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Regulatory

June 1974

R. D. 1, Middletown Road
Parkton, Maryland 21120
October 23, 1974

Hon. Philip W. Buchen
Counsel to The President
The White House
Washington, D. C. 20500

Re: Promotion Policy and Practices of the
Interstate Commerce Commission

2400 Reservoir Avenue
Baltimore, Maryland 21124 and

Investigation Policy and Practices of the
U. S. Civil Service Commission

Dear Sir:

Attached is a copy of my letter dated June 8, 1974, addressed to the Chairman of the Interstate Commerce Commission and his reply of June 18th pertaining to my civil service career. While Chairman Stafford does not take exception to any of the facts presented, he flatly refuses to do anything.

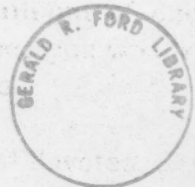
Counsel has advised me of grounds for a court suit and it has also been suggested that I turn my file over to the Washington Post, but I prefer to settle this in a less notorious way. I am in that large group of Americans who are not interested in suing or humiliating our government. The procedure for providing corrective action as delineated by the Civil Service Commission should, however, be fully enforced. The efficiency of our government is closely related to the morale of its employees.

Your comments and advice will be appreciated.

Very truly yours,

William L. Hughes
William L. Hughes

WLH/h
Encl.



Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

June 18, 1974

Mr. William L. Hughes
846 Evesham Avenue
Baltimore, Maryland 21212

Dear Mr. Hughes:

Thank you for your letter of June 8, 1974, concerning your employment history with this Commission and our promotion policies.

I can well understand your desire to further your career in the Commission and have had your record carefully reviewed. I find that although you have performed satisfactorily, the positions for which you have been qualified at GS-13 have been filled by other employees within the Commission who were considered to have superior qualifications and who were selected in accordance with the Merit Promotion Program. I believe that you have been counselled in the past by regional officials in this respect. Our files indicate that the Personnel Director forwarded a memorandum on February 17, 1972, to Regional Manager Cochran giving suggestions as to how you might improve upon your productivity skills. Mr. Cochran passed this information on to you.

In respect to some of the positions you mentioned you should be considered for, we believe you are being very unrealistic. The Assistant Managing Director position is in grade GS-17, and you could not under the Civil Service Commission's Qualifications Standards be eligible for a position at that grade level. This applies also to the GS-17 Director of the Bureau of Operations position and the GS-15 Regional Manager's position. The Standards require that a candidate must serve a minimum of one year in a position at the next lower grade level, so you can see, you would not qualify from this standpoint for these top level positions.

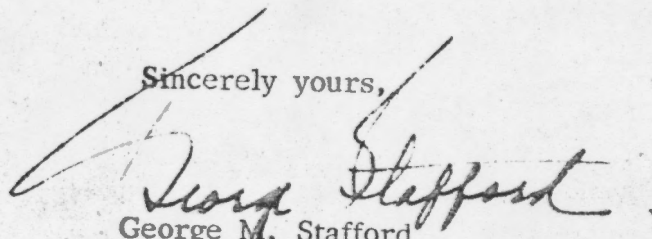
We value the services of a conscientious and devoted employee such as you and hope that you will continue to concentrate on improving



Mr. William L. Hughes

your work performance to the point of being in a top category for consideration for GS-13 vacancies. You may be sure that the Commission does recognize employees with meritorious ability and whenever possible promotes them accordingly.

Sincerely yours,


George M. Stafford
Chairman



THE WHITE HOUSE

WASHINGTON

October 8, 1974

MEMORANDUM FOR:

DEAN BURCH

PHIL BUCHEN ✓

FROM:

DONALD RUMSFELD

*By Phil Cheney
for D.R.*

Per our recent telephone conversations, this is to confirm that responsibilities for all liaison with Regulatory Commissions is to be transferred from Dean Burch to the Counsel's office. In addition, I understand that the Counsel's office will be developing guidelines for White House staff members as to communication with Regulatory Agencies and informational requests made of them. Further, I understand that this transfer is to occur immediately.



THE WHITE HOUSE
WASHINGTON

October 9, 1974

MEMORANDUM FOR:

LAURELLE SHEEDY

FROM:

SKIP WILLIAMS *SW*

SUBJECT:

Removal of the Chairmen of the
EEOC and the CAB

You have asked for my opinion about the legality of removing the Chairmen of the EEOC and the CAB. I am assuming that they will remain as members of their respective commission and board and that there is no claim of impropriety or malfeasance on their part.

With respect to the Chairman of the CAB, who has a statutory six year term as a member, 49 U.S.C. 1321(a)(2) provides that the "President shall designate annually one of the members of the Board to serve as chairman" Accordingly, I would recommend that the chairmanship be changed only at that annual time at which the President designates the Chairman. Although the change could arguably be made sooner, it would appear to frustrate the intent of the statute.

The members of the EEOC serve for five year terms. Because the relevant legislation provides in 42 U.S.C. 2000(e)-4(a) that the "President shall designate one member to serve as Chairman," without any reference to the frequency of the designation or to the term of the chairmanship, I conclude that the President may replace at will the Chairman with another member of the Commission.

bcc: Philip Buchen ✓
Bill Casselman
Phillip Areeda



For filing
in "Regulatory
Agency relations"
T.

THE WHITE HOUSE
WASHINGTON

October 14, 1974

MEETING WITH LEWIS A. ENGMAN

Monday, October 14, 1974

12 noon (15 minutes)

The Oval Office

From: Dean Burch

PURPOSE

To receive a brief rundown of the responsibilities and principal concerns of the Federal Trade Commission, from the Chairman of that Commission.

BACKGROUND, PARTICIPANTS & PRESS PLAN

- A. Background: This is one of a series of meetings with the chairmen of the independent regulatory commissions, to acquaint you with the substance of their work -- and them with you.
- B. Participants: Chairman Lew Engman.
- C. Press Plan: White House photographer. Meeting may be announced.

TALKING POINTS (a Memorandum prepared by Chairman Engman is attached) (Tab A)

1. The door of the Oval Office is always open, and the White House senior staff is available for consultation: Don Rumsfeld and Phil Buchen on matters of substance, Bill Walker with regard to personnel.
2. Lew Engman is to be commended for his very forceful recent speech on the elimination of regulatory practices that tend to inhibit the free play of the marketplace -- right in line with the Economic Message and the request to Congress to set up a National Commission on Regulatory Reform.
3. Seek the Chairman's ideas on what the White House can do to establish an effective working relationship.





OFFICE OF
THE CHAIRMAN

FEDERAL TRADE COMMISSION

WASHINGTON, D. C. 20580

October 14, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: Lewis A. Engman *LEW*

SUBJECT: The Federal Trade Commission

The mission of the Federal Trade Commission can be stated in 17 words: to preserve the health of the free enterprise system by guaranteeing that competition is free and fair. The importance of this mission in a free market economy which depends on competition is readily apparent, but in a time of rapidly rising prices, the Commission's responsibilities assume uncommon significance. We perform this mission with an annual budget of \$38 million and 1,600 personnel.

I view the Federal Trade Commission as a law enforcement agency -- not a regulatory agency.

I am under no illusions that antitrust enforcement alone can win the war against inflation, but vigorous competition, fair market practices and reliable product information can help insure that price increases born of excessive demand or shortages are not exacerbated by increases attributable to anticompetitive conduct, abuse of market power or unfair marketing practices.

The Commission has determined to create and utilize the best possible management and analytical systems in order to carry out our mission in the most effective manner. We are targeting for action those areas of the economy which have the greatest impact on the individual citizen in his capacity as consumer. Accordingly, in the current and forthcoming fiscal years, we are particularly intensifying our antitrust activities in three of the most vital and currently most inflation-prone sectors of the economy:

- energy
- food
- health care



We are attempting to target our efforts on the most critical areas of the economy. We also are attempting to assure that the benefits of our actions justify our costs to the taxpayer.

The Commission utilizes economic analysis to evaluate the benefits of every antitrust matter we undertake. We are developing the ability to apply cost-benefit analysis at the very beginning of an action, and during the next year we hope to improve our ability to perform follow-on benefit measurements.

The Commission also maintains a continuing liaison with the Antitrust Division of the Department of Justice which enables both agencies to avoid duplication of effort. Before either agency undertakes an investigation beyond the preliminary stage, a mutual decision is made as to which agency has the expertise or the statutory authority which would make it the best-equipped to undertake the investigation and whatever litigation may result.

Because of the legislation establishing the FTC as an independent agency, we bring to the area of antitrust law enforcement the benefits of administrative proceedings without the necessity of always having to go to court.

All but one of the Commissioners have served for less than two years. All of the top staff have joined the Commission within the past 18 months and we are attracting some of the best talent from law schools all over the country.



THE WHITE HOUSE
WASHINGTON

Phil A:

What is your view
of involvements
such as these?

