



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

119710

Resources
COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

October 8, 1982

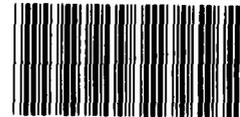
B-209176

The Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate

The Honorable Henry M. Jackson
Ranking Minority Member
Committee on Energy and Natural
Resources
United States Senate

The Honorable John Warner
Chairman, Subcommittee on Energy
and Mineral Resources
Committee on Energy and Natural
Resources
United States Senate

The Honorable Bill Bradley
United States Senate



119710

Subject: Status of the Administration's Implementation of
the Energy Emergency Preparedness Act of 1982
(GAO/RCED-83-33)

Your August 11, 1982, letter requested that we monitor and analyze reports to be prepared by the Department of Energy (DOE) and others under the Energy Emergency Preparedness Act of 1982 (EEPA). As part of our monitoring activities you asked us for a status report by October 8, 1982, on whether the statutory requirements and deadlines would be met. In a subsequent discussion on September 27, 1982, your staff asked us to review the extent of interagency coordination in developing and approving the reports required by the statute. This letter and the enclosures constitute the status report.

Since the EEPA reports are still in a very early stage of preparation and this is an interim report, we cannot offer a final conclusion on whether the reports' contents will meet the statutory requirements. However, we do raise several concerns about the reports based on preliminary information provided by DOE officials. We will analyze the reports' contents when they are submitted to the Congress.

(001713)

023685

EEPA required the President and the Secretary of Energy to produce the following reports by the following dates:

- Legal Memorandum on existing authorities (November 15, 1982).
- Strategic Petroleum Reserve (SPR) Drawdown Plan (December 1, 1982).
- SPR Drawdown and Distribution Report (December 1, 1982).
- Comprehensive Energy Emergency Response Procedures (December 31, 1982).
- Regional Reserve Report (December 31, 1982).
- Strategic Alcohol Fuel Reserve Report (December 31, 1982).
- Economic Impact Analysis (August 3, 1983).

Although DOE intends to meet these deadlines, and the reports are progressing according to plan, it is too early to say with certainty whether the drafts will be completed and approved by DOE as scheduled. After DOE approval, only 2 weeks have been allotted for final review outside DOE for all but one report. However, an official of the Office of Management and Budget stated that 2 weeks was adequate and had been agreed upon in advance. The reports may also have a limited scope, not specifying precise emergency response policies.

Department of Justice staff expect to submit the Legal Memorandum to the Attorney General and the White House so that the Congress will receive it by the reporting deadline. Justice views the preparation of the memorandum as its responsibility, although DOE has provided input and will review the draft.

SCOPE AND METHODOLOGY

We examined the status of the Legal Memorandum and all the required reports. However, we focused most on the Legal Memorandum, Emergency Response Procedures, and SPR reports since your letter expressed particular interest in these areas. EEPA's provisions concerning filling the SPR will be reported on in our October 15th quarterly SPR report to the committee. We obtained information for this assessment from interviews with officials of DOE's Emergency Preparedness and International Affairs groups, the Departments of State and Justice, and the Office of Management and Budget. The Assistant Secretary for Environmental Protection, Safety and Emergency Preparedness and his top staff cooperated fully and provided us with the information we needed so that we could meet the tight reporting schedule set for this interim report.

We did not obtain any of the draft reports or outlines at this time since they are still in a very early stage of preparation and are likely to change greatly. Our audit work was conducted in accordance with generally accepted Government auditing standards.

Responsibility for all reports lies with DOE, except the Legal Memorandum which is being prepared by Justice. Because of this division of responsibility, we will discuss the Legal Memorandum and DOE's reports separately.

DOE REPORTS

How DOE organizes reporting activities

Within DOE, the Deputy Assistant Secretary for Energy Emergencies in the Office of the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness has lead responsibility for all but one of the reports. Enclosure I shows how DOE organizes emergency preparedness functions. The Economic Impact Analysis is being prepared by DOE's Office of Policy, Planning and Analysis.

