTION #3

COMMENT: FEA is pressed by many organizations and law firms to release advance copies of draft and final regulations. We believe they should do so freely so that public participation is maximized. However, they have on too many occasions been selective, giving one group a copy which they officially refuse to give to others until the others explain that they know who already has copies.

Because FEA uses the shortest possible public comment periods for new regulations, advance release on a discriminatory basis places many, including the general public, at a distinct disadvantage. Worse, the Public Affairs Office too often does not even know about proposals or regulations which are public for two or three days.

The remedy, we believe, would be a strictly enforced policy of making all internal documents immediately available to anyone who asked for them. If FEA must keep secrets then it should at least forbid employees to release any documents without advising the Public Affairs Office and making copies available there within an hour.

QUESTION: With this background in mind, Mr. Zarb might be asked, (1) whether he foresees any reason why all of FEA's substantive activities should not be completely open to the

QUESTION #3 (Cont.)

public; (2) what material should be restricted and why; (3) whether he will...a policy mandating equal availability of all documents, including these papers improperly released; (4) whether he will mandate FEA employees to fully inform the Public Affairs Office can begin providing information when it is useful; and (5) whether Mr. Zarb will countenance any discrimination by the selective advanced release of information to major oil companies or to large Washington law firms.

ANSWER: If confirmed, it will be my policy to make FEA documents available to the public on a non-discriminatory basis consistent with all existing laws and regulations.

QUESTION #4

COMMENT: In your statement you say first that

> "The time has come, however, when hard decisions must be made and positive actions taken."

but later that

> "A voluntary conservation program should be our first approach, but if it does not work, then mandatory conservation measures will be required and I will not hesitate to recommend them to the President and the Congress, if legislation is needed, and implement them, if given the legislative authority."

QUESTION: Would it not be desirable if the legislative authority were enacted now to be used later if needed rather than wait to demonstrate the need and then, with the situation more critical, seek the authority?

ANSWER: See response I provided before your Committee during public hearings on my confirmation on December 4, 1974

QUESTION #5

COMMENT: In your introductory statement you say that the Energy Resources Council is currently reviewing and examining the Project Independence Blueprint which was developed by FEA and presented to the President and to the Congress in November. Once the Blueprint has been reviewed and specific energy problems identified we will be in a position to begin developing solutions.

However, on November 14, 1974, two days after submission of the FEA report, the Secretary of State in an address in Chicago outlined an energy strategy that has been described by the White House as official policy. On November 18, 1974, the United States signed the International Energy Program Agreement whose draft plan had been concluded with U.S. participation. By its signature the U.S. formally committed itself to certain specific energy policies. These broad strategic decisions, having been made, announced, and formalized in advance of any study by the Administration of FEA's report on Project Independence, two questions arise:

QUESTION:

a. First, to what extent will be truly a factor in the development of future energy policy?

ANSWER:

a. The Project Independence Blueprint is intended to be the basis of the development of future energy policy. The

QUESTION #5 (Cont.)

data in this report, the analyses used, and the implications for policy of these analyses are playing a major role in the development of energy policy. The FEA is working with the Energy Resources Council to prepare a series of policy recommendations for the President dealing with energy that will be reviewed by the President and included in an energy message early next year.

QUESTION:

b. Second, which options set forth in the report are implicitly projected by virtue of the adoption of the elements of the strategy announced by Dr. Kissinger and by virtue of U.S. obligations incurred through participation in the International Energy Program Agreement?

ANSWER:

b. FEA participated fully in the development of the strategy announced by Dr. Kissinger. The policy was based upon an early review of the Project Independence Blueprint and is fully consistent therewith. Thus, all options presented by the Blueprint remain viable.

QUESTION #6

COMMENT: Government participation in the exploration and development of the Nation's energy frontiers such as the Outer Continental Shelf has been proposed as a means of offsetting delays in development of those areas resulting from high financial risk and public concern with environmental dangers.

QUESTION:

a. Would you comment on this proposal?

ANSWER:

a. I do not believe that direct government participation in the exploration of OCS areas would materially accelerate the development of the OCS. Further, regardless of whether the government or private enterprise is involved, the environment must be considered and protected.

