

**DEPARTMENT OF ENERGY
FY 2001 CONGRESSIONAL REVIEW BUDGET REQUEST**

PROPOSED APPROPRIATION LANGUAGE

Economic Regulation

For necessary expenses in carrying out the activities of the Office of Hearings and Appeals, [~~\$2,000,000~~] *\$2,000,000*, to remain available until expended.

**DEPARTMENT OF ENERGY
FY 2001 CONGRESSIONAL REVIEW BUDGET REQUEST
ECONOMIC REGULATION**

OFFICE OF HEARINGS AND APPEALS

PROGRAM MISSION

The Office of Hearings and Appeals (OHA) is responsible for all of the Department's adjudicatory processes. OHA was created to adjudicate cases arising under the Emergency Petroleum Allocation Act of 1973 (EPAA), and continues to conduct refund proceedings returning petroleum overcharge funds collected by the Department to parties who were directly injured by those overcharges, and to the states and federal government for indirect restitution. OHA continues to receive refund applications, although at a lower rate than in past years. OHA also continues to work on isolated matters connected with EPAA-related enforcement proceedings that are before the federal courts or that have been remanded to OHA.

Goal: The Goal of OHA is to continue to issue high quality, articulate decisions that fairly and equitably resolve the matters that are brought before it. In doing so OHA considers the Congressionally-mandated objectives implicated in each case and the interests of its customers, stakeholders and other concerned parties, including the public, state and federal governments, and the individual litigants.

Performance Measures & Accomplishments: OHA has been highly successful in fulfilling its mission. The primary quantitative performance measures are