The Office of Energy Contingency Planning is directly in charge of producing the Office of Energy Emergencies' reports. This office will collect input from other groups in DOE, including the Energy Information Administration; the Office of Policy, Planning and Analysis; the Office of Alcohol Fuels; and the Office of International Affairs. The Deputy Assistant Secretary for Energy Emergencies told us that the Department of State would be called upon to contribute on an "as needed" basis.

DOE intends to meet reporting deadlines

The Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness told us that DOE intends to meet its reporting deadlines. While it is too early to tell whether DOE will do so, reports are now progressing according to plan. Emergency preparedness staff have established internal deadlines to facilitate timely completion of report drafts (see encl. II). While the report preparation phase has only just begun, Emergency Preparedness staff have kept to their schedules so far. The Director of the Office of Energy Contingency Planning reported that all outlines and rough drafts due the week of September 24, 1982, had been completed. DOE intends to have drafts for final review outside the Department for the SPR reports on November 17 and the three others mentioned above on December 17.

DOE solicited public comments in a Federal Register notice published on September 29. These comments will not be on drafts, but are being solicited to help DOE develop the reports. No public comment on report drafts is being sought. DOE has set deadlines for public comments on November 5 for both SPR reports,

and on December 3 for the Emergency Response Procedures, Alcohol Fuel and Regional Reserve Reports.

Short review period may threaten timely reporting

The clearance process could slow report issuance because only 2 weeks have been reserved for clearance outside DOE for all reports except the SPR Drawdown Plan (SPR Plan). Limited input by other agencies--partially because the programs to be covered are still unclear--the possible lack of advance review by other agencies, and the potentially large number of concurrences needed may make approval difficult in the short time allotted.

Limited input from other agencies may inhibit quick approval. The DOE official in charge of preparing the Emergency Procedures Report told us that input from other agencies on the proposed emergency decisionmaking system was not obtained. Department of State officials confirmed that DOE has not asked them for their input on any of the international elements in EPA's required reports. However, the DOE official pointed out that the specific programs laid out in the reports are ongoing DOE programs. As such, they are normally coordinated with other agencies for other purposes.

Program level coordination normally is informal for the working level and formal for interagency groups such as the Interdepartmental Group on International Energy Policy. That group is chaired by an Assistant Secretary of State and has comparable level participation by DOE and seven other agencies. An Interagency Task group that coordinates Defense Production Act energy activities is another example of a formal group which coordinates development of plans. However, neither of these groups has been asked for input for the overall report at this time. In order to address this problem, the Chairman, Cabinet Council on Energy and Natural Resources, established a working group on September 30 to examine and resolve issues which may arise in preparing the reports. The working group is chaired by the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness and the Senior Staff Member for National Security Affairs of the National Security Council. The agencies represented at the group's first meeting on October 4, 1982, were DOE, Justice, the National Security Council and the White House. The Departments of Defense, State, and the Treasury have been invited to attend the second meeting on October 12, 1982. In order to solicit input from these agencies, DOE shared its current outlines for the reports at the group's first meeting. It will be difficult to assess whether the type of program level input plus whatever is provided by the working group members will adequately reflect other agencies' views until more details about the reports are known.

The possible lack of advance review of report drafts is another factor that could make quick clearance of the reports outside DOE difficult. Reviewing agencies--including the Cabinet Council working group--and administration officials may not receive the drafts until 2 weeks before the reports are due to the Congress. According to the Deputy Assistant Secretary for Energy Emergencies, compliance with a DOE notice dated September 13, 1982, requires that no drafts be circulated outside of DOE before the Secretary's office clears them. Unless the Secretary gives his explicit approval, DOE staff cannot supply others with drafts before the final 2 weeks of review. DOE officials intend to ask the Secretary of Energy to approve early release of the draft report so DOE can obtain feedback.