QUESTION:

b. What is the optimum role of government on the energy frontier?

ANSWER:

b. I believe that the government's role in the OCS area should concentrate on making leases available for commercial development in a manner that is consistent with industry's capability to explore and develop in a safe and lawful way. In general, I would extend this principle to the leasing of government owned "frontier" lands too.

QUESTION #7

COMMENT: The GAO has been designated the agent of the Congress in the monitoring of FEA activities to permit an orderly but, where necessary, detailed check on FEA operations by an independent source. In addition to this ongoing GAO activity it would greatly assist us as a legislative committee if FEA could, on a regular basis, see that the Committee is provided with a summary of current issues and problem areas in connection with FEA regulations and/or proposed regulations. The GAO could prepare such a summary based on its contact with the FEA operation on a monthly basis and submit it to the Committee along with FEA comments. In view of the complexity of the issues which arise, for example in petroleum pricing, I think that such an "early warning system" for problem areas would greatly assist the Congress in evaluating FEA's performance.

QUESTION: Could you comment on this idea?

ANSWER: I am definitely in favor of a regular program which assures that Committees of Congress with oversight responsibility for FEA will be kept informed of current issues and "problem areas" in connection with FEA regulations. It is my understanding that, during recent informal consultations between FEA officials and Interior Committee staff personnel, a proposal very much along the lines you suggest was agreed to in principle.

QUESTION #8

COMMENT: It is my understanding that there is no desire on the part of GAO or, for that matter, on the part of Congress to cause any disruption of the operations of FEA in monitoring those operations or to compromise or second-guess strategies in cases which are under litigation at the time of the monitoring.

Section 12 of the Federal Energy Administration Act requires the Comptroller General to "monitor and evaluate the operations of the Administration" and states that the "Comptroller General shall have access to such data within the possession or control of the Administration from any public or private source whatever, notwithstanding the provisions of any other law, as are necessary to carry out his responsibilities under this Act."

I understand that in the past GAO has had some difficulty in obtaining access to information pertaining to the compliance and enforcement operations of FEA. It appears that access to information was denied where proprietary information was alleged to be involved, where investigations were in progress or, in the case of audits, prior to the completion of an audit cycle. The intent of Congress in the FEA Act was to provide for a "real-time" monitoring of FEA operations by GAO.

QUESTIONS:

a. However, I wonder if you agree with me that the FEA Act requires that the GAO shall have complete access to FEA

QUESTION #8 (Cont.)

files even if these files do in fact involve (1) confidential or proprietary information? (2) issues which may eventually lead to litigation? (3) audits which are in process? or (4) investigations which are in progress prior to issuance to a notice of probable violation (NOPV)?

b. Will you guarantee that the FEA will comply with the provisions of Section 12 of that Act granting the GAO access to all the information it requires to fulfill its monitoring function?

ANSWER: I understand that, in a letter of December 4, 1974, FEA recognized the breadth of Section 12 of the Federal Energy Administration Act of 1974 in affording GAO plenary access to audit data in its custody. I further understand that FEA and GAO agreed to take appropriate steps to assure that GAO is advised of the sensitivity of certain data requests from a compliance standpoint, so that FEA's statutory responsibilities are not impaired by GAO data requests. I fully support the cooperative nature in which FEA and GAO are meeting this problem and agree that Section 12 of the Federal Energy Act provides GAO access to all audit data, including that which contains proprietary information and which involves pending compliance actions.

QUESTION #9

COMMENT: Section 22 of the Federal Energy Administration Act, Public Law 93-275, requires that:

> . . . the Administrator shall, within six months from the date of the enactment of this Act, develop and report to the Congress and the President a comprehensive plan designed to alleviate the energy shortage, for the time period covered by this Act. Such plan shall be accompanied by full analytical-justification for the actions proposed therein.

Although due on November 7, 1974, that Comprehensive Report has not yet been received, apparently because of the conflicting requirements of preparation of the Project Independence Report.

However, Dr. Sawhill advised on October 23 that the plan would be submitted not later than next Monday, December 9, 1974.

