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REPORT TO THE SUBCOMMITTEE ON REORGANIZATION, RESEARCH, AND INTERNATIONAL ORGANIZATIONS COMMITTEE ON GOVERNMENT OPERATIONS UNITED STATES SENATE

Problems In The Federal Energy Office's Implementation Of Emergency Petroleum Allocation Programs At Regional And State Levels

B-178205

Federal Energy Administration

UNITED STATES
GENERAL ACCOUNTING OFFICE

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This study reports on: how FEA is adopting and administering regulations; how FEA detects and stops violators to insure compliance; and the extent and effectiveness of state and local participation in its programs. GAO's study showed that: FEA's regional offices were not processing applications for allocations promptly or correctly; the management information system designed to keep track of allocation cases was ineffective; and the enforcement and compliance effort was rather limited and may have been misdirected.

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

B-178205

The Honorable Abraham A. Ribicoff
Chairman, Subcommittee on Reorganization,
Research and International Organizations
Committee on Government Operations
United States Senate

Dear Mr. Chairman:

Your letter of February 8, 1974, asked that we continuously monitor the operations of the Federal Energy Office and its successor agency, the Federal Energy Administration (FEA), after legislation establishing FEA becomes effective.[1] Specifically, you asked that we gather information on:

--Due process--the administrative procedures FEA is following in adopting and administering regulations.

--Compliance--the manner in which FEA detects and stops violators to insure compliance with its regulations.

--State and local participation--the extent and effectiveness of local participation in forming and implementing programs.

--Organization and staffing problems--the progress made in starting up and staffing FEA, including coordination with other agencies.

--Compliance with statutory requirements--compliance with reporting and other requirements imposed by legislation and the adequacy of energy data collection and analysis efforts.

--Evenhandedness of actions--complaints received, exceptions issued, and the administration of such activities.

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[1] On June 27, 1974, legislation establishing FEA became effective. Accordingly, we have used the abbreviation FEA in this report.

On March 18, 1974, we sent you an interim report on progress in staffing FEA. More recently, we concentrated on FEA's activities in the areas of due process, compliance, State and local participation, and even-handedness of actions--areas in which FEA's regional offices and States' energy offices were heavily involved. On May 23, 1974, we briefed staff members of your Subcommittee on the results of our work. As requested by your staff, this report summarizes the information presented at that briefing.

In developing this report, we sought to gather as much information as possible in a short time and to identify potential problem areas. We visited 6 of FEA's 10 regional offices and 2 States within each of the 6 regions. (See appendix I.) We based our observations on the information which was readily available at these offices and on discussions with FEA headquarters officials.

Any discussion of the problems FEA has experienced should be tempered by the recognition that FEA was created at a time of crisis and had to act swiftly to satisfy public fears. In such circumstances, it was inevitable that problems should arise. In general, FEA officials we contacted recognized many of the problems we identified and evidenced a positive attitude toward working to improve the agency's programs.

Given this perspective, our work at FEA regional offices showed the following difficulties.

--FEA's regional offices were not promptly or correctly processing applications for allocations.

--The management information system designed to keep track of allocation cases was ineffective.

--The enforcement and compliance effort was rather limited and may have been misdirected.

At the State level, we found that States appeared to be using the State set-aside for hardship allocations of fuel. We noted, however, that many priority users, such as agricultural producers, were requesting and receiving set-aside fuels, even though such priority users should have been receiving 100 percent of their current requirements from regular supplies. Delays in processing applications at FEA regional offices were one apparent cause of priority users requesting hardship allocations.

As you are aware, FEA regulations and programs have been revised many times since the agency was created. Most of FEA's actions were intended to respond to changing conditions and to resolve problems which arose. Also, the lifting of the Arab oil embargo has changed the crude oil supply picture and led to a relaxation of allocation programs in recent weeks, as well as discussion of phasing out the programs over the next few months.

BACKGROUND

Under the Emergency Petroleum Allocation Act of 1973 (87 Stat. 627) and Executive Order 11748 issued December 14, 1973, FEA is directed to exercise specific temporary authority to minimize the adverse effects of shortages of crude oil, residual fuel oil and refined petroleum products.