P.

Regulatory

THE WHITE HOUSE
WASHINGTON

October 21, 1974

MEMORANDUM FOR: PHILIP BUCHEN
FROM: ANNE ARMSTRONG *AA*
SUBJECT: PARTICIPATION OF REGULATORY MEMBERS IN
WHITE HOUSE FUNCTION

Today I have invited our top women Presidential appointees to a reception for Madame Francoise Giroud.

Included in the guest list are several members of regulatory agencies; they are:

Catherine Bedell
Helen Bentley
Charlotte Reid
Elizabeth Hanford
Constance Newman
Dixie Lee Ray



file

THE WHITE HOUSE

WASHINGTON

October 24, 1974

MEMORANDUM FOR JOHN SAWHILL

FROM:

Henry Schlee
Henry Schlee

SUBJECT:

Iowa State Representative Harold O. Fischer

Attached are two letters from Representative Harold O. Fischer of the Iowa House of Representatives which describe a complaint about the FEA's Office of Exceptions and Appeals. I would appreciate it if you would look into the matter and respond to Representative Fischer.

Attachment

✓ cc: Philip Buchen





HAROLD O. FISCHER
STATE REPRESENTATIVE
GRUNDY COUNTY

SERVICE - 58TH, 59TH, 60TH, 60TH X,
61ST, 62ND, 63RD, 64TH, AND
65TH GENERAL ASSEMBLIES

WELLSBURG, IOWA 50680
PHONE: (515) 869-3836

House of Representatives

STATE OF IOWA
Sixty-Fifth General Assembly
STATE HOUSE
Des Moines, Iowa 50319

COMMITTEES

COMMERCE
APPROPRIATIONS
TRANSPORTATION

Wellsburg, Iowa
October 14, 1974

Mr. Glenn R. Schleede
Assistant Director - Domestic Council
The White House
Washington, D. C. 20515

Dear Mr. Schleede:

In your letter of October 1, 1974, you request "more specific information on the problem involved, ect.". The specific problem involved one of my constituents, Mr. Henry Hippen, Wellsburg, Iowa.

Congressman Gross has also attempted to assist Mr. Hippen with his energy problem but the content and detail of the requirements set out in the letter of August 26 from the FEA is an indication of the absolute low level to which bureaucratic government can sink. The information requested and the questions posed are in addition to a detailed form previously submitted. Further, the information requested reflect an extremely low level of intelligence and understanding of the business of operating a business such as Mr. Hippen's in an agricultural area.

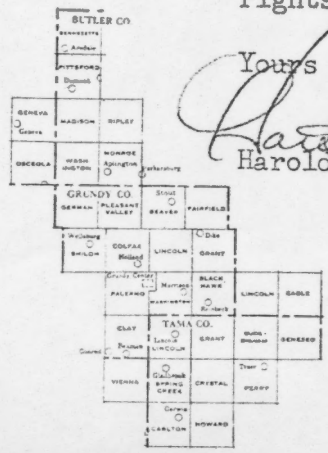
The furnishing of profit and loss statements, other confidential business information, and copies of income tax returns to a department of government, other than the Department of Revenue or a Grand Jury, is, in my opinion, unnecessary and the demands by a department such as FEA in this instance is an outrage and unreasonable invasion of rights.

Yours very truly,

Harold O. Fischer.

REPRESENTATIVE DISTRICT 38

BLACK HAWK COUNTY - ORANGE, LINCOLN, AND EAGLE TOWNSHIPS, AND THAT PORTION OF BLACK HAWK TOWNSHIP NOT INCLUDED IN REPRESENTATIVE DISTRICT THIRTY-THREE, AS DESCRIBED IN SUBSECTION THIRTY-THREE (33) OF THE APPENDIX.
BUTLER COUNTY - BENNEZETTE, PITTSFORD, MADISON, RIPLEY, WASHINGTON, AND MONROE TOWNSHIPS.
FRANKLIN COUNTY - GENEVA AND OSCEOLA TOWNSHIPS.
GRUNDY COUNTY - GERMAN, PLEASANT VALLEY, BEAVER, FAIRFIELD, SHILOH, COLFAX, LINCOLN, GRALPERMO, WASHINGTON, BLACK HAWK, AND CLAY TOWNSHIPS.
MARSHALL COUNTY - VIENNA TOWNSHIP.
TAMA COUNTY - LINCOLN, GRANT, BUCKINGHAM, GENESEO, SPRING CREEK, CRYSTAL, PERRY, CARLTON, AND HOWARD TOWNSHIPS.



FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

Mr. Henry Hippen
Henry Hippen Auto & Oil
Wellsburg, Iowa

AUG 26 1974

Re: Case No. FEE-1054

Dear Mr. Hippen:

This is to confirm the telephone conversation held between you and Mr. Alan Mintz of the Office of Exceptions and Appeals on August 23, 1974. Under the provisions of 10 CFR 205.41 an exception may be granted for the purpose of preventing or correcting a serious hardship or gross inequity. From the information which your firm has provided it appears that it is requesting a new base period supplier based on the financial hardship to your firm caused by expensive fuel and the lack of certainty of supply.

In order to fully document your case and to enable us to perform a comprehensive analysis of your exception application, we request that you furnish the following information:

1. Financial statements (Profits and Loss Statements and Balance Sheets) for Henry Hippen Auto & Oil and any other businesses directly or indirectly controlled by Henry Hippen Auto & Oil or the owner(s) of Henry Hippen Auto & Oil for the last five fiscal years and for the current fiscal year to date through the most recently completed fiscal quarter. In the event that audited financial statements are prepared for the business(es), please submit a copy of these statements. If the financial statements are not prepared for the business(es), submit a copy of income tax returns for the last five fiscal years.
2. A detailed description of all businesses directly or indirectly controlled by Henry Hippen Auto & Oil and by the owner(s) of Henry Hippen Auto & Oil including the nature of each business operation, the name and address of each business, the amounts of revenue and pre-tax income realized by each business during the most recently completed fiscal year and an identification of all covered products as defined in 10 CFR Section 212.31 sold by the businesses.



3. A schedule which specifies for each month of Henry Hippen Auto & Oil's current fiscal year to date the amount of sales revenue which it realized, the amount of total expenses which it incurred, the amount of total expenses incurred which were fixed, and the amount of profit which it realized.
4. A list of all base period suppliers of diesel fuel for Henry Hippen Auto & Oil, including a schedule of base period volumes, actual volume of diesel fuel supplied, and the price charged per gallon by each supplier for the period January 1, 1974 to the present.
5. A list of the principal competitors of Henry Hippen Auto & Oil and the prices currently being charged by these competitors for diesel fuel.
6. A statement of the historical price relationship between the sales of Henry Hippen Auto & Oil and these principal competitors.
7. Data as follows for each month from January, 1972, through the most recently completed month for Henry Hippen Auto & Oil:
 - a. the volume in gallons of diesel fuel sold;
 - b. the weighted average cost of diesel fuel sold;
 - c. the average selling price of diesel fuel sold.
8. Projected current fiscal year financial statements for Henry Hippen Auto & Oil assuming:
 - a. that the exception is granted as requested; and
 - b. that the exception request is denied.

In addition, provide a detailed description of the manner in which these projections are made and fully explain all assumptions which are included in the projections.

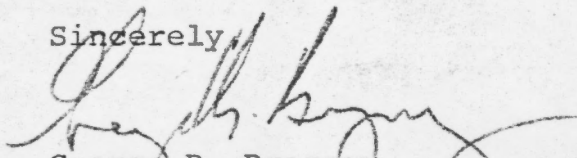


9. A schedule comparing the level of cost of each grade of diesel fuel sold by Henry Hippen Auto & Oil during the period January 1974 through the most recently completed month with the level of cost which Henry Hippen Auto & Oil would have incurred for the diesel fuel sold during that period if it had purchased it from the firm which it now requests as its supplier.
10. A schedule showing for each month, from January, 1974, through the most recently completed month the quantity of diesel fuel Henry Hippen Auto & Oil obtained from the Iowa State set-aside program, and the cost thereof.
11. Projected monthly assistance that will be required by Henry Hippen Auto & Oil from the Iowa State set-aside program for the remainder of the current calendar year and the first six months of 1975; assuming:
 - a. that the exception is granted as requested; and
 - b. that the exception request is denied.

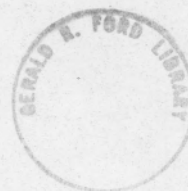
Henry Hippen Auto & Oil should provide a detailed description of the manner in which these projections are made and should fully explain all assumptions which are included in the projections.

As soon as we receive this information, we will immediately proceed with our analysis of Henry Hippen Auto & Oil's exception request. Please refer to the above case number in any correspondence regarding this appeal. If you have any questions, please contact Mr. Alan Mintz, Telephone (202) 254-9711.