You are potentially responsible for the implementation of that Comprehensive Plan.

QUESTION: Have you had the opportunity to review or comment on it and would you care to discuss its provisions with the committee in advance of its submission next week?

ANSWER: While I have not had the opportunity to review the contents of the comprehensive energy plan required by Section

QUESTION #9 (Cont.)

22 of the FEA Act, I understand that the report is now being circulated within the Executive Branch for comment and coordination.

If confirmed, I will review the report in detail and, of course, will be pleased to discuss it with the committee at any time.

QUESTION #10

QUESTION: When will the Administration announce its legislative, administrative, economic, and budgetary objectives for the attainment of those energy goals?

ANSWER: The Administration will announce its program for attaining the necessary energy goals shortly after January 1, 1975. The specific date and format will be decided upon by the President.

QUESTION #11

QUESTION: What urgent energy programs must be implemented now?

ANSWER: We must implement programs to foster both energy conservation and the development of domestic energy supplies. The Project Independence Report indicates that if we get started now, we could well be on our way to self-sufficiency by the early 1980's. Due to the lead times involved and the past trends in oil, gas, and coal production, unless we establish a clear national energy policy and initiate programs to stimulate the production of domestic oil, gas and coal, our dependence on foreign energy could increase over the next few years.

I believe that programs which should be implemented now were stated by the President in his October 8, 1974 Economic Message. These programs include:

- Deregulation of new natural gas
- Passage of acceptable surface mining legislation
- Passage of deepwater ports legislation
- Increased leasing of Federal lands for coal and oil production
- Implementation of utility coal conversion programs
- Responsible use of Naval Petroleum Reserves
- Increased auto fuel economy
- Conservation of 1 million bbls/day

QUESTION #11 (Cont.)

The Energy Resources Council is now coordinating an interagency effort to develop more detailed short-range and long-term energy policy recommendations. These policy proposals will be submitted to the Congress early next year.

QUESTION #12

QUESTION: Is a mandatory energy conservation program that would, among other things, end the use of oil and natural gas for boiler fuel, and improve auto efficiency, needed?

ANSWER: The Project Independence Report indicates that the potential for greatest energy savings lies in those programs that attain specific conservation goals. The application of conservation measures dependsupon the unique demand characteristics in each sector of the economy. Circumstances may dictate that an integrated national energy policy will be a mix of both voluntary and mandatory programs.

A great deal of time has been expended to determine how to achieve adequate conservation of energy in both the utility and automotive sectors of our economy.

If confirmed, I will focus on assuring an orderly manner in which these programs can contribute to conservation.

QUESTION #13

QUESTION: Do you consider it necessary to mandate an upper limit on petroleum imports by either volume or dollar outlay?

ANSWER: Both dollar and volume limitations on petroleum imports should be considered as viable alternatives to reduce U.S. dependence on foreign supplies. These, along with others, will be submitted to the President. In each instance, the impact on affected sectors of the economy will be outlined.

QUESTION #14

QUESTION: In your view is the early enactment of legislation to provide a statutory basis for the implementation of energy shortage contingency plans necessary?

ANSWER: See response to this question I provided before your Committee during public hearings on my confirmation on December 4, 1974.

QUESTION #15

QUESTION: Is a national strategic reserve necessary?

ANSWER: There are still a number of questions to be answered regarding the viability of the strategic reserve option. The Energy Resources Council is currently accumulating information for submission to the President for his decision.

QUESTION #16

QUESTION: Should the U.S. Government be a party to negotiations between foreign governments and the U.S. international oil companies in the case of contracts for the purchase of oil for import into the U.S.?

ANSWER: I understand that FEA is currently studying the problem and that the report will soon be completed. If confirmed I will be happy to provide the Committee with my views on the completed report.

QUESTION #17

QUESTION: Do you believe it necessary to maintain price controls on domestically produced petroleum for so long as the world price is determined by a cartel?

ANSWER: No, if we achieve an effective windfall profit tax instrument, it should not be necessary to maintain controls.