Because the petroleum allocation program is so large, specific responsibilities have been placed at four levels. FEA's national office has established the broad policy guidelines. It also administers programs, such as the crude petroleum allocation program and the refinery yield control program, which, because of their scope, have nationwide impact. The 10 FEA regional offices are primarily responsible for equitably distributing the available supply of petroleum products within the States they administer. The State energy offices, by administering reserved quantities of certain petroleum products, attempt to provide temporary relief for hardship situations which arise. The suppliers, by processing requests for increased supply and by complying with orders issued by FEA and State energy offices, also play a key role in the allocation program.

FEA REGIONAL OFFICES

Allocation of Petroleum Products

The primary responsibility of the FEA regional offices was processing applications for increases to the 1972 base level of petroleum products when the applicant and the supplier could not agree. The offices also assigned suppliers to applicants who were unable to find sources of supply.

Another important responsibility of the regional offices was to direct the auditing, verification, and investigative procedures which would insure compliance with FEA's regulations and orders. They also functioned as liaisons, passing information between the FEA national office and the State energy offices.

Processing Allocation Requests

The following describes the more significant problem areas in FEA's processing of allocation requests. Generally, they fall into two classifications. The first is returned or backlogged applications which may have resulted in delayed allocations. The second is applications involving questionable processing procedures which may have resulted in inequitable or inconsistent treatment for requesters.

Returned and backlogged applications

The table below shows that from 31 to 53 percent of the applications received at the FEA regions we visited were returned.

Regional office	Percent returned
Boston	40
Atlanta	37
Chicago	31
Dallas	45
San Francisco	53
Seattle	47

Because the application process was complex, most of the applications from small retail outlets were incomplete and should have been sent to the State energy office or to the suppliers. When an application is returned without processing, the requester will receive only that amount he was receiving previously, or, if he was requesting assignment of a supplier, he will continue to be without a source of supply.

The table below shows the number of applications the six regional offices received and accepted through March 1974 and the number backlogged at the end of the month.

Regional office	Applications accepted	Applications backlogged	Percent of applications backlogged
Boston	4,502	1,754	39
Atlanta	18,858	2,877	15
Chicago	7,470	4,107	55
Dallas	11,731	3,122	27
San Francisco	8,147	1,182	15
Seattle	3,148	728	23

As indicated above, a large number of applications were backlogged at the time of our visit. In most regions, the backlog approached 1 month's workload. Although requesters whose applications were returned without processing or whose applications were delayed in processing could request temporary relief on a month-to-month basis from the State energy offices, we believe permanent resolution was preferable.

Processing problems

In examining selected applications processed by FEA, we noted a lack of documentation concerning the factors considered in arriving at decisions. We recognize that FEA's goal was to approve applications as quickly as possible so that the supply of petroleum products could be increased; however, the lack of documentation makes it difficult for anyone to evaluate the propriety of decisions. The lack of documentation may also have contributed to inconsistent decisions at each region because no basis for developing precedents was available.

Practices in granting allocation adjustments also differed among FEA regions. For example, three of the regions we visited were routinely granting adjustments for estimated growth in 1974 sales while three were not. Such inconsistent practices result in inequitable fuel distribution.

In addition, we also noted a number of deviations from the regulations. For example, FEA failed to grant the entire allocation required by some priority users.

Other processing problems apparent during our survey included:

--Several regions were having problems with duplicate adjustments being granted to some requesters.

--There were undetected computational errors which resulted in both overadjustments and underadjustments.

--Two of the regions had lost applications. Officials felt that when the requesters realized they had not received responses they would submit new applications.

Management information system

To manage the data on the allocation program, FEA established a nationwide computerized case tracking and reporting system. This system was intended to (1) instantly provide information on the status of any or all cases, (2) detect bottlenecks which required closer management attention, and (3) provide the statistics needed to evaluate the overall effectiveness of FEA's operation of the allocation program.

However:

--There were inconsistencies in the manner in which the regions entered information into the system.

--The system was not used to identify duplicate adjustments. Because some regions had backlogs of thousands of cases which had not been entered into the system, any attempt to do so would probably have been unproductive.

