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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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OFFICE OF SPECIAL PROGRAMS

- ENERGY
- MATERIALS
- FOOD
- REGULATORY REPORTS REVIEW

B-178205

MAY 8 1975



The Honorable Frank Zarb  
Administrator  
Federal Energy Administration

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Dear Mr. Zarb:

We have reviewed the administration of the petroleum set-aside program by the State energy offices in Arkansas, Florida, New Mexico, New York, Oklahoma, and Virginia.

We examined program documents and interviewed officials at the six State Offices of Petroleum Allocation, the FEA regional office in Dallas, Texas, and FEA headquarters in Washington, D.C.

At the height of the Arab oil embargo, the State Offices of Petroleum Allocation played an important role in alleviating temporary shortages of petroleum products through allocations from the State set-asides to users who could not obtain fuel from their traditional suppliers and/or who had not been assigned new suppliers by FEA. When the embargo ended and supplies of petroleum products became more plentiful, the State set-asides in the States we visited were no longer being used strictly for emergency and hardship cases. Specifically, we found that many State set-aside allocations had been made with no or inadequate documentation that hardships or emergency requirements existed. We also found that States appeared to be allocating products for other than hardship or emergency situations.

Some FEA officials are aware that States are allocating set-aside for other than emergency and hardship uses. Due to confusion among FEA officials concerning whether FEA has the necessary authority to administer, review, and evaluate State set-aside programs, FEA has taken little or no corrective action.

The apparent lax administration of the State set-aside program may stem from the increased supplies of petroleum products now available compared with the supply situation when the program was established. Because of the changed circumstances, we believe that FEA should determine whether the set-aside program should continue in its present form.

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If the program is continued, we believe FEA should determine whether it is operating counter to the intent of the Emergency Petroleum Allocation Act of 1973 (Public Law 93-159) and the Mandatory Petroleum Allocation Regulations by permitting users to exceed the fuel allocations to which they are entitled. FEA also should take action to insure that State Offices of Petroleum Allocation administer the set-aside program compatibly with the above law and regulations.

#### BACKGROUND

The Emergency Petroleum Allocation Act of 1973 mandated, among other things, equitable distribution of refined petroleum products among all users and areas of the country.

In keeping with the intent of this law, the Federal Energy Office (FEO), FEA's predecessor organization, issued regulations on January 15, 1974, providing for uniform allocation of crude oil and petroleum products on an equitable basis to all users. To insure uniform allocation, fuel was distributed on a pro rata basis, depending upon the amount used during a base period. The base period varied somewhat for the different types of fuel.<sup>1</sup> The regulations permitted FEO to assign suppliers to users

- not in business during the base period, or
- without a supplier during the base period, or
- with a base-period supplier unable to supply fuel.

In addition, users could apply to FEO for increases in their base-period volumes to cover unusual growth, such as plant expansion or population growth.

The January 15, 1974, regulations also established the State set-aside program for certain allocated petroleum products and permitted States to apply to FEO to create a State Office of Petroleum Allocation. All States implemented set-aside programs. Currently, under the State set-aside program, each month the State offices withhold from the normal distribution a predetermined percentage of available fuels (motor gasoline and propane, 3 percent and residual fuel oil and middle distillate, 4 percent).

The regulations intended that State offices use the set-asides to resolve emergencies and hardships due to fuel shortages. A hardship was defined in the January 15, 1974, regulations as: "\* \* \* a situation involving

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<sup>1</sup>Base period for set-aside products: residual fuel oil--month of 1973 corresponding to the current month for all nonutility users; propane--October 3, 1972, through April 30, 1973; and middle distillate and motor gasoline--month of 1972 corresponding to the current month.

or potentially involving substantial discomfort or danger and/or economic dislocation, caused by a shortage of an allocated substance due to maldistribution of that substance."

The regulations for the allocation of set-asides were amended on May 6, 1974, to allow the States greater flexibility in releasing set-aside products and to delete the definition of hardship. The deletion of the definition permitted the States to establish their own definitions to be used in administering their programs. The amended regulations provided that the State office, in addition to allocating set-asides on an application-by-application basis, could order the release of part or all of a supplier's set-aside volume to purchasers within certain State geographical areas, to alleviate geographical supply imbalances.