A potentially large number of reviewers would have to approve the reports in 2 weeks. DOE's Deputy Assistant Secretary for Energy Emergencies believed that the Council of Economic Advisors, the Senior White House Policy Advisor, the Office of Management and Budget, and the Defense Department will be involved in the clearance process. The extent to which other White House staff, the Federal Emergency Management Agency, the National Security Council, and the Cabinet Council on Natural Resources and Environment (including the Attorney General, Deputy Secretary of Transportation, and the Secretaries of the Interior, Agriculture, Housing and Urban Development, Energy, Commerce, and State) will be included is unclear. Obtaining concurrences from all of these groups could slow report issuance.

The Associate Director for Natural Resources, Energy, and Science at OMB told us that the 2 weeks for review and concurrence were adequate and was agreed upon in advance. He also stated that he did not expect to have problems with the reports because the administration's energy policies were clearly stated, and specific guidance on the reports was given in advance to DOE's Assistant Secretary for Environmental Protection, Safety and Emergency Preparedness. Furthermore, he felt that the close working relationship between the high-level officials that would be involved would facilitate the review. As in the approval of the administration's National Energy Policy Plan, he stated that he would meet with the appropriate Assistant Secretary of DOE and other key officials for a couple of hours and complete the review.

The scope of reports
appears to be limited

Our review of the evolving scope of the reports is based on extensive interviews with DOE officials. It should be noted, however, that the reports are in an early stage of preparation and their content could change greatly. DOE officials told us that the reports will not specify precise emergency response policies. Reasons DOE officials gave for why reports will not specify precise policies are: (1) the state of knowledge is not sufficiently advanced to support conclusions, (2) reporting deadlines are so

tight that reports can only be summaries of work in progress, and (3) DOE wants flexibility to respond to disruptions. The reports primarily present summaries of DOE's ongoing work and current thinking about contingency planning, according to the Deputy Assistant Secretary for Energy Emergencies. Information obtained about the Emergency Procedures and SPR reports points up their limited scope.

Emergency response procedures

EEPA requires that the Emergency Response Procedures Report describe options which could be used during a supply disruption and the likely sequence in which they would be taken, and specify how actions would be selected and implemented. The Senate Report accompanying EEPA shows that the procedures should contain some descriptions or criteria of what actions the administration would take in a supply disruption. In the Senate Report, the committee agreed that the Emergency Response Procedures should:

"* * * identify the response options or policies that the Administration would consider using, and should include, if not the precise criteria for decisionmaking, than at least descriptions of how decisions will be made, who will make them, and the general policy considerations that will be taken into account in selecting a particular procedure or course of action rather than other available alternatives."

DOE officials told us that the Emergency Response Procedures Report will lay out approximately 30 emergency programs along with a decisionmaking process called the Emergency Response Management System. Although subject to change, the report, as currently planned, will not specify under what circumstances and in what sequence the programs will be used. The responsible Program Manager told us that the report would instead describe how each program could be used most effectively in disruptions. The reason that DOE officials give for not specifying more precise procedures or policies is that their development is not sufficiently advanced to meet the tight reporting deadlines.

SPR reports

EEPA requires that the administration produce an SPR Plan, and SPR Drawdown and Distribution Report (SPR Report). The SPR Plan must state how SPR oil would be drawn down and distributed during a disruption. The Plan will be an update of the 1979 Plan which was required under the Energy Policy and Conservation Act. The SPR Report is required to specify the circumstances and strategies under which the SPR would be used. The Congress intended that the Report contain more analysis and greater detail than the SPR Plan. The House Report accompanying EEPA stated that requiring the SPR

Report, "strongly signals the intent of Congress that more planning and analysis of SPR options are needed." This would give the Congress an indication of the administration's intentions without restricting the Government's flexibility.

DOE officials we interviewed indicated that the December 1982 reports will not contain specific SPR drawdown policies. For example, the House report accompanying EEPA had criticized the previous plan for being, "extremely general in its approach to SPR distribution." The Program Manager responsible for the SPR Plan told us that the forthcoming report would be an update of the previous plan, altered to be more flexible and conform with administration energy policies. Furthermore, the Deputy Assistant Secretary for Energy Emergencies told us that the SPR Report will present the energy and economic effects of different drawdown strategies but no specific guidance on when to use the SPR.