--The system was not used to provide feedback to State energy offices on the status of requests for permanent adjustments made by applicants requesting hardship relief.

Suppliers' Role

Under the petroleum allocation program, FEA assumed responsibility for making major adjustments of petroleum supplies and assigning suppliers to customers who could not obtain enough fuel. The suppliers were to keep records on each customer's requirements so that allocation bases could be determined and the need for adjustments could be reviewed.

Under a March 18, 1974, change to FEA's regulations, the suppliers were allowed to approve increased allocations to customers because of unusual growth in the customers' 1973 sales of petroleum products without FEA approval. More recent changes to the regulations, effective June 1, 1974, also provided increased flexibility by allowing the suppliers to increase and redistribute customers' allocations of fuel without FEA's prior approval.

As suppliers assume these additional responsibilities, we believe that an extensive FEA monitoring effort will be necessary because less information will be available to FEA to assess the propriety of suppliers' actions. On the basis of FEA's minimal past efforts at monitoring supplier action and on the basis of recent discussions with FEA officials, we doubt that FEA is prepared to do the necessary monitoring, particularly if supplies of crude oil again become restricted as they were last winter.

Special Problems of Independent Market

The petroleum supply for independents comes mainly from imported crude petroleum and from domestic crude petroleum which is not subject to price controls. Therefore, independents must purchase petroleum products at higher costs and consequently must sell them to the public at higher prices. To further complicate the situation, many independent retail outlets had great difficulty finding sources of supply.

Although the Petroleum Allocation Act mandates the protection of the independents' market share, a consultant's study prepared for FEA indicated that there had been a steady erosion of this market share. An FEA official advised us that because of the higher prices and difficulties in finding sources of supply, a number of independents closed.

Compliance With FEA Actions

FEA has the basic responsibility for compliance with and enforcement of (1) the mandatory petroleum allocation regulations and (2) price regulations ~~or other~~ actions necessitated by provisions of the Economic Stabilization Act of 1970, as amended, with respect to petroleum products and crude oil.

FEA regional offices were responsible for program direction of compliance and enforcement activities, except for certain audits of major oil refiners which FEA headquarters directed. Actual compliance and enforcement work, however, was performed by Internal Revenue Service (IRS) employees in accordance with a Memorandum of Understanding between FEA and IRS. Under ~~the~~ Memorandum of Understanding, dated January 11, 1974, FEA transferred compliance and enforcement responsibilities for allocations and pricing to IRS through June 30, 1974. IRS immediately assigned 300 investigators to this work and agreed to hire and train 1,000 energy investigators who would be transferred to FEA on July 1, 1974, at which time program operations would be returned to FEA. FEA officials told us that as of early July 1974, about 850 investigators had been transferred.

Potential problems in the audit and investigation program

The following potential problems were apparent in the audit and investigative program.

--IRS investigators primarily focused on pricing at the retail level; as a consequence, the effectiveness of refinery audits was questionable.

--Although penalties up to $2,500 per day of violations may be assessed, they rarely were. While complete data was not available, we were told that the penalties which were assessed were usually compromised at lesser amounts. (For example, in Boston an average penalty of $146 was collected from 253 violations.)

We also noted that FEA direction of IRS personnel at the regional level was hampered due to the lack of key regional personnel. Also, FEA's assessment of the effectiveness of IRS efforts was limited because of the limited amount of information being furnished FEA by IRS.

Limited refinery audit effort

To determine compliance with FEA requirements at the refinery level, FEA directed IRS to conduct in-depth audits of 31 major refinery companies. These audits, which were to cover all pricing transactions from May 15, 1973, through January 31, 1974, were assigned to about 62 IRS investigators. In a period of about 5 months, the two investigators per company were expected to cover the entire spectrum set forth in the audit program. (See appendix II.)

Although FEA expects to eventually assign 100 investigators to the refinery audit program, there are 200 companies in the continental United States that operate more than 250 refineries. The refineries range in capacity from 250 barrels per calendar day to over 400,000 barrels per calendar day. FEA officials confirmed that 100 investigators would not be sufficient manpower to assure that refiners comply with FEA requirements.