Sincerely,



George B. Breznay
Assistant Director
Office of Exceptions and Appeals



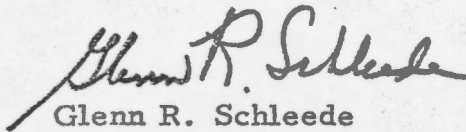
THE WHITE HOUSE
WASHINGTON

October 1, 1974

Dear Mr. Fischer:

Thank you for your September 25 letter to the President. I regret that the activities of the Federal Energy Administration's Office of Exceptions and Appeals has caused you such great concern. If you could provide more specific information on the problem involved, we will do our best to follow up on the matter with FEA Administrator Sawhill.

Sincerely,



Glenn R. Schleede
Assistant Director
Domestic Council

Honorable Harold O. Fischer
House of Representatives
State of Iowa
Des Moines, Iowa 50319

FEA (Jack Rafuse) concurred 10/1/74



13.
Ann Schmitt

"OUR LIBERTIES WE PRIZE AND OUR RIGHTS WE WILL MAINTAIN"



HAROLD O. FISCHER
STATE REPRESENTATIVE
GRUNDY COUNTY

SERVICE - 58TH, 59TH, 60TH, 60TH X,
61ST, 62ND, 63RD, 64TH, AND
65TH GENERAL ASSEMBLIES

WELLSBURG, IOWA 50680
PHONE: (515) 869-3836

House of Representatives

STATE OF IOWA
Sixty-Fifth General Assembly
STATE HOUSE
Des Moines, Iowa 50319

COMMITTEES

COMMERCE
APPROPRIATIONS
TRANSPORTATION

Wellsburg, Iowa
September 25, 1974

The Honorable Gerald Ford
President of the United States
White House
Washington, D. C. 20461

RE: Federal Energy Administration, Office of Exceptions & Appeals.

Dear Mr. President:

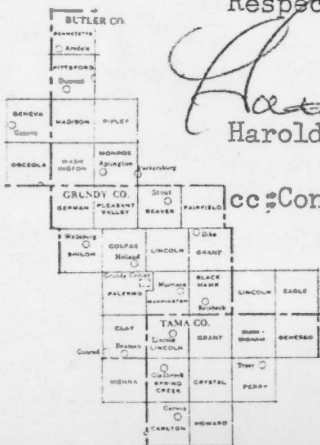
Many times during my public service, I have considered addressing the President of our country about a particular problem but in consideration of the many duties and responsibilities of your office better judgment has always resulted in the idea being dropped. In the dealings with big government in general and the FEA in particular, it is my opinion that the time has come to respond as forcefully as possible in asking that a thorough house-cleaning be initiated with the objective being to eliminate the wasteful, unnecessary, abrasive bureaucrats in this division of government.

Having always been an ardent conservative, I can point with strong conviction at this particular ballooning bureau as the most inefficient group of useless administrators with whom I have ever had the experience of coming in contact at any time during my public service.

It is very evident that the administrators in this agency are not aware of the fact that government should serve the people instead of the people serving the government. Your personal attention in cleaning up this operation is in the public interest and would be deeply appreciated.

Respectfully,

Harold O. Fischer
Harold O. Fischer.



cc: Congressman H. R. Gross
REPRESENTATIVE DISTRICT 38
BLACK HAWK COUNTY - ORANGE, LINCOLN, AND EAGLE TOWNSHIPS, AND THAT PORTION OF BLACK HAWK TOWNSHIP NOT INCLUDED IN REPRESENTATIVE DISTRICT THIRTY-THREE, AS DESCRIBED IN SUBSECTION THIRTY-THREE (33) OF THE APPENDIX.
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MARSHALL COUNTY - VIENNA TOWNSHIP.
TAMA COUNTY - LINCOLN, GRANT, BUCKINGHAM, GENESEO, SPRING CREEK, CRYSTAL, PERRY, CARLTON, HOWARD TOWNSHIPS.

11/12/74

To: Ken Lazarus

From: Phil Buchen



44B
11/9

United States Senate

WASHINGTON, D.C. 20510

November 7, 1974

The Honorable Philip Buchen
Counselor to the President
The White House
Washington, D. C.



Dear Mr. Buchen:

I would deeply appreciate your assistance in hastening the resolution of an urgent matter currently pending in the Department of Housing and Urban Development which affects the City of Cheyenne, Wyoming.

The urgency of this matter is occasioned by the fact that \$138,000 in HUD funds is at stake, and that money will no longer be available for allocation to Cheyenne after December 31, 1974, even if the outcome of the issue is in Cheyenne's favor, because the program under which the money was authorized expires on that date and will be replaced by the new Housing and Community Development Act.

This controversy dates back to May 10, 1973, when it was alleged that the City of Cheyenne had violated Title VI of the Civil Rights Act of 1964, which relates to discrimination in the allocation of federal funds. The City has pursued the appeals available under Section 602 of the Act, and at this point, Cheyenne is still waiting for a final administrative decision from HUD on the initial allegation. But the issue is complicated by the fact that funding of subsequent applications from Cheyenne for other programs has been deferred by HUD, pending a decision on the initial complaint. I am enclosing background material I hope will explain the present problem.

Having studied very carefully the Act and all of the Justice Department and HUD Title VI regulations, I am convinced HUD's action to withhold funding of the new \$138,000 application pending an administrative decision on the complaint involving a previous application, is wrong.

Further, when my staff explained the case and HUD's handling of it to lawyers at the General Accounting Office, the American Law Division of the Library of Congress, and the Justice Department, they found general, though unofficial, agreement with my contention that HUD apparently has improperly applied the law in this case. As the enclosures indicate, GAO and the Justice Department are pursuing the matter with HUD.

Meanwhile, time is growing short for the City of Cheyenne, and justice demands that a decision be made immediately not only on the initial question of whether discrimination took place, but also on the legality of HUD's refusal to fund the \$138,000 application pending the decision on the discrimination complaint.

Page Two
The Honorable Philip Buchen
November 7, 1974

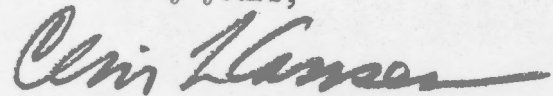
I have sent numerous telegrams and letters to Secretary Lynn, none of which have been answered, in which I requested the opportunity to meet with him about the legality of deferring the \$138,000. When I could not get a response from HUD, I then contacted the Justice Department and the General Accounting Office. But the question must be answered before December 31, and I am hoping you can assist me in that regard.

I believe very strongly that the law and the regulations implementing the law do not permit HUD to tie the allocation of the \$138,000 to the outcome of the initial complaint involving a previous program. But if we cannot establish the legality or illegality of this action before December 31, Cheyenne will lose the money even if HUD was wrong, because it is not likely a decision on the initial complaint will be made before that date.

Any assistance you might provide concerning this matter will be most appreciated. If you need additional information, please contact me or Patty Howe of my staff.

Thank you for your consideration.

Sincerely yours,



Clifford P. Hansen
U S S

CPH: ph
enclosures
cc: The Honorable Bill Nation
The Honorable James Lynn
William Thomson



11/12/74

To: Phil A.
From: Phil B.



JOE L. EVINS, TENN.
CHAIRMAN

TOM STEED, OKLA.
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JOHN D. DINGELL, MICH.
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JAMES C. CORMAN, CALIF.
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PARREN J. MITCHELL, MD.
BOB BERGLAND, MINN.

SILVIO O. CONTE, MASS.
JAMES T. BROYHILL, N.C.
J. WILLIAM STANTON, OHIO
JOSEPH M. MCDADE, PA.
VERNON W. THOMSON, WIS.
JACK F. KEMP, N.Y.
JOHN Y. MCCOLLISTER, NEBR.

COMMITTEE OFFICE
2361 RAYBURN HOUSE OFFICE BUILDING
225-5821
AREA CODE 202

HOWARD GREENBERG
STAFF DIRECTOR

HENRY A. ROBINSON
GENERAL COUNSEL

Select Committee on Small Business
House of Representatives of the United States
Ninety-third Congress
Washington, D.C. 20515

November 7, 1974

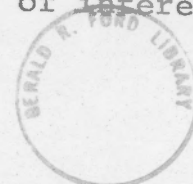
Mr. Phillip Buchen
General Counsel
The White House
Washington, D. C.

Dear Mr. Buchen:

During late September and early October of this year, the Subcommittee on Activities of Regulatory Agencies of the House Permanent Select Committee on Small Business held hearings on propane and crude oil allocation regulations promulgated by the Federal Energy Office. At these hearings, it became evident that a Phillips Petroleum Company executive, working in the Federal Government as a member of the Presidential Executive Interchange Program, held a position in which he was able to exert a direct influence on Federal energy policy decisions. This, of course, may represent a serious conflict of interest.