Other reports

For the Regional Reserve report, DOE intends to pull together previous work on cost estimates and provide a synthesis of DOE's current thoughts about regional reserves, according to the Deputy Assistant Secretary for Energy Emergencies. The Deputy Assistant Secretary also told us that the Alcohol Fuel Reserve report would reflect DOE's limited state of knowledge and more specific conclusions would evolve over time. It is too early to tell what the contents of the Economic Impact report will be.

LEGAL MEMORANDUM

The Office of Legal Counsel, Department of Justice, is preparing a draft of the Attorney General's memorandum of law required by the act. Pursuant to section 272(a), the President must submit a memorandum of law to the Congress by November 15 describing the legal authorities the President can use to deal with oil-related energy emergencies. The statute also requires the memorandum to be prepared in consultation with the Secretary of Energy.

Department of Justice staff we interviewed anticipate that the Legal Memorandum will be completed on time. A draft of the memorandum is expected for review by the Departments of Justice and Energy about the middle of October. A final draft would go to the Attorney General and the White House for their consideration about November 1.

Staff of Justice's Office of Legal Counsel have met with lawyers from the Anti-trust and Lands Divisions, DOE, and the Federal Emergency Management Agency to identify all of the relevant statutory authorities available to the President to deal with oil-related energy emergencies. Written materials previously

prepared in the executive branch have been obtained and are under review.

No formal interagency working group has been set up to participate in or coordinate the preparation of the Legal Memorandum. Justice plans to consult with other executive branch lawyers as necessary. We were unable to ascertain whether Justice will submit the draft to other parts of the executive branch, besides DOE, before it is sent to the Attorney General and the White House. The Department views the preparation of the memorandum as its responsibility, consistent with the language in section 272(a).

AGENCY COMMENTS

The Departments of Justice and Energy reviewed this report in draft. They generally agreed with the facts and observations and limited their comments to providing additional information and clarifying several points. Their comments have been integrated into the appropriate sections of the report.