Pricing violations

Through May 3, 1974, IRS received almost 137,000 complaints of price violations. Although IRS could not correlate the number of complaints with the number of firms investigated, it informed us that about 54,000 firms had been investigated, and about 12,000 violations had been found. The dollar value of rollback--that amount of overpricing returned to the public--was about $17 million.

Pricing investigations were concentrated at the retail level and the vast majority of violations were in amounts ranging from $500 to $1,500. While there appeared to be a large number of these violations, the total dollar value appears insignificant in relation to the potential violations at the refinery and primary wholesale levels. For example, FEA refinery auditors detected one suspected refinery violation by a major oil company, which may amount to over $46 million.

Due Process

In reviewing FEA's administrative actions, we found that the area of due process was not well defined. Although there were a number of changes to FEA's regulations, some without prior public comment, the regulations were still complex and confusing. We discussed earlier the large number of applications returned without processing. Further, there were many appeals of allocation orders. Many of these appeals were backlogged because of

--a lack of clear criteria for determining which actions were subject to the appeal process;

--a lack of an established policy, together with guidelines, to use in evaluating appeals;

--insufficient personnel to process the appeals; and

--the lack of a system for disseminating appeal decisions so that they could be used as precedents in other appeals.

FEO officials advised us that improvements were being made in the area of due process including the assigning of permanent staff and the publishing of appeal decisions.

STATE ENERGY OFFICES

To implement FEA's regulations, each State could establish energy offices to help citizens when shortages of certain products caused severe hardship situations. This help was provided by using quantities of petroleum products reserved or set aside from the total quantities available for distribution within the State. For example, 3 percent of the gasoline available in each State was allocated to the State set-aside. Each State established the administrative procedures and hardship priorities which it was to follow in allocating its set-aside.

Besides providing assistance in hardship situations, the State energy offices were required to participate in the allocation program for small concerns operating within the petroleum product distribution system and for certain designated small consumers. This participation consisted of reviewing the applicants' requests and recommending what action FEA should take.

The following table shows the number of employees and the estimated annual operating costs of the State energy offices in the 12 States we visited.

	Number of State employees	State's estimate of annual costs for FY 1975[a]
Arizona	24	$ 170,000
California	26	180,000
Connecticut	31	1,100,000
Florida	35	700,000
Illinois	31	450,000
Louisiana	16	250,000
Massachusetts	26	450,000
Oregon	18	370,000
South Carolina	12	340,000
Texas	43	1,200,000
Washington	40	460,000
Wisconsin	11	150,000

[a]Significant differences existed in the allocation of operating costs under the various State accounting systems.

In some ~~of the~~ States, the energy offices did not have specific legislative authority for their continued existence. In these States, as in several others, opinions were divided on the need for the energy offices and the need for funding such a program from State resources.

State Set-Aside Program

Generally, States made hardship allocations for State set-asides on a month-to-month basis.

Hardship situations arose from any number of causes. Some of the more common causes included

--delays resulting from returned or backlogged requests for permanent adjustments of allocation levels;

--limited supplies available from applicants' normal sources; and

--reduced operating hours of retail outlets which had been the normal sources of supply for public service institutions, such as schools, police departments, etc., or for essential operations, such as agriculture.

In March 1974, the 12 States included in our survey had over 200 million gallons of petroleum products in set-aside. The table shows the composition of the State set-asides by type of petroleum product.

	Percent
Gasoline	55
Heating Oil	16
Diesel	15
Propane	9
Residual Heating Oil	3
Kerosene	2
Total	100

As shown above, gasoline comprised more than one-half of the set-aside quantity. Of the 110.6 million gallon gasoline set-aside, 94 percent was used to alleviate hardships. Each State's use is shown in appendix III.

The number of applications processed for hardship relief ranged from 436 to 4,945. Most States, however, had relatively small backlogs of applications at the end of March 1974. On the basis of the number of applications processed in March, as shown in the following table, and our examinations of selected hardship requests, we believe the State energy offices were providing timely assistance to applicants requesting hardship relief.