QUESTION #18

QUESTION: Recently, the FEA took the position that a hydroelectric plant should not be constructed in the Middle Snake River/Hell's Canyon area, and that this area should be preserved as a recreational facility. Should the FEA change its position?

ANSWER: On July 10, 1974, Mr. Duke Ligon, Assistant Administrator for Energy Resource Development, testified before the Parks and Recreation Subcommittee of the Senate Committee on Interior and Insular Affairs with respect to FEA's position on hydroelectric development in the Hell's Canyon reach of the Middle Snake River. In his testimony, support was given to legislation which would designate that portion of the Snake River which includes Hell's Canyon as a wild and scenic river. Support of this designation represented FEA's decision not to support proposed hydroelectric development in the area.

In response to this question of particular concern to Senator McClure, I promise the Senator that if confirmed I will reexamine the FEA determination and notify him of my decision.

QUESTION #19

QUESTION: Please provide a response to reconsideration of the helium conservation program.

ANSWER: The Helium Act Amendments of 1960 called for dependable and sustained supplies of helium for the Federal government's activities by providing contracts to the west Texas natural gas industry. Helium is a natural component of natural gas and it can be separated while natural gas undergoes treatment for other purposes. An important feature of these contracts was the stipulation that a significant decline in demand for helium would be sufficient cause for termination of the contracts.

During the 1960's, the National Aeronautical and Space Administration's projects consumed about 90% of all the Federal government's helium requirements. More recently, however, this large NASA helium demand has dropped considerably because of the completion of many NASA projects and the implementation of helium recovery(recycle) techniques. The substantial quantities of helium produced in excess of demand were delivered to the Department of the Interior for underground storage.

Subsequent to the Department of Interior's thorough investigation of the Nation's helium needs through the year 2000, the Secretary of Interior determined that because sufficient helium had been stored to meet the Nation's projected needs until the year 2000,

QUESTION #19 (Cont.)

and because of the recent sharp reduction in the Federal government's helium requirements, the four delivery contracts existing at that time should be terminated.

Section 104(e)(3) of the Energy Reorganization Act of 1974, which established the Energy Research and Development Administration, provides: "The Administrator (of ERDA) shall conduct a study of the potential energy applications of helium and, within six months from the date of the enactment of this Act, report to the President and Congress his recommendations concerning the management of the Federal helium programs, as they relate to energy."

The Federal government currently has in storage about 53 billion standard cubic feet of helium, and additional quantities of helium are held in storage by private interests. Presuming that 300 gas cooled nuclear reactors, which use helium, are constructed through the year 2000, they would require only 1 billion standard cubic feet of helium. There are several other very interesting possible uses for helium in the energy field. Helium's unique properties at low temperatures suggest possible use in cryogenic electrical transmission lines and for purposes of low temperature, magnetic storage.

These possibilities are under consideration by the National Laboratories under AEC's jurisdiction, and I am certain that

QUESTION #19 (Cont.)

the energy aspects of the need for helium will be carefully evaluated as required by the Energy Reorganization Act. I fully support a careful study of the potential energy applications of helium as required by the Act.

QUESTION #20

QUESTION: What standards would you set to cover the following professional and ethical considerations?

(a) Will you agree not to accept employment with any company over which FEA has regulatory authority within one year after your official resignation as the Administrator of FEA?

(b) Would you require the same standards of your policy making employees?

(c) How do you intend to insure that the people appointed to policy making positions do not try to "better themselves" while serving at the Federal Energy Administration? Is it better to set a standard now and find the exceptions later? Please submit your set of standards for the Federal Energy Administration, and address yourself to the basic problem of conflicts of interest.

ANSWER: I agree that it is absolutely critical that we maintain public confidence in the integrity and objectivity of FEA's activities. Toward that end I fully support continuation --and, where possible, the improvement-- of the "lobbying" regulations which FEA has adopted, as well as its conflict-of-interest regulations, which are designed to assure that the character of a person's public service is not influenced by the possibility of private gain.

QUESTION # 20 (Cont.)