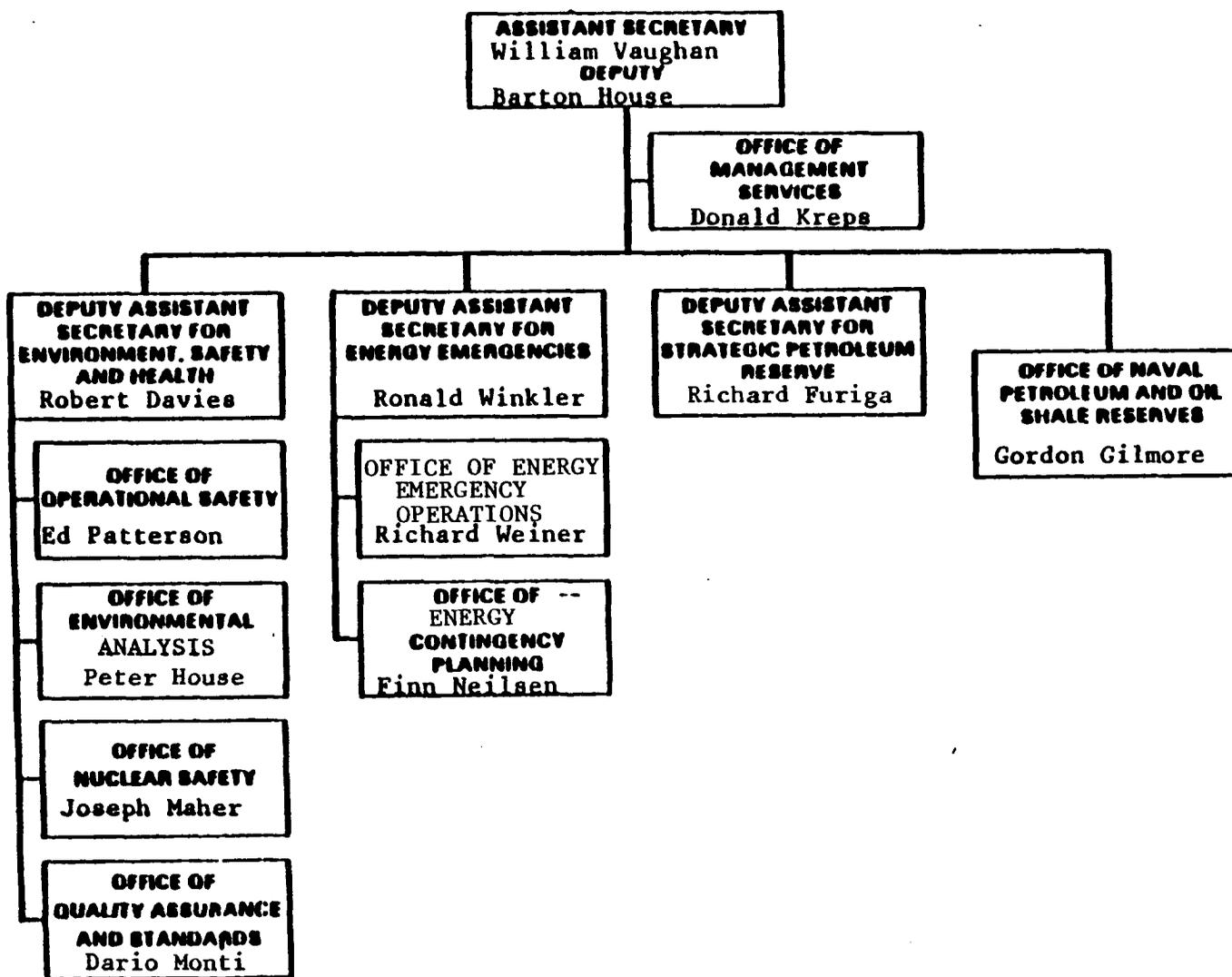
- - - -

Copies of this report are being sent to the Secretaries of Energy and State; the Attorney General; and the Director, Office of Management and Budget.

F. Kermi Roland
for J. Dexter Peach
Director

Enclosures - 2

Office of the Assistant Secretary Environmental Protection, Safety and Emergency Preparedness



6

DOE's TENTATIVE SCHEDULE FOR COMPLETING REQUIRED REPORTSSPR DRAWDOWN PLAN

- September 24, 1982 - Outline or rough draft
- October 8, 1982 - Draft for internal DOE circulation
- October 18, 1982 - Draft circulated externally
- November 5, 1982 - Public comments received
- November 17, 1982 - Final draft for review 1/
- December 1, 1982 - Final to Congress

SPR DRAWDOWN AND DISTRIBUTION REPORT

- September 22, 1982 - Outline
- October 15, 1982 - First draft
- October 29, 1982 - Second draft for internal distribution
- November 5, 1982 - Public comments received
- November 17, 1982 - Final draft 1/
- December 1, 1982 - Final to Congress

COMPREHENSIVE EMERGENCY RESPONSE PROCEDURES

- September 24, 1982 - Outline
- October 22, 1982 - Draft
- December 3, 1982 - Second draft for DOE circulation and receive public comments.
- December 17, 1982 - Final draft for review 1/
- December 31, 1982 - Final to Congress

REGIONAL RESERVE

- September 24, 1982 - Outline
- October 22, 1982 - First draft
- November 19, 1982 - Second draft for DOE circulation
- December 3, 1982 - Public comments received
- December 17, 1982 - Final draft for circulation 1/
- December 31, 1982 - Final to Congress

ALCOHOL FUEL RESERVE

- October 1, 1982 - Contract awarded
- October 8, 1982 - Outline
- October 29, 1982 - First draft
- November 19, 1982 - Second draft for DOE circulation
- December 3, 1982 - Public comments received
- December 17, 1982 - Final draft for circulation 1/
- December 31, 1982 - Final to Congress

ECONOMIC ANALYSIS 2/

- October 15, 1982 - Outline
- January 28, 1983 - Public comments received

1/Approved by the Secretary of Energy.

2/No milestone dates beyond public comments have been established at this time.