



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

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May 5, 1983



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To the President of the Senate and the
Speaker of the House of Representatives

This letter reports a deferral in budget authority provided for the Strategic Petroleum Reserve petroleum account which should have been, but was not, reported to the Congress pursuant to the provisions of the Impoundment Control Act, 2 U.S.C.A. §§ 681 et seq. The funds involved are used for petroleum acquisition, transportation, and injection activities for the Strategic Petroleum Reserve (SPR). A total of \$4.5 billion is available in the SPR account for oil deliveries in fiscal year 1983. We estimate that, at current prices, approximately \$800 million in the SPR account will remain unobligated in fiscal year 1983. Our estimate of the amount deferred is based on our calculation of the amount of funds that will not be used if the President continues to fill the SPR at the current rate for the rest of fiscal year 1983 and carries out current plans to enter into contracts in fiscal year 1983 for oil delivery in the first 6 months of fiscal year 1984. Our calculations are set out in the enclosure to this report.

The Office of Management and Budget (OMB) recently submitted to our Office a memorandum addressing several issues related to the SPR fill rate. In the memorandum, OMB maintained that there are difficulties with applying the Impoundment Control Act to the SPR funds. First, our estimate of the amount deferred includes certain funds transferred by the Department of Energy (DOE) to the Defense Fuel Supply Center (DFSC), DOE's agent for purchasing oil. The funds involved are recorded as obligations by DOE upon transfer to DFSC, which is authorized to commit the funds for oil purchases as directed by DOE. In our deferral report, we include the amount of funds so transferred to DFSC that DFSC has not yet committed to oil purchases. In its memorandum, OMB argued that the effect on the funds transferred to DFSC of congressional disapproval of the SPR deferral would be unclear, because those funds already are obligated by DOE.

In our view, the Impoundment Control Act requires reporting as part of the deferral of SPR funds, the funds obligated by DOE and transferred to DFSC, but uncommitted to oil purchases. Section 1011(1)(A) of the Impoundment Control Act defines "deferral of budget authority" to include--

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withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise)

* * *

(Emphasis added.)

Accordingly, withholding or delaying the expenditure of obligated funds, like those transferred to DFSC by DOE, constitutes a deferral to the same extent as withholding or delaying the obligation of budget authority.

OMB also noted that, when a deferral is disapproved, section 1013(b) of the Impoundment Control Act provides only that the deferred funds "shall be made available for obligation." Given that the Act requires that delays in expending funds, as well as in obligating funds, be reported as deferrals, we believe that, where a deferral of obligated but unexpended funds (such as the funds transferred to DFSC) is disapproved, section 1013(b) requires that the funds be made available for expenditure.

Second, OMB suggested that applying the Impoundment Control Act to SPR funds may be inconsistent with the scheme established by the Energy Emergency Preparedness Act (EEPA), Pub. L. No. 97-229, 96 Stat. 250 (1982), the statute which imposes minimum requirements for filling the SPR. Briefly, the operative provision of EEPA requires that the SPR be filled at a minimum rate of 220,000 barrels per day, but:

If funds are available in any given fiscal year to achieve an average annual fill rate higher than [220,000 barrels per day], the minimum required fill rate shall be the highest practicable fill rate achievable, subject to the availability of appropriated funds.

Section 160(c)(1)(D)(i) of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6240(c)(1)(D)(i), as added by section 4 of EEPA.

In our view, the existence of the deferral of SPR funds under the Impoundment Control Act does not depend on the determination of the "highest practicable fill rate achievable, subject to the availability of appropriated funds." To the contrary, whatever is determined to be the highest practicable fill rate, if management of the SPR account results in

funds remaining unobligated, such funds should be reported to Congress as a deferral under the Impoundment Control Act. However, the fact that the minimum requirement for filling the SPR is subject to a finding of "practicability" suggests that EEPA vests some discretion in the President to determine the minimum required fill rate, by allowing him to take into account factors relating to the prudent management of the funds. According to OMB's argument, this flexibility was approved by both Houses of Congress through passage of EEPA, but, under the procedures in the Impoundment Control Act, would be overridden by a resolution of one House disapproving the deferral. In effect, the action of one House would direct the President to fill the SPR at the highest rate the funds would support, a result that may appear inconsistent with the flexibility granted by EEPA.

The prospect of the ultimate outcome described by OMB has not escaped our attention. Nevertheless, we are constrained by both the Impoundment Control Act and the EEPA, which specifies that the Impoundment Control Act is to apply to SPR funds, to conclude that a deferral report covering the SPR funds is required. OMB's observations about the interplay between EEPA and the Impoundment Control Act are more appropriately for consideration by those in Congress who must decide whether to disapprove the deferral and, in some degree, the flexibility granted by EEPA.

Finally, OMB argued that the issue of applying the Impoundment Control Act to the SPR funds is made more difficult because they are no-year funds. The Impoundment Control Act applies by its express terms to all budget authority. We are not aware of any proposition to the effect that the authority to obligate funds which extends beyond one year is not budget authority. OMB also suggests that the Impoundment Control Act is difficult to apply in the context of a statute establishing a fill rate, rather than a funding level. To the contrary, the fill rate is determined by the amount of funds available and reporting a deferral in this context is no different from reporting a deferral of funds required to be used for any other activity.

Because the executive branch has not reported this deferral, we are now reporting it to Congress in accordance with section 1015(a) of the Impoundment Control Act. The amount of the deferral represents our estimate of the amount that will not be used in fiscal year 1983, based on the information we have to date. The amount will change if the

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executive branch changes the current rate of fill or its plans to enter into contracts for oil delivery in early fiscal year 1984.

Sincerely yours,

A handwritten signature in cursive script, reading "Milton F. Fowler". The signature is written in dark ink and is positioned above the typed name and title.

Acting Comptroller General
of the United States

Enclosure

ENCLOSURE

SPR Petroleum Account Deferral

FY 1983 Oil Deliveries

Contract	Barrels (millions)	Cost (millions)
PEMEX I	18.3	\$ 521
PEMEX II	40.3	1000
PEMEX Transportation		59
DFSC Spot	2.8	97
DFSC Long-Term	8.2	288
DFSC Spot	2.0	60
Additional Oil	8.7	261
	80.3	2,286
+6% Contingency ^{1/}		141
		<u>\$2,427</u>

FY 1984 Oil Deliveries (first 6 months)

40.15 million barrels x \$31.08/barrel = \$1,250

Total SPR Petroleum Account Budget Resources	\$4,477
Less FY 1983 Oil Acquisition	-2,427
Less FY 1984 (first 6 months)	-1,250
Deferred	<u>\$ 800</u>

^{1/} Current estimates are that permanent storage capacity will support a daily fill rate of 220,000 barrels. However, the pace of development of permanent storage capacity may allow filling above 220,000 barrels. The contingency allowance represents funds that would be used to fill the increased permanent storage capacity.