Your questions raise two very difficult specific issues within the general conflict-of-interest framework. The first is the degree to which, if at all, I should promise, if confirmed as FEA Administrator, to refrain from accepting employment in any industry subject to FEA regulation upon completion of my term in office. A corollary question, of course, is whether--and to what extent--such restrictions should be imposed upon my principal assistants. I have already informed the Committee that, in recognition of the great sensitivity of the position of FEA Administrator and the importance of establishing beyond question the integrity of that office, that I would undertake, if confirmed, not to accept employment with an oil company within one year of my departure from FEA.

With regard to my policy-making assistants, as indicated during the public hearings on my confirmation, I will necessarily have to study the problem in depth. While I am concerned about the Government's ability to recruit highly qualified personnel for important and sensitive policy-making positions, I also have a deep appreciation of the important points you raise.

Within 90 days of my confirmation I will submit to the Committee my recommendations on professional and ethical considerations as they apply to top-level policy makers in FEA. During the course of my study I will solicit the views of the Congress.

QUESTION #21

QUESTION: What has been and what is now the nature of the regulation used by FEA to govern transfer prices? Have there been significant violations of these rules? If so, in each instance, what was the nature of the violation, how much money was involved and what is the current disposition of the case? What rules governing transfer prices have been proposed by FEA? (Include those rules not adopted and those pending) Provide a discussion which compares these rules as to their rationale, potential for limiting unwarranted profits and minimizing costs to U.S. consumers, and ease of enforcement.

FEA has indicated that major integrated companies have landed crude oil at prices above those of the smaller independents. The major companies claim that this effect results from the FEA program requiring mandatory crude oil sales. Has FEA attempted to determine the validity of this explanation?

ANSWER: If confirmed, my intention is to review current regulations to ensure equitable implementation. However, not being familiar with the present treatment of transfer pricing regulations, I have referred this question to the Federal Energy Administration for answer. The FEA response is as follows:

QUESTION #21 (Cont.)

The regulation used by FEA in the past to govern transfer prices was §212.83(b) of its regulations. This required that the "landed cost" of imported crude petroleum acquired in transactions with affiliated entities be computed by use of the customary accounting procedures generally accepted and consistently and historically applied by the firm concerned. FEA's (then FEO) only enforcement of this regulation was a Notice of Proposed Violation of May 8, 1974, to Gulf Oil Corporation which alleged that, in determining landed cost of crude petroleum received from its Nigerian and Canadian affiliates, Gulf had failed to comply with §212.83(b). Because the case is still pending, it is inappropriate to discuss the money involved.

FEA has further authority to govern transfer prices under §212.83(c) which provides that

> "Whenever a firm uses a landed cost which is computed by use of its customary accounting procedures, the FEO may allocate such costs between the affiliated entities if it determines that such allocation is necessary to reflect the actual costs of these entities or the FEO may disallow costs which it determines to be in excess of the proper measurement of costs."

Recently FEA has issued new regulations which are interpretative in nature, setting out with more precision the methods for measurement of actual landed costs which is required in any application of §212.83(e).

After two proposed rulemakings on the subject, FEA on October 31, 1974, promulgated the final regulations applying §212.83(e) and proposed additional regulations to supplement them. The final regulation prevents companies from establishing transfer prices in excess of competitive market levels. The proposed supplemental regulation would impose a company-by-company ceiling price which is intended to limit firms to normal competitive margins on

QUESTION #21 (Cont.)

their crude oil sales and is thought to be consistent with existing open market prices.

The final regulations are designed to establish more precise standards for disallowing costs in excess of those permitted under the price regulations. Refiners found in violation of the regulations would be required to reduce their prices and refund the excess costs. International companies are permitted to set their prices to U.S. affiliates at arms-length levels. FEA will collect price data on all foreign crude oil transactions monthly from each company.

From this data, FEA will establish for each type of crude oil a representative price and a maximum price. The representative price which FEA will use to measure transfer prices is the median price of all reported transactions between non-affiliated companies. The maximum price is the greater of (a) the representative price plus 10 cents per barrel or (b) the lowest price at or below which 65 percent or more of reported third-party sales have taken place. If FEA finds that company-set prices are above the maximum price, such prices would be disallowed, and companies would be required to recompute their allowable costs using the lower representative price.