The Subcommittee is concerned that such conflicts of interest may be inherent in the operation of the Presidential Executive Interchange Program. The Subcommittee is also concerned about the apparent lack of small business participation in this program and the program's sorry record in this regard.

During the five years in which this program has been in existence, no Congressional review of its operations has ever been made, despite these two serious problem areas. The Subcommittee has, therefore, decided to hold oversight hearings during this Congress on the Presidential Executive Interchange Program, with emphasis upon the problems of the lack of small business representation and inherent conflict of interest.

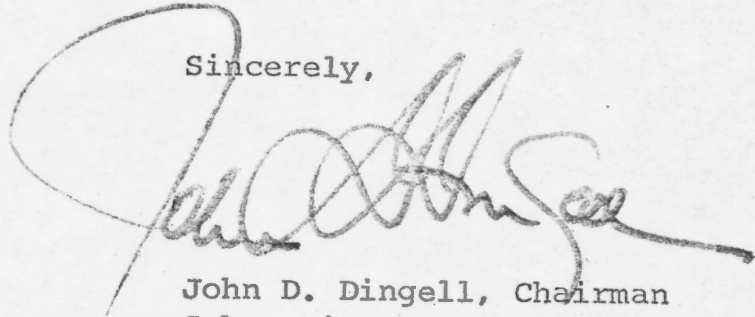


Mr. Phillip Buchen
November 7, 1974
Page 2

To assist the Subcommittee in this investigation, you are requested to provide the Subcommittee with all White House documents, studies, correspondence, notes, memoranda, or transcripts of meetings relating to the establishment, operation and/or funding of the Presidential Executive Interchange Program and the implementation of Executive Order 11451, signed by President Lyndon Johnson on January 19, 1969. This request includes, in particular, all documents prepared by, at the request of, or received by Peter Flanigan, John Ehrlichman, and/or Frederic Malek, which relate to this program.

With every good wish, I am

Sincerely,

A large, stylized handwritten signature in dark ink, appearing to read "John D. Dingell". The signature is written over the word "Sincerely," and extends across the middle of the page.

John D. Dingell, Chairman
Subcommittee on Activities
of Regulatory Agencies



Regulatory

THE WHITE HOUSE
WASHINGTON

December 3, 1974

MEMORANDUM FOR: ROBERT MONTGOMERY
GENERAL COUNSEL

FROM: PHILIP BUCHEN *P.W.B.*
COUNSEL TO THE PRESIDENT

We have no views on the matter posed by Governor Godwin but do forward his telegram for whatever relevance it may have for FEA.



THE WHITE HOUSE
WASHINGTON

December 3, 1974

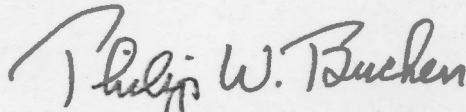
Dear Governor Godwin:

The President understands your concern for the availability of fertilizer for Virginia farmers and thus your concern for the availability of natural gas to the Farmers Chemical Association of North Carolina.

Because the Federal Power Commission is an independent regulatory agency that is not subject to control by the President, I hope you will understand that it is not possible for him to take a position on the North Carolina Natural Gas Corporation's petition which you favor.

Your telegram is, however, being forwarded to the Federal Energy Administration which will, I am sure, take appropriate account of Virginia's interest in the exercise of its responsibilities.

Sincerely,



Philip W. Buchen
Counsel to the President

Honorable Mills Godwin, Jr.
Governor of Virginia
Richmond, Virginia



158A
12/2

THE WHITE HOUSE
WASHINGTON

December 2, 1974

MEMORANDUM FOR: Phil Areeda
FROM: Dudley Chapman *DC*
SUBJECT: Mills Godwin Telegram re:
FPC Proceeding

The attached telegram from Mills Godwin to the President asks that he take a position on a matter pending before the FPC.

One option would be to forward it without comment, and perhaps a disclaimer, to the FPC and reply to Godwin that since the FPC is an independent agency we don't attempt to interfere, etc.

I see two disadvantages in that course. One, as a passive response to a prominent political leader, it could fuel criticism of the President for lack of leadership on energy. Second, even though the agency is independent, the Executive Branch should not be disabled from expressing its views in a proper way.

The action, however, should not be a Presidential one, at least in the first instance. The logical approach would seem to be a referral to FEA for such action as they deem appropriate.

I have attached drafts of such a referral to FEA and a response to Godwin for your signature.



THE WHITE HOUSE
WASHINGTON

*- Rec'd
11 AM
12/2*

TO: GLENN SCHLEEDE

FROM: MIKE DUVAL

For your information _____

Comments: FOR ACTION

[Handwritten signature]



The White House
Washington

WHD005 VAC085(1247)(1-015478C325)PD 11/21/74 1246

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1974 NOV 21 PM 12 53

01110 RICHMOND VIR 73 11-21 1234P EST

PMS THE HON. GERALD R. FORD

THE WHITE HOUSE

WASH DC 20500

MR PRESIDENT:

DIRECT YOUR ATTENTION TO SUPPLEMENT TO PETITION R.P. 75-16-2

OF THE NORTH CAROLINA NATURAL GAS CORPORATION. IF FEDERAL POWER

COMMISSION DENIES SUPPLEMENT PETITION, FARMERS CHEMICAL ASSOCIATION

OF NORTH CAROLINA WILL BE FORCED TO SHUT DOWN. THIS PLANT

PRODUCES 40 0/0 OF THE NITROGEN FERTILIZER FOR AGRICULTURAL

PRODUCTION IN VIRGINIA. URGENTLY REQUEST YOU TO ENCOURAGE THE

FEDERAL POWER COMMISSION TO GRANT THIS PETITION WHICH IS SO

NECESSARY TO THE AGRICULTURAL SEGMENT OF VIRGINIA'S ECONOMY.

MILLS E. GODWIN JR

GOVERNOR OF VIRGINIA

NNNN



D R A F T

Dear Governor Godwin:

Thank you for your telegram concerning the petition of the North Carolina Natural Gas Corporation. Because the Federal Power Commission is an independent regulatory agency, any submission of Administration views should be made in accordance with the procedures of that agency, and by the executive department or agency responsible for the subject matter. Your telegram has therefore been forwarded without comment to the Administrator of FEA for such action as he may deem appropriate.

Sincerely,

Phillip E. Areeda
Counsel to the President

The Honorable Mills Godwin
Office of the Governor
Richmond, Virginia

bcc: Honorable John Sawhill

D R A F T

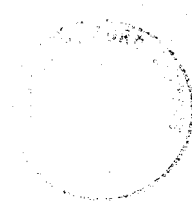
MEMORANDUM FOR: The Honorable John Sawhill
Administrator
Federal Energy Administration

FROM: Phillip Areeda
Counsel to the President

SUBJECT: Mills Godwin Telegram

The enclosed telegram from Governor Godwin is forwarded without comment for response and whatever action, if any, you may think appropriate.

Attachment



*Regulatory
agencies*

Tuesday 12/3/74

MEETING
12/3/74
5:00 p.m.

1:00 We have scheduled the meeting on EEOC for 5 o'clock
this afternoon (Tuesday 12/3).

The following people will be attending:

Larry Silberman		
Paul O'Neill (available between 5 and 5:30)	Helen Hartley	4742
Dick Cheney	Cathy Burger	6797
William Walker (has a 4 o'clock with two Senators but hopes to get back by 5 o'clock)	Holly	2995
Stan Scott	Pat Hughes	2587

The meeting will be held in the Situation Room Conference Room.

cc: Mr. Areeda



160B, A
12/3

THE WHITE HOUSE

WASHINGTON

December 2, 1974

MEMORANDUM FOR: ✓ PHIL BUCHEN
PHIL AREEDA

FROM: DICK CHENEY D

I was called tonight, Monday, December 2nd, by a man named Don Zimmerman.

He is the Majority Counsel on the Labor Committee on the Hill.

He indicated to me that he was visited recently by members of the Equal Employment Opportunity Commission who were very critical of Chairman Powell.

He said they alleged there were contract irregularities at EEOC, as well as over-spending. In other words, Powell had permitted the Commission to spend more than had actually been appropriated, which obviously violated federal statutes.

In addition, Powell has supposedly refused and told the staff to refuse to permit other Commissioners to look at the books, and there are allegations that Powell himself has personal irregularities in his travel and expense accounts.

Supposedly, Paul O'Neill has some general knowledge of the problems in EEOC, but Zimmerman wanted to call me to make certain the White House is aware of this. Specifically, he'd like to have someone sit down with these Commissioners.

I think we should move immediately to look into this entire matter. We cannot let any time pass over it, because we've now been put on notice by the Majority Counsel of the relevant Congressional Committee.

Would you please contact Paul O'Neill immediately. See what additional information you can get, and move as quickly as possible to make certain that we take whatever action is appropriate.



Regulatory

THE WHITE HOUSE

WASHINGTON

12/4/74

Phil A:

Had a call from
Len Garment on the
Powell matter.