	Total applications processed
Arizona	750
California	4,945
Connecticut	(a)
Florida	653
Illinois	1,116
Louisiana	714
Massachusetts	1,045
Oregon	2,527
South Carolina	882
Texas	3,356
Washington	2,951
Wisconsin	436

[a]Records unavailable

Our examination of about 600 requests showed the following percentages of applicant types.

	Percent of requests
Agriculture production	26
Emergency services	6
Energy production	2
Sanitation services	1
Transportation service (public)	4
Cargo, freight, and mail hauling	5
Retail service stations	25
Other	31
Total	100

The first six types of applicants, which comprised 44 percent of the requests, are defined in the mandatory petroleum allocation regulations as priority users. They should have been able to obtain, from their suppliers or FEA, permanent allocation adjustments reflecting their actual current needs. In addition, 25 percent of the applications reviewed had been submitted by retail gasoline outlets. Many of these applicants had previously requested hardship assistance. This further indicates that some retailers were having difficulty obtaining permanent allocation adjustments. As previously noted, many applications for fuel were backlogged in the FEA regions and probably accounted for some of the hardship requests.

Also, according to FEA regional officials, some priority users who were to be receiving 100 percent of their allocation had to request hardship allocations for the State set-aside because of problems in obtaining petroleum products from their normal suppliers.

Several States expressed concern that not all product inventories available within the States were being reported and that some of the suppliers' inventory reports were inaccurate. Since these reports were used to determine the amount of set-aside, it was essential that all product inventories be reported accurately.

State Participation in Allocation Program

Because of the emphasis placed on the set-aside program, some of the States included in our survey had relatively large backlogs of applications for allocation adjustments or assignment of suppliers. As in the case of delays in FEA processing, delays at the State energy office also contributed to an imbalanced supply in the marketplace. Delays at the State energy office, however, take on added significance in light of the fact that, even when the State energy office had reached a determination on an application, it could only recommend to FEA the action to be taken. The application, together with the State energy office recommendation, was forwarded to the FEA regional office where further delays in final processing frequently occurred. In many instances, duplicate processing took place in the State energy office and the FEA regional office. The Dallas FEA region was an exception because this region had a representative at each State energy office who worked with the State energy office in development of its recommendations.

The following table shows, for the 264 applications we reviewed, the types of applicants requesting allocation adjustments or assignment of suppliers.

	Percent of requests
Agricultural production	46
Emergency services	2
Energy production	2
Sanitation services	3
Telecommunication services	1
Transportation service (public)	5
Cargo, freight, and mail hauling	2
Retail service stations	7
Other	32
Total	100

A number of these applicants had historically obtained their products from retail outlets but were requesting allocations from wholesale sources. For example, loggers and farmers, who were obtaining fuel from retail outlets, had installed fuel tanks on their property and were purchasing from wholesalers.