Under the proposed supplemental regulations, the ceiling price is tentatively set to allow firms profit margins equal to their May 1973 margins plus 25 cents per barrel. The additional allowance is necessary to cover certain increases in capital costs, and to reflect open market prices. The price ceiling is not designed to supplant the other regulations, but to provide an added degree of certainty concerning allowable transfer prices during the period required for FEA to collect the data necessary to compute representative and maximum prices.

Both sets of rules are designed to protect American consumers against artifically high prices for products refined from crude oil purchased by the U.S. firms from their overseas subsidiaries. While FEA does not yet have sufficient information to draw firm conclusions, the data which is available strongly suggests

QUESTION #21 (Cont.)

that certain international companies may in some cases have been charging their U.S. affiliates more for crude oil than they could obtain in arms-length sales to third parties. Until actual data is collected and analyzed pursuant to the new regulations, however, it is not possible to estimate the potential for limiting unwarranted profits and minimizing costs to the consumer. The new regulations should be easy to enforce because of the fixed standards which they establish.

Data available to FEA indicates that several of the major integrated companies in the last few months have landed crude oil at prices above those of the independent refiners. While this effect may in part result from the FEA program requiring mandatory crude oil sales, the program does not account for the general discrepancy in prices. This phenomenon cannot be fully analyzed until FEA has available the more detailed information which it will collect as part of the new regulations and its continuing audit program.

QUESTION #22

QUESTION: What limits the price to consumers of propane derived from natural gas plants? What limits the price of propane derived from refinery operations? Discuss the rules FEA has used to regulate the propane market including significant types of violations, amounts of money involved, enforcement problems, and the rationale for rules which have been or are being proposed.

ANSWER: If confirmed, my intention is to review current regulations to ensure equitable implementation. However, not being familiar with the present treatment of propane pricing, I have referred this question to the Federal Energy Admininistration for answer. The FEA response is as follows:

> Propane produced by natural gas plants has been frozen at May 15, 1973 levels, which in some cases represented the price at which propane was sold in August, 1971. The current limit on the price of propane derived from refinery operations is the May 15, 1973 price plus that percentage of the increased cost of crude oil since May, 1973 which equals the ratio that propane production bears to all products produced from that crude oil. The FEA expects to publish very shortly a revision of the regulations to more adequately treat propane produced from natural gas as well as taking into consideration those natural gas processors and refiners whose propane prices were caught below market levels. To minimize the impact on residential users, the regulation will permit refiners and natural gas processors to allocate permitted costs away from propane to other products. The necessity for the change is evidenced by the decreased supply of propane coming from both refineries and gas plants.

QUESTION #22 (Cont.)

Propane violations have been given special attention by FEA.

After the transfer of the compliance program from IRS in July a compliance program called Project Speculator was expanded. Project Speculator was initiated by IRS when it became apparent that propane prices were being driven up by illegal broker activity, particularly by large markups that were being made without any product even changing hands.

During February through June 1974, the IRS committed a team of 15 men to Project Speculator. When FEA assumed Compliance activities in July of 1974 added emphasis was placed on this project. The FEA Regional Offices assigned investigators to Project Speculator without restriction as to numbers resulting in an expansion of the project to its current size.

To date, 77 selected firms have been investigated. As of November 1974, FEA has taken a formal position that 28 firms are in violation as a result of completed audits of the firms' records. These violations total $43.1 million. Another approximately $25 million in violations exist among the 49 other firms. FEA's audits indicate that 98-99% of the selected 77 firms are or have been in violation of FEA pricing regulations.

It is difficult at this time to give an accurate figure on just how much actually has been refunded since the 28 completed investigations are in varying stages of compliance, discussion, clarification or litigation.

The establishment of a compliance strategy and priority workload system has necessitated the redistribution of the number and skills of the Regional Compliance and Enforcement staff.

Additional study is being made to ensure that a combination of the allocation regulations and FEA investigations prevent a reoccurrence of speculative activity this winter. If necessary additional regulation changes will be made although this may be disruptive to distribution systems.