He expressed a view
that it might be better
tactics to try casing
Powell out through putting
him on notice of a
need to reshape operations
over the next 7 mos
(at which time Ethel
Walsh's term expires)
when, if Powell does not
succeed, a new appointment
would be made of a
person who would also
become chairman.

In any event he is
concerned about our (over)



undertaking an investigation,
with the possible consequence
that Powell's reaction
will be to misrepresent
our motives and to arouse
his supporters into a
strong public defense of
him.

He also raises the matter
of developing new
legislation to rationalize
the Civil Rights enforcement
program.

T.



Millie
Byington

2645-

Dawn
will check +
call me

*Regulatory Policy
Travel*

Friday 12/6/74

9:25 Millie Peterson in Mrs. Knauer's office called to say 2645
that on 11/15 Byington sent a memo to Buchen re clearance for
reimbursement for Mrs. Knauer's trip; thereafter,
they had received a call from Lazarus asking for
more information.

Checked with Mr. Lazarus and he advised he will
have something for them next week.

10:45 Have so advised Millie.



Friday 12/6/74

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2645

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2645

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10:45 Have so advised Millie.



Regulatory
CAB

Dec. 16, 1974

To: John Marsh

From: Phil Buchen

I talked to Britt Gordon during
the first week in December and
suggested he work through
Robert Griffin.



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 29, 1974

TO: PHIL BUCHEN

FROM: JOHN O. MARSH, JR.



Be on the lookout for a call from our mutual friend, Britt Gordon, in reference to a matter involving either the CAB or the FAA in reference to Kent County, Michigan, and their request for a refuse land fill project close enough to the airport to require federal approval.

As you will recall, the rule in the White House is that any contacts to regulatory agencies must go through the general counsel's office.



Regulatory

Monday 12/16/74

MEETING
12/16/74
6 p. m.

10:00 An EEOC meeting is scheduled at 6 o'clock this afternoon
(Monday 12/16) in your office. Those attending:

Phil Areeda
Paul O'Neill
Stan Scott
Dick Cheney
Bill Walker



THE WHITE HOUSE
WASHINGTON

Eva,

This is more for your information. The letter was prepared for Mr. Buchen's signature by Dudley-- I'm not quite sure how Mr. Areeda ended up with it --but he redid it for his own signature and changed Dudley's draft slightly. In any case, I just wanted you to know what had been done with it.

Eleanor

12/17

THE WHITE HOUSE
WASHINGTON

December 17, 1974

Dear Mr. Sachs:

Enclosed is our answer to the questionnaire
enclosed with your letter of December 5, 1974.

Sincerely,

Phillip Areeda
Counsel to the President

Encl.

Mr. Richard C. Sachs
Government and General
Research Division
Congressional Research Service
Library of Congress
Washington, D. C. 20540

PA/eac

PA chm.

*copies in Counsel's office
106- Dudley Chapman*

bcc for Mr. Buchen (Letter originally prepared by Dudley
Chapman for Buchen's signature--redone for
Mr. Areeda's signature per PA's instructions)



NAME AND POSITION OF RESPONDENT Phillip E. Areeda, Counsel to the President

AGENCY White House Office

ADDRESS The White House, Washington, D. C. 20500

Would you kindly complete this questionnaire and, together with a copy of your agency's regulation or proposed regulation regarding this subject, return to:

Mr. Richard C. Sachs
Government and General Research Division
Congressional Research Service
Library of Congress
Washington, D.C. 20540
or
Library of Congress
Stop Number 303

1. Does your department or agency have or plan to have, a regulation that requires agency staff to make written reports and keep meeting logs recording oral or in-person communications between staff of the agency and persons from outside the agency who are not parties to your agency's proceedings? In addition to "yes" or "no" please briefly explain the background of such regulations or the status of a proposed regulation, for example, the date when a proposed regulation will take effect.

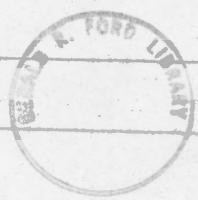
This Office has no such "proceedings" and neither has nor contemplates any such regulation.

2. If you have such a regulation in force, what official is responsible for its administration, i.e., both report-collecting and enforcement.

N/A

3. Has the office administering this regulation received any allegations and/or taken any disciplinary action with respect to violations of the regulation? For example, have any employees been suspended for violation of this regulation?

N/A



(use reverse side as needed to complete responses)



Congressional Research Service

WASHINGTON, D.C. 20540

December 5, 1974

Office of the General Counsel
The White House Office
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Sir:

Pursuant to Sec. 321(d) of the Legislative Reorganization Act of 1970, the chairman of a subcommittee of Congress has requested the Service to survey all Federal departments, their agencies, and independent agencies to determine if they have in force, or plan to have, regulations requiring written reports and meetings logs recording oral or in-person communication between staff of the agency and persons from outside the agency who are not parties to agency proceedings. Such regulations were recently adopted by the Federal Energy Administration and appear in 39 Federal Register 34295, a copy of which is enclosed.

Would you kindly complete the enclosed questionnaire and, together with a copy of your regulations or proposed regulations regarding this subject, return it to the address indicated.

The chairman of the subcommittee has requested that responses be filed in committee offices no later than December 27, 1974.

Your assistance in this matter is greatly appreciated.

Sincerely,

Lester S. Jayson
Director



through fourteen and substituting therefor the following:

§ 2.101 Filing of application.

(a) * * * An applicant for a construction permit for a nuclear power reactor subject to § 51.5(a) of this chapter may submit the information required of applicants by Part 50 of this chapter in three parts. One part shall be accompanied by the information required by § 50.30(f) of this chapter, another part shall include any information requested by §§ 50.34(a) and 50.34a of this chapter and a third part shall include any information required by § 50.33a. One part may precede or follow other parts by no longer than six (6) months except that the part including information required by § 50.33a shall be submitted in accordance with time periods specified in § 50.33a. The Regulatory staff may return the later information to the applicant, informing it in what respects the information is incomplete, if the information is not complete or in conformance with the requirements of this chapter. Such a determination of completeness will generally be made within a period of thirty (30) days. Except for the part including information required by § 50.33a, whichever part is filed first shall also include the fee required by §§ 50.33(e) and 170.21 of this chapter and the information required by § 50.37 of this chapter. The Commission will accept for docketing an application for a construction permit for a nuclear power reactor subject to § 51.5(a) of this chapter where one part of the application as described above is complete and conforms to the requirements of Part 50 of this chapter.

2. Section 50.33a is amended to read as follows:

§ 50.33a Information required for anti-trust review.¹

(a) An applicant for a construction permit for a nuclear power reactor shall submit the information requested by the Attorney General, as described in Appendix L to this part, if the application is for a class 103 permit. This information shall be submitted as a separate document prior to any other part of the license application as provided in paragraph (b) and in accordance with § 2.101 of this chapter.

(b) Any person who applies for a class 103 construction permit for a nuclear power reactor on or after July 23, 1975 shall submit the document titled "Information Requested by the Attorney General for Antitrust Review" at least nine (9) months but not more than thirty-six months prior to the date of submittal of any part of the application for a class 103 construction permit.

(c) Any person who applies for such a

¹ The reporting requirements contained in §§ 50.33a, 50.35b, 50.30, and Appendix L of Part 50 have been approved by GAO under B-130223 (R0071). This clearance expires 8-31-77.

construction permit prior to July 23, 1975 shall submit the document titled "Information Requested by the Attorney General for Antitrust Review" as soon as possible.

3. The Introduction to Appendix L is amended to read as follows:

Introduction. The information in this Appendix is that requested by the Attorney General in connection with his review, pursuant to section 103c of the Atomic Energy Act of 1954, as amended, of certain license applications for nuclear power plants. The applicant shall submit the information as a separate document titled, "Information Requested by the Attorney General for Antitrust Review." Twenty (20) copies shall be submitted prior to any other part of the facility license application as provided in § 50.33a and in accordance with § 2.101 of this chapter and not less than twenty-five (25) additional copies shall be retained by the applicant to be available as needed during the antitrust review.

4. The first sentence of Question 9 of Appendix L is amended to read as follows:

9. List, and provide the mailing address for non-affiliated electric utility systems with peak loads smaller than applicant's which serve either at wholesale or at retail adjacent to areas served by the applicant. * * *

Effective date. The foregoing amendments become effective on October 25, 1974.

(Sec. 105, 181, Pub. L. 83-703, 91-530, 93 Stat. 938, 948; 84 Stat. 1473 (42 U.S.C. 2135, 2201))

Dated at Washington, D.C., this 20th day of September 1974.

For the Atomic Energy Commission.

GORDON M. GRANT,
Acting Secretary of the Commission.