FEA did not establish procedures for States to use for allocating the set-asides until September 5, 1974. Most important among the procedures then established was that State offices insure that applications for set-asides, either written or oral, give enough information to enable the State offices to determine whether the proposed allocations would satisfy the objectives of the Emergency Petroleum Allocation Act of 1973 and the Mandatory Petroleum Allocation Regulations.

From March through November 1974, about 1.85 billion gallons of gasoline, 283.5 million gallons of diesel fuel, 19.5 million gallons of propane, and 173.8 million gallons of home-heating oil were allocated from State set-aside volumes nationally.<sup>1</sup>

Under the Special Energy Research and Development Appropriation Act, 1975 (Public Law 93-322), FEA received \$10 million to partially reimburse States for participating during fiscal year 1975 in energy programs, such as the set-aside program.

SET-ASIDE ALLOCATED WITHOUT DOCUMENTATION OF  
HARDSHIP OR EMERGENCY DEMONSTRATION

Many States allocated fuel with no documentation of hardship or emergency requirements. For instance, one State required evidence that a hardship existed only for allocations of 40,000 gallons or more. In other States, the justification provided appeared inadequate to support the existence of hardships or emergencies. The following are examples of justifications for hardship and emergency accepted by the State offices we visited. One example came from each State.

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<sup>1</sup>These figures are based on FEA data obtained from the States; however, not all States reported for all months.

- There are so many forms that I have not had time to fill them out.
- Need gas for festival.
- Demand greater than supply.
- Have more orders than we can fill.
- To maintain 7 a.m. to 10 p.m., 7 days per week, station hours.
- Retail gas unavailable.

Another State permitted major oil company suppliers to distribute two-thirds of the State gasoline set-aside. Before allocating set-aside gasoline, the suppliers determined that a hardship or emergency existed. Since the State did not require the suppliers to provide either a list of the users supplied or the basis for the allocations made, the State did not know who received set-aside fuel or for what reasons. Consequently, neither the State nor FEA had any assurance that set-aside fuel had been allocated only in hardship or emergency cases. A State official said he had "faith" that the suppliers would allocate fuel only to those users demonstrating hardship and emergency requirements.

At a third State we visited, one company received 63 percent of the entire propane set-aside between March and October 1974. The following chart shows, by month, the quantity and percent of propane allocated to that company.

<u>Month</u>	<u>Gallons allocated</u>	<u>Percent of total allocated</u>
March	70,000	90
April	73,900	100
May	130,368	100
June	214,040	100
July	224,260	54
August	296,600	77
September	122,760	21
October	<u>460,011</u>	<u>73</u>
8-month total	<u>1,591,939</u>	<u>63</u>

Our review of the firm's applications for temporary hardship relief from the State set-aside revealed, in most cases, the absence of information required by FEA's regulations.

After our work in that State, we determined the firm did not have a request pending at FEA's regional office for an assignment of a supplier or for an adjustment of base-period volume supply. An FEA senior case resolution officer told us the firm has submitted a request for the propane, but FEA had returned the application for lack of justification and documentation. The application had not been resubmitted.

On November 27, 1974, we told the FEA regional administrator of the results of our work and asked him to advise us of the results of any investigation undertaken in the matter. As of March 24, 1975, FEA's investigation was still in progress.

#### QUESTIONABLE ALLOCATION OF STATE SET-ASIDES

We noticed some States appeared to be allocating products for other than hardships or emergencies. For example, one State office phoned prime suppliers, resellers, and end-users in the State to determine whether they needed any of the remaining set-asides. One reseller said he had neither a need nor a storage capacity for the fuel but would accept it later and use it to supplement his next month's allocation from his normal supplier. He later obtained 100,000 gallons of fuel from the set-aside.

Another State repeatedly allocated products from the set-aside to the same applicant when the applicant's basis for requesting set-aside products was that his normal supplier's product prices were too high.

Some FEA officials were aware that problems exist in administering the State set-aside program. However, these officials have taken little or no action to correct the problems. For example, an FEA regional office learned that some States within the region were distributing set-asides for other than emergencies and asked FEA's national office for compliance and enforcement what action could be taken. On September 26, 1974, a reply, signed by the National Director, Enforcement Policy and Coordination Division, stated that FEA had no authority over allocating State set-asides and that the States were authorized to distribute the set-asides for whatever purposes they deemed appropriate.