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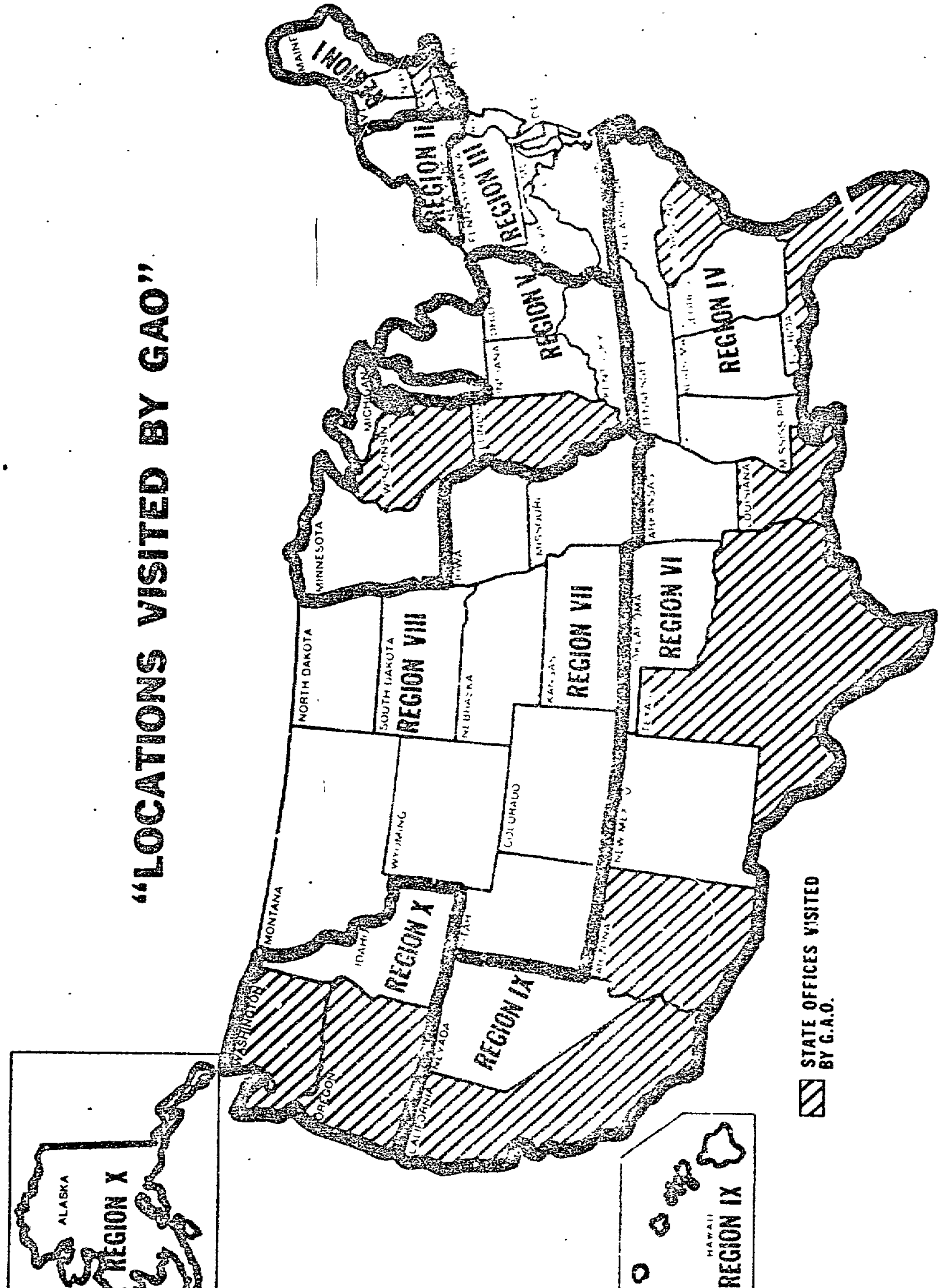
We will continue monitoring FEA's activities and will provide you with further briefings and reports as warranted. Two areas we plan to examine in more depth are (1) the effectiveness of the compliance and enforcement program and (2) efforts to protect independents.

We have informally discussed the matters covered in this report with FEA officials, and they have expressed general agreement. We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

Phillip S. Hughes
Assistant Comptroller General

"LOCATIONS VISITED BY GAO"



BEST DOCUMENT AVAILABLE

KEY ELEMENTS IN PLANNED
SCOPE OF REFINERY AUDIT EFFORT

--Insure that only allowable costs are passed through.

--Insure that additional profits do not accrue due to the cost passthrough.

--Insure that uniformity of price increases passed on in regards to products.

--Insure that no price discrimination is made on classes of suppliers.

--Insure that only customary levels of inventory are maintained.

--Insure that historic and consistent business practices are being maintained.

--Insure that the intent of the regulations is not being subverted.

STATE SET-ASIDE GASOLINE AVAILABLE AND PERCENT USED DURING MARCH 1974

	Gallons Available	Percent Used
Arizona	7,184,508	89
California	22,168,781	80
Connecticut	3,300,900	93
Florida	20,083,758	99
Illinois	11,871,036	99
Louisiana	4,966,993	99
Massachusetts	5,607,500	100
Oregon	2,490,202	100
South Carolina	3,119,523	100
Texas	21,092,028	98
Washington	4,064,948	99
Wisconsin	4,658,592	90
Total	110,608,769	