[FR Doc.72-22230 Filed 9-24-74; 8:45 am]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 204—RECORDS OF ORAL COMMUNICATION WITH PERSONS OUTSIDE FEA

Establishment of Procedures to Record Certain Oral Communications

The Federal Energy Administration ("FEA") hereby establishes Part 204 of its regulations in order to provide internal FEA procedures for preparing and maintaining written records of oral communications received from persons outside FEA concerning applications, petitions, appeals, investigations, or enforcement proceedings being considered by FEA. The new Part also sets forth procedures for maintaining logs of meetings between the Administrator, the Deputy Administrator, the General Counsel, Assistant Administrators or Directors of FEA Offices and persons outside the agency concerning FEA policy questions. Finally, procedures are established for preparing and making available to the public a list of all meetings that have occurred between the Administrator, the

Deputy Administrator, Assistant Administrators or the General Counsel and persons outside FEA during the preceding two-week period.

Part 204 is designed to maintain the integrity of FEA's decision making process, to insure that FEA's programs and policies are developed and implemented in an open atmosphere and to promote public confidence in the agency.

Section 204.1 sets forth the general organization and objectives of Part 204. Section 204.2 contains the definitions applicable to this part.

Under the provisions of § 204.3, FEA employees in grade GS-15 and above, will be required to prepare and maintain written records of oral communications received from "non-involved" persons expressing an opinion or viewpoint on a specific application, interpretation request, appeal, petition for special review, investigation, or enforcement proceeding pending before FEA. The purpose of the requirement that written records be maintained on communications from "non-involved" persons, rather than from actual parties to applications or proceedings, is to insure that sources of influence that would not otherwise be apparent to the public are identified. Section 204.3 also prescribes the form to be utilized in reporting conversations. Such forms will provide information on: The name of the communicant, the application or proceeding involved, the organization or entities represented by the communicant, and the subject matter or matters discussed.

Under the provisions of § 204.4, the Administrator, the Deputy Administrator, the General Counsel, and all Assistant Administrators and Directors of FEA Offices will be required to maintain records of their meetings with persons from outside the agency concerning FEA policy questions. These records will identify the organizations and entities represented by each participant and will provide a brief summary of the subject matter or matters discussed.

Section 204.4 requires the Office of Public Affairs to distribute to interested parties a list of all meetings that have occurred between the Administrator, the Deputy Administrator, Assistant Administrators, or the General Counsel and persons from outside the agency during the preceding two-week period. These lists will also be made available to the public in the Office of Public Affairs' Public Reference Room.

Because Part 204 pertains to rules of internal agency procedure and practice, formal notice and public hearings are not required.

In consideration of the foregoing, a new Part 204 of Chapter II, Title 10 of the Code of Federal Regulations is hereby established.

Issued in Washington, D.C., on September 20, 1974.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

*Regulatory
agencies*

Wednesday 12/18/74

12:05 Gary Sievers needs to talk with you right away---
Secy. Butz had already set up a luncheon with
Chairman Nassikas at 12:15 today.

Mr. Buchen asked me to call Jack Knebel 447-3351
at Agriculture right away.

He's out of town -- so he talked with Stanley Harsh, 447-2713
his deputy.



Wednesday 12/18/74

10:05 Gary Sievers (Council of Economic Advisers) called 5046
to say that he and Earl Butz would like to meet with
John Nassikas, Chairman of the Federal Power Commission,
to talk about the problem of natural gas curtailment to
fertilizer plants. In accordance with the procedure of
contacting the independent regulatory agencies, he wanted
to make sure it was O. K. to meet with Mr. Nassikas.

(Mr. Sievers would not be going in his capacity as a member
of CEA, but as Chairman of an interagency task force on
fertilizer.)





Nassikas has a call in to
Mr. Buchen as of
12:05 12/19 - Mr.
Buchen does not want
to return the call until
he has discussed this
with Mr. Areeda

12/19



THE WHITE HOUSE
WASHINGTON

Phil A:

On this matter I
dissuaded G. Sievers
from participating &
called ~~Asst~~ ^{Dep} Gen. Counsel ^{Dept} of Agriculture
(Stanley Harsh)
to that effect &
raised issue of the
Secretary's involvement.

Would like to
discuss this with
you. J

Regulatory

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§ 2292 of Title 50



THE WHITE HOUSE
WASHINGTON

Regulatory

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of CEA, but as Chairman of an interagency task force on
fertilizer.)

§ 2292 of Title 50



Regulatory

THE WHITE HOUSE

WASHINGTON

December 20, 1974

MEMORANDUM FOR: PHIL BUCHEN
FROM: JAY FRENCH
SUBJECT: Foreign Claims Settlement Commission

The Chairman of the Foreign Claims Settlement Commission has requested the advice of Ted Marrs with regard to a claim, in a letter dated December 9, 1974. You asked me to review this matter and advise you about the propriety of Ted Marrs giving such advice. I have concluded that it is improper for him to do so because the Commission is an independent adjudicatory body, designed to be free from control by the Executive.

The Commission was created by the Reorganization Plan No. 1 of 1954, eff. July 1, 1954, 19 F. R. 3985, 68 Stat. 1279. This plan, subsequently approved by the Congress, abolished the War Claims Commission and the International Claims Commission, and merged their functions into the Foreign Claims Settlement Commission. It was Congress' intent that this Commission independently settle claims. Nebenzal v. Re, 407 F. 2d 717 (1968). This intent is embodied in 50 App. §2010, set forth below in part:

" . . . The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise . . . "

It is noteworthy that one of the leading Supreme Court decisions discussing the power of the President to remove appointed officials dealt with an attempt to remove the commissioners of the War Claims Commission. Weiner v. United States, 357 U.S. 349 (1958). In this case, the Court by Justice Frankfurter at pp. 355-356, stated as follows:



" . . . The fact that it [Congress] chose to establish a Commission to 'adjudicate according to law' the classes of claims defined in the statute did not alter the intrinsic judicial character of the task with which the Commission was charged. The claims were to be 'adjudicated according to law,' that is, on the merits of each claim, supported by evidence and governing legal considerations, by a body that was 'entirely free from the control or coercive influence, direct or indirect,' Humphrey's Executor v. United States, supra, 295 U. S. at 629, of either the Executive or the Congress as one must take for granted, the War Claims Act precluded the President from influencing the Commission in passing on a particular claim"

Based upon the foregoing, it is my recommendation that Ted Marrs decline to advise the Chairman with respect to any matter now or hereafter within the Commission's jurisdiction.



to MARRS 12/23

THE WHITE HOUSE
WASHINGTON

December 19, 1974

Jay French

MEMORANDUM FOR: TED MARRS
FROM: JAY FRENCH
SUBJECT: Foreign Claims Settlement Commission

By your memorandum to Philip W. Buchen of December 16, 1974, you inquired whether it would be appropriate for you to respond to the Chairman's letter of December 9, 1974, in which he requested your advice about a pending claim.

The Commission is an independent adjudicatory body and it was the Congress' intent that matters before this Commission would not be subject to review by any official or court of the United States. It is recommended that you immediately decline to advise the Chairman with regard to matters raised in his letter.

You are requested to keep this office informed about any further developments concerning this matter.

THE WHITE HOUSE
WASHINGTON

Jay:

Please review those and, if possible, report to me by Friday or after that to Phil A.

(Consider among other matters by what authority (or with what propriety) we can influence the result in such a case as this.

1.

THE WHITE HOUSE

WASHINGTON

December 16, 1974

MEMORANDUM FOR: PHIL BUCHEN

FROM: TED MARRS *Ted*

Phil - I would appreciate your having the appropriate person review these decisions as to legality and appropriateness. I do not understand the palatability factor referenced by Mr. Bell.

Enclosure





OFFICE
OF THE CHAIRMAN

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

December 9, 1974

Honorable Theodore Marrs
Special Assistant to
the President
The White House
Washington, D. C. 20500

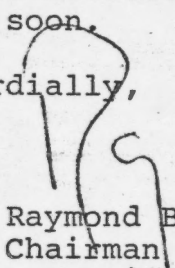
Dear Ted:

Here are the two decisions I mentioned to
you -- one for payment and one for denial.

We can live with and justify either one.
The question, however, is which would be
more palatable in today's climate.

Please see if you can get some reaction
just as quickly as possible because we must
issue some decisions very soon.

Cordially,


J. Raymond Bell
Chairman

Enclosures



IN THE MATTER OF THE CLAIM OF

ALEXANDER L. DUNN

Claim No. SPN-1700

Under Section 6(f), Title I of the War Claims Act of 1948, as amended

This is a claim filed by Alexander L. Dunn under Section 6(f), Title I of the War Claims Act of 1948, as amended, for prisoner of war compensation as provided thereunder.