QUESTION #23

QUESTION: Explain the role of so-called "banked costs" in determining future prices of crude oil and petroleum products and in adjustments for overcharges by individual companies which FEA has ordered. How much has been "banked" during each month since the embargo by U.S. companies? How much of the bank has been cancelled in lieu of consumer refunds? How does this compare to the total amount of refunds to consumers through price rollbacks? What is the role of banked costs for tax purposes?

ANSWER: If confirmed my intention is to review current regulations to ensure equitable implementation. Not being familiar with the present treatment of "banked costs," however, I have referred to the Federal Energy Administration for answer. The FEA response is as follows:

> So-called banked costs have no relationship to future prices of crude oil. Banked costs can be allocated to future petroleum product prices on a controlled basis. As of November 1, 1974, companies can use in their price calculations for a particular month, up to 10% of their "banked" costs of October 31, 1974, or any month thereafter or whatever amount is necessary to maintain prices at price levels for the previous month. (Reference F.R. November 6, 1974) Previous to this time, companies were able to use the full "bank" if the marketplace would support it. A reduction in a firm's banked costs equal to an amount of overcharge on a particular product has been one method of enforcing compliance with the regulations to assure that only a dollar-for-dollar cost pass-through is allowed. The total of banked costs since implementation of the price rules is $1.5 billion.

QUESTION #23 (Cont.)

The monthly totals are:

Date M/Yr.	Bank Difference (X1000)
9/74	1459940.8
8/74	1730188.1
7/74	1618647.2
6/74	1544449.7
5/74	1056590.3
4/74	790853.6
3/74	416186.0
2/74	427761.5
1/74	335971.2
12/73	-27334.3
11/73	268622.7
10/73	112942.9

Additionally, approximately 75% of our compliance actions at the refiner level involved reduction in a firm's bank vs. actual refund to the marketplace. The reduction in the bank prevents a firm from passing through to the consumer increased costs in an amount equal to the overcharge. The Bank has no purpose for tax benefit.

QUESTION #24

QUESTION: What method has FEA used to determine the amounts of domestic crude oil produced in each of these categories? Has company-supplied data describing production in these categories been provided with certification? Has any of this data been verified on a spot-check basis? What are the penalties for submitting inaccurate production data as part of this program?

What is the regional breakdown of production in these price categories by month since September 1973? What is the structure of the production in each category in terms of characteristics of the petroleum industry: major companies, independents, large, mid-range and small producers?

What data has FEA gathered concerning the costs associated with maintaining production and bringing on increased incremental production in each of these categories?

ANSWER: If confirmed, my intention is to review current regulations to ensure equitable implementation. Not being familiar with the present method of information collection, however, I have referred to the Federal Energy Administration for answer. The FEA response is as follows:

> The FEA has continued to use the Cost of Living Council CLC-90 reporting system to collect

QUESTION #24 (Cont.)

information on the sales of stripper, new, old and released crude oils. This program will be replaced shortly with the FEA-P302-M-0 form and reporting requirements which requests information in a format consistent with the updated regulations. Both the old and new forms are submitted to FEA with a required certification which aids in the Compliance and Enforcement effort. Attached to this sheet is a capsule description of the enforcement effort on this system entitled Project Manipulator. The violation penalties are specified in 10 C.F.R. Part 205 as $2500 for each civil violation. However, since fradulent reporting may be encountered, the criminal sanctions of Title 18 will apply.

The FEA Office of Policy and Analysis has the responsibility of analyzing the CLC-90's to determine nationwide trends. The attached chart exhibits this analysis on a percentage basis.

At this time, the crude category data is not delineated either by PAD or type of producer. However, the FEA data bank could be used to obtain this information if the Policy and Analysis Office is requested to reprogram its current retrieval system.

The FEA Office of Policy and Analysis is now completing an analysis of various regulatory options to promulgate regulations which would stimulate the production of crude oil. The analysis considers crude oil in the categories of primary, secondary and tertiary rather than as new, old and released. In the course of this study, incremental cost data have been developed.