A memorandum dated January 13, 1975, from FEA's Acting Assistant Administrator, Operations, Regulations, and Compliance, to regional administrators stated that it had been alleged that some States had improperly distributed set-asides by making all assignments in the last few days of the month or by making assignments to brokers and others in instances not necessarily related to emergency or hardship requirements and that other States had not used the set-asides at all. The memorandum states:

"In this regard, if a State is misusing its State set-aside or is using it improperly, then such instances ought to be approached on a case-by-case basis."

When questioned about the above memorandum, an FEA official said that he was unsure whether FEA had the authority to review State allocations of set-aside products.

LACK OF FEA PROGRAM GUIDANCE AND REVIEW

Other than the guidelines contained in the Mandatory Petroleum Allocation Regulations, the States had received no directives from FEA on administering the set-aside program. We found only one State that followed FEA's guidelines in administering the program. Program administrators at four of the States believed that FEA had given the States the right to operate the set-aside program as each one saw fit.

FEA had reviewed set-aside operations at only one of the six States we visited and never questioned the State's use of set-aside fuel. FEA officials at the national level said that FEA had not checked or verified the States' compliance with regulations. The officials also said the expense involved in monitoring and evaluating the program would not be worthwhile.

There is confusion within FEA concerning its authority to investigate allegations of State misuse of set-aside fuel. As previously mentioned in this letter, FEA officials are unclear as to their authority once fuel is given to the States. According to an official of FEA's Office of General Counsel, the Federal Energy Administration Act of 1974 (Public Law 93-275), the Emergency Petroleum Allocation Act of 1973, and FEA's regulations do not preclude FEA from administering, evaluating, or investigating the energy programs at the State level.

Because there is no consistent interpretation of FEA's authority over the State set-aside program, FEA has elected not to investigate set-aside uses. Because of this "hands-off" policy, the States believed that their programs were administered as FEA intended.

We understand that FEA has contracted with a consulting firm for an analysis and evaluation of the set-aside program, but that the results of the contractor's examination have not been finalized.

We believe as long as FEA is partially reimbursing States for participation in energy programs including the set-aside program, FEA should take steps to insure State set-aside programs are administered consistently with the Emergency Petroleum Allocation Act and the Mandatory Petroleum Allocation Regulations.

## CONCLUSIONS

State set-aside fuel was allocated in many instances with no or inadequate documentation that a hardship or emergency requirement existed. Because individuals were allocated State set-aside fuel without adequate justification that a hardship or emergency existed, these individuals may have exceeded the allocations to which they were entitled under the regulations. In this respect, some individuals may have avoided filing with FEA for an adjusted allocation by repeatedly applying for and receiving State set-aside allocations.

Because of the confusion among FEA officials as to whether FEA has authority to administer, review, and investigate State energy programs, FEA has had a hands-off approach concerning the set-aside program.

The lax manner in which the State set-aside program apparently is being administered may stem from the increased supplies of petroleum products now available compared with the supply situation when the allocation program was imposed.

## RECOMMENDATIONS

In view of the changed supply situation and the manner in which the program is being administered, we recommend that FEA reevaluate its set-aside regulations to determine whether the set-aside program should be continued in its present form. FEA should consider reducing the amount of fuel allocated to the set-aside program, restricting the program to those petroleum products for which hardship or emergency requirements exist, or stopping the program until such time as a shortage may again develop.

If the set-aside program is continued, we recommend that FEA take the following actions to correct the more specific problems noted in our review.

- Review the Federal Energy Administration Act of 1974, the Emergency Petroleum Allocation Act of 1973, and the Mandatory Petroleum Allocation Regulations, to determine whether FEA, in fact, has the authority to administer, evaluate, or investigate the use of State set-aside fuel. Should FEA determine that it does not have such authority, it should change the regulations or seek changes in the law, if necessary, to obtain this authority.
- Determine whether State offices have established and are following consistent and concise criteria for evaluating hardships and emergencies.

--Determine whether State offices are allocating set-aside fuels for reasons other than those of hardship and emergency and take appropriate action to correct any deficiencies in the program.

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions he has taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

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We shall be pleased to discuss the contents of this letter in further detail should you so desire.

Sincerely yours,



Monte Canfield, Jr.  
Director