Section 6(f) of the Act authorizes the Foreign Claims Settlement Commission to receive and determine, according to law, the amount and validity, and provide for the payment of any claim filed by any prisoner of war for compensation for failure of the hostile force by which he was held as a prisoner of war during the Vietnam conflict to (1) furnish him the quantity or quality of food prescribed for prisoners of war under the terms of the Geneva Convention of August 12, 1949, and (2) to meet the conditions and requirements prescribed under such convention relating to labor of prisoners of war or for inhumane treatment by the hostile force by which he was held.

Compensation allowed to any prisoner of war under the provisions of the Act is payable at the rate of \$2 for each day on which he was held as a prisoner of war and on which such hostile force or its agents failed to furnish him such quantity and quality of food, and at the rate of \$3 per day for each day on which he was held as a prisoner of war and with respect to which he alleges and proves in a manner acceptable to the Commission, the failure to meet the conditions and requirements



relating of labor or inhumane treatment. In the case of death or determination of death of the persons who are entitled to receive compensation, such compensation is payable only to or for the benefit of the persons specified, and in the order established, by Section 6(d)(4) of the Act, which includes the widow, children, and parents of deceased prisoners of war in that order of priority.

Claimant, ALEXANDER L. DUNN, is the father of Michael Edward Dunn, a regularly appointed member of the Armed Forces of the United States at the time he was reported missing in action on January 26, 1968, while flying on an aircraft mission in North Vietnam.

There is no allegation by claimant nor has any documentary evidence been submitted that Michael Edward Dunn was ever captured and held by a hostile force as a prisoner of war during the Vietnam conflict. Moreover, the final report of casualty by the Department of the Navy failed to establish that Michael Edward Dunn was at any time in a captured status. The report reflects a change of status from missing in action to presumed killed in action and a presumption of death on November 26, 1973, was made in accordance with the provisions of the Missing Persons Act (37 U.S.C.A. 555). The casualty report failed to indicate a prisoner of war status for Michael Edward Dunn nor is there any factual information contained therein on which the Commission could presume a prisoner of war status.

The term "prisoner of war" is defined under Section 6(f)(1) (B) of the Act as "any regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States who was held as a prisoner of war for any period of time during the Vietnam conflict by any force hostile to the United States...."

The basis for the payment of prisoner of war compensation under the Act, however, is the failure of the hostile force to furnish a prisoner of war the quantity or quality of food prescribed



for prisoners of war under the terms of the Geneva Convention of August 12, 1949, and the failure of the hostile force to meet the conditions and requirements of said Convention relating to labor of prisoners of war or inhumane treatment.

It is clear, therefore, that the Act requires, as a basis for recovery, that a member of the Armed Forces of the United States must meet two conditions, namely: (1) he must have been "held as a prisoner of war" by a hostile force during the Vietnam conflict, and (2) the detaining power must have failed (a) to furnish the prisoner the quantity and quality of food as prescribed under the Geneva Convention of 1949, and (b) to meet the conditions and requirements of such convention with respect to forced labor or inhumane treatment.

In the instant claim these basic elements for compensation under the Act have not been met nor is there any factual information available whereby the Commission could legally indulge in a presumption to establish a prisoner of war status.

In the absence of documentary evidence or the lack of any ancillary information which may be helpful in establishing eligibility under the Act, the Commission is compelled under the circumstances to find that the subject claim does not come within the purview of the Act and concludes that this claim must be, and the same is, hereby denied.

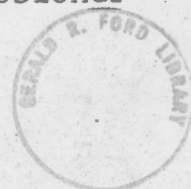
The denial of this claim is not to be construed as binding if evidence becomes available at a later date which would justify a finding that the subject member of the armed forces in fact a prisoner of war.

Dated
Washington, D. C.

J. Raymond Bell, Chairman

Lyle S. Garlock, Commissioner

Wilfred J. Smith, Commissioner



IN THE MATTER OF THE CLAIM OF

ALEXANDER L. DUNN

Under Section 6(f), Title I of the Claims
Act of 1948, as amended

Claim No. SPN-1700

This is a claim filed by Alexander L. Dunn under Section 6(f), Title I of the War Claims Act of 1948, as amended, for prisoner of war compensation as provided thereunder.

Section 6(f) of the Act authorizes the Foreign Claims Settlement Commission to receive and determine, according to law, the amount and validity, and provide for the payment of any claim filed by any prisoner of war for compensation for failure of the hostile force by which he was held as a prisoner of war during the Vietnam conflict to (1) furnish him the quantity or quality of food prescribed for prisoners of war under the terms of the Geneva Convention of August 12, 1949, and (2) to meet the conditions and requirements prescribed under such convention relating to labor of prisoners of war or for inhumane treatment by the hostile force by which he was held.

Compensation allowed to any prisoner of war under the provisions of the Act is payable at the rate of \$2.00 for each day on which he was held as a prisoner of war and with respect to which he alleges and proves in a manner acceptable to the Commission, the failure to meet the conditions and requirements relating to labor or inhumane treatment. In the case of death or determination of death of the persons who are entitled to receive compensation, such compensation is payable only to or for the benefit of the persons specified, and in the order established, by Section 6(d)(4) of the Act, which includes the widow, children, and parents of deceased prisoners of war in that order of priority.

Claimant, Alexander L. Dunn, is the father of Michael Edward Dunn, a regularly appointed member of the Armed Forces of the United States at the time he was reported missing in action on January 26, 1968, in North Vietnam.



- 2 -

The final casualty report issued by the Department of the Navy indicates a missing in action status from January 26, 1968, while on a flying mission in North Vietnam. The report also indicates that Michael E. Dunn was presumed dead by the Department of the Navy on November 26, 1973, in accordance with the provisions of the Missing Persons Act (37 U.S.C.A. 555). Other than being officially reported missing in action on January 26, 1968, the casualty report is devoid of any further information concerning the status of Michael Edward Dunn. No additional information concerning the status of this member of the U.S. Armed Forces is available either from the hostile forces in Vietnam or the U.S. Armed Forces which could be used as a basis for any change in status.

Unlike World War II where the International Red Cross in Geneva was able, in the most part, to verify and check the names of members of the Armed Forces of the United States who were reported in a prisoner of war status, there was little or no information furnished to the United States Government or any other allied military power by the hostile forces in Vietnam concerning U.S. military personnel reported missing in action. Reports, when made, were released through communist news media or persons whose views coincided with those of the hostile forces, and were made usually for propaganda purposes. No accuracy could be attached to these reports nor can any reliance be placed on the report that all prisoners of war held by hostile forces in Vietnam and elsewhere in Southeast Asia have been released. Accordingly, the Commission is of the opinion that in the absence of concrete evidence to establish that the subject member of the Armed Forces was killed or that he was not captured and taken as a prisoner of war, a reasonable presumption may be made that a prisoner of war status did exist.

Under the terms of the Missing Persons Act, when a member in uniform services is entitled to pay and allowances has been in a missing status, and the official report of his death or of the circumstances of his absence has not been received by the appropriate secretary within the Department of Defense, he shall, before the end of a 12-month period on that status, have the case fully reviewed. After that review and the end of the 12-month period in a missing



status, or after a later review which shall be made when warranted by information received or other circumstances, the secretary concerned, or his designee, may:

- (1) if the member can reasonably be presumed to be living,
direct a continuance of his missing status, or
- (2) make a finding of death. (underscoring supplied)

When a finding of death is made, it shall include the date death is presumed to have occurred for the purpose of:

- (1) ending the crediting of pay and allowances;
- (2) settlement of accounts; and
- (3) payment of death gratuities.

Any determination made by the secretary concerned, or his designee, is conclusive on all other departments and agencies of the United States. Payment of gratuities, such as prisoner of war compensation, of course, are not included under the Missing Persons Act.

In the instant claim, a presumption of death in regard to Michael E. Dunn was made by the Secretary of the Navy through his designee on November 26, 1973. In this case, the missing status of Michael Edward Dunn was carried over from January 26, 1968, to the date of a presumption of death was made.

It follows, therefore, that there must have been a reasonable presumption of life for this member at least until the presumptive date of death, otherwise, such presumption of death must have been 12 months after the missing in action date by the Secretary of the Navy which is mandatory under the Missing Persons Act. Under the circumstances, it would also be reasonable to assume also that Michael Edward Dunn would more likely to have been captured and held as a prisoner of war as a member of the Armed Forces of the United States than remaining free in a hostile country. It is unlikely that any person other than an indigenous person of Southeast Asia could have escaped recognition and capture for any length of time. Moreover, no finding of death was made until such presumption was made on November 26, 1973, nor has any recovery of the remains of Michael Edward Dunn been made in case death in fact did occur.



The Commission, after a thorough consideration of the matter, holds for the purpose of Section 6(f) of the War Claims Act, where a member of the Armed Forces of the United States is reported missing in action and is carried in such status until such status is determined by the appropriate secretary in the Department of Defense by making a presumption of death, that (1) there must be, and the Commission so finds, a presumption of continued life of such member, and (2) such member is presumed to have been captured and held as a prisoner of war until April 1, 1973, the date the last known reported prisoner of war was returned to U.S. control.