ATTACHMENT #1

PROJECT MANIPULATOR

Project Goal: To conduct field investigations and take corrective action against producers who are selling more new oil than they produce.

National Plan:

1. Select targets nationwide that indicate maximum potential violations.
2. Analyze results of target cases to determine trends and violation methods in order to develop effective strategies which conform to legislative mandates and FEA regulations.
3. Conduct training of regional representative at the National Office to maintain coordinated investigative procedures on a nationwide basis.

Progress to Date:

Sept. 3, 1974 Began trial investigations and interviews of oil producers.

Oct. 7, 1974 Implemented procedures which use FEA reporting system to target oil producers. Initial 125 targets selected.

Nov. 4, 1974 Basic training manual completed.

Nov. 20, 1974 Training manual updated with regional C&E support.

Nov. 22, 1974 Completed training program in National Office.

Dec. 2, 1974 Regional Offices begin training programs.

Dec. 9, 1974 Field investigations of oil producers begin in most regions.

NOTE: C&E estimates that 50% of the initial target cases will be completed by February 28, 1975.

ATTACHMENT #2

Controlled Oil			Uncontrolled Oil	
Date	Old Oil	New	Released	Stripper
October	76	7	4	13
November	71	10	6	13
December	71	17	6	13
January	60	15	10	13
February	62	16	10	13
March	60	16	11	13
April	60	16	11	13
May	62	15	10	13
June	63	15	9	12
July	64	15	9	12
August	66	14	8	12
September				

QUESTION #25

Inasmuch as I was not a party to the crude equalization rule making procedure, I have asked FEA to respond to your specific questions regarding the program.

Experience, however, has taught us that systems of regulations sometimes produce effects other than that originally intended. Therefore, if confirmed, I will undertake a thorough review of the program. The purpose of the review will be to ascertain if it is achieving a beneficial result on our economy and consuming public without unduly burdening various segments.

If I find the program is not accomplishing the desired goal, I will not hesitate to recommend changes.

FEA's response to the specific questions are:

QUESTION: Provide a discussion of the issues associated with the crude oil costs equalization program. Include, in particular the effect of this program on the programs for mandatory crude oil sales, mandatory crude oil allocation and its effect on the incentives acting on refiners to reduce their imports of expensive and potentially insecure imports of foreign crude oil.

QUESTION #25 (Cont.)

ANSWER: Approximately 2/3 of U.S. domestic crude oil is under price controls at approximately $5.25 per barrel. The remaining 1/3 of domestic production is free of price controls and prices for it currently approach the cost of imported crude oil. With percentages of price-controlled domestic crude oil differing among refiners the historic raw material cost structure of the industry has been badly distorted. The crude cost equalization program has been designed to minimize this distortion. Other factors being equal - crude quality, location, foreign crude costs, transportation costs, etc. - all refiners would have exactly the same crude costs. Other factors, of course, are not equal. The cost equalization program, therefore, has the potential for returning the refining industry to its historic competitive environment. This should insure the competitive viability of the small and independent refiners.

As a consequence of the crude cost equalization program, FEA anticipates product costs and prices to be more nearly competitive. It is FEA's desire that this development will permit eventual product deallocation and the removal of product price controls.

The crude cost equalization program should also reduce the importance of the mandatory crude oil sales program as well

QUESTION #25 (Cont.)

as the volumes sold under it. Heretofore, the mandatory sales program was important to some refiners primarily because of its impact upon their average crude costs. The crude cost equalization program should largely replace this need. FEA will, of course, have to examine carefully the ability of the small and independent refiners to obtain crude before making major adjustments to the mandatory crude sales program.

With regard to crude imports, the crude cost equalization program should have only limited impact. Domestic crude will still be as fully produced as if the cost equalization program had not been implemented. Crude imports are superficially rewarded because they earn "entitlements" when that crude is run. The crude, however, would have been imported anyway out of absolute necessity. The crude cost equalization program is basically a method of approximately equalizing crude costs, the effects of which should stretch no further than U.S. boundaries. Moreover, product imports under the program receive only 30% of the entitlements earned by crude imports, and should not be significantly higher than they would be in the absence of the program.