The Commission, therefore, determines that for the purpose of Section 6(f) of the War Claims Act, Michael Edward Dunn was in a prisoner of war status from January 26, 1968, to April 1, 1973, a period of 1,893 days, and that he would have been entitled to receive compensation for that period in the total amount of \$9,465.00.

In view of the finding a presumption of death, his father and mother, Alexander L. Dunn and Honor S. Dunn, would be the proper recipients of the award. Honor S. Dunn has been joined in this claim by motion of the Commission to share the award with the surviving father of the decedent.

AWARD

Pursuant to the provisions of Section 6(f), Title I of the War Claims Act of 1948, as amended, an award is made to Alexander L. Dunn in the amount of \$4,732.50 which represents one-half of the total award of \$9,465.00; and

An award is made to Honor S. Dunn in the amount of \$4,732.50 which represents the remaining one-half of the total amount.

Dated
Washington, D. C.

J. Raymond Bell, Chairman

Lyle S. Garlock, Commissioner

Wilfred J. Smith, Commissioner



SBA

Mushrooms

Date: December 18, 1974

Time:

FOR ACTION: Roy Ash
 Phil Buchen
 Max Friedersdorf
 Bill Seidman

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 20, 1974 Time: 3:00 p.m.

SUBJECT:

Cole memo (no date) re: Mushroom
 Processors' Request for SBA Disaster Loans

ACTION REQUESTED:

For Necessary Action For Your Recommendations
 Prepare Agenda and Brief Draft Reply
 For Your Comments Draft Remarks

REMARKS:

*Approved
 P.W.B.*



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jerry K. Jones
 Staff Secretary

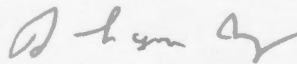
THE WHITE HOUSE
WASHINGTON

December 17, 1974

MEMORANDUM FOR PHIL BUCHEN

SUBJECT: Mushrooms

Attached is the final decision memorandum on the mushroom situation. OMB and SBA are agreed to sell SBA assets to provide direct loan funding for the processors.



F. Lynn May

Attachment



THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM: KEN COLE

SUBJECT: Mushroom Processors' Request for SBA Disaster Loans

Background

In 1973, botulism was discovered in several cans of American produced mushrooms. The subsequent recall of the product and the resultant consumer reluctance to buy caused a severe business decline for the mushroom processing industry, which is primarily located in Michigan, Pennsylvania, Ohio and New York. The Food and Drug Administration does not establish specific standards for the processing of low acid foods like mushrooms but does require that processors use procedures which safely prevent botulism. The mushroom processors for the most part were following generally accepted industry procedures when the botulism occurred, but the procedures had become inadequate due to changes in the handling of the product.

The processors, faced with debts to banks and to the farmers that supply them, have requested assistance in the form of direct Small Business Disaster Loans. The terms of these loans at the time of the disaster included a one percent interest rate with a \$5,000 forgiveness feature, which would be applicable to the mushroom processors. The disaster loans have no ceiling while other SBA lending programs, including Direct and Guaranteed Loans, available to the mushroom industry at higher interest rates, are limited to \$350,000. The availability of these other loans is limited by the lack of private capital for Guaranteed Loans and budget limitations on Direct Loans, which SBA claims are allocated elsewhere. The processors claim that these other loan programs are too limited to supply the capital they need.

The law requires that loans may only be granted where "natural" or "undetermined" causes led to the disaster. The FDA inspection of the mushroom processors whose cans were discovered to contain botulism revealed that the problem was due to deficiencies in the processing. About half the firms were operating with deficiencies in equipment or operating procedures which according to FDA "would not be tolerated by knowledgeable and conscientious cannery management".



The SBA ultimately decided to grant the disaster loans but needed the endorsement of the Federal Disaster Assistance Administration (FDAA) located in HUD, As a matter of course, FDAA forwarded the matter to the Domestic Council. Because of the potentially precedential nature of this and its political and budgetary implications it was also referred to OMB and to the Office of the Legal Counsel (OLC) in the Justice Department. The industry demand has been estimated at \$20-30 million loans, if all of the approximately 50 processors apply.

There are two options in this case:

- (1) To grant the disaster loans
- (2) Deny them and let the processors apply for other SBA loans.

If this latter course is followed, additional direct loan authority could be sought from the Congress to increase the availability of this type of funding or additional funding could be obtained by the sale of SBA assets contained in the SBA loan portfolio.

Factors Favoring Granting Disaster Loans to Processors

- SBA maintains that it has the legal authority to grant the loans and OLC concurs. OLC claims that the factors inherent in the botulism found in smoked fish from the Great Lakes in 1963, which led to the statute providing for Small Business Disaster Loans, are similar to those found in the case of mushrooms. The OLC opinion points out that the botulism bacterium is a natural occurrence in some foods including fish and mushrooms but to become toxic in foods it must have a growth environment provided by improper or negligent processing. The OLC claims that the natural occurrence of botulism qualifies this case for the disaster loans and argues that evidence of negligence does not render a claimant ineligible.
- Congressmen and Governors from Michigan, Ohio, Pennsylvania and New York (including Senators Scott, Hart, Javits, and Schweiker; Congressmen Vander Jagt and Huber; Governor Milliken) have kept a steady pressure for a decision on behalf of the mushroom processors.
- According to the processors' impact statement and other outside sources the canned mushroom industry is in danger of collapsing, affecting both processors and farmers. The six processors



which have applied for disaster loans to date claim that the regular SBA loans, with a maximum of \$350,000, would be inadequate to meet their needs. They are requesting an average of \$750,000 each.

- The processors have pointed out that in 1974, after the botulism scare, the World Bank underwritten by U.S. funds, granted \$7 million in loans to the Korean mushroom industry to improve their processing techniques to meet FDA requirements, helping them compete in U.S. markets.
- The processors claim the loans would enable a formerly viable, small industry return to full production.

SBA is in favor of granting the loans because they would enable a small industry to survive, and would demonstrate the Administration's concern for small business in a time of economic dislocation.

Against

- The FDA report on the matter appears to indicate that the botulism was primarily due to management deficiencies rather than "natural" or "undetermined" causes. The firms involved had changed operating conditions without altering processing standards to assure adequate safety. Also, several firms were operating with deficient equipment including broken thermometers and inaccurate timing devices. Providing loans in this case, therefore, may set a precedent for assisting firms which suffer losses due to management deficiencies rather than from factors beyond their control. This would be the first instance where the loss is due to human failure to produce a safe product.
- If this precedent is established, firms previously "injured" by FDA recalls of unsafe products may now request this assistance. In fiscal year 1974, FDA instituted 170 recalls of contaminated food products and 1273 recalls of other products. Since there is no time limit on when firms affected by disasters are no longer eligible for loans, positive action on the mushroom industry's request could result in a flood of requests from industries previously affected by FDA recalls, like cyclamates.



- The potential cost of this precedent could be high. The mushroom case, with a cost of \$20-30 million, is an example of the cost of one FDA recall. It is estimated that in 1972, the FDA ruling on cyclamates resulted in industry losses of \$250-\$500 million. Just in the food processing industry alone there are about 26,000 small businesses which would be eligible for SBA disaster assistance. These firms have annual sales of about \$29 billion.
- If the disaster loans were provided in this case, they would have an interest rate of only 1%, and \$5,000 of each loan would not have to be repaid. There is no evidence that the processors need such favorable loan terms or the \$5,000 grant, in order to survive and remain competitive.
- At a time of severe budget stringency, actions which could increase the Federal deficit should be avoided.

The Office of Management and Budget recommends against allowing these loans because of the possible precedent for assisting firms with product losses due to management deficiencies, and the potentially high cost of such a precedent. If it is determined that special actions should be taken to assist this industry, OMB recommends that it take the form of conventional SBA loans at 6 ½% with a limitation of \$350,000 per loan.

RECOMMENDATIONS

Ash, Buchen, Seidman, Cole

That the SBA Disaster Loans be denied to the mushroom processors. All agree that SBA should be directed to expedite handling of 7(a) loan applications from the mushroom operators. Buchen and Seidman feel that the \$350,000 from these loans to those who qualify would be sufficient to keep many of the processors financially afloat.

Friedersdorf

Does not recommend either option but advises that this is an acute political problem because of the interest of Senator Hugh Scott and that whatever assistance deemed feasible should be afforded the processors.



Thomas Kleppe
SBA Administrator

That the disaster loans be granted because the funds are immediately available and many of the processors need larger sums than the \$350,000 available to them from the 7(a) loans to stay in business. If the decision is made to deny the disaster loans, Kleppe promises SBA will do everything to expedite 7(a) loan applications from the processors.

DECISION

_____ Grant the mushroom processors Disaster Loans.

_____ Deny them and direct SBA to expedite 7(a) loan applications from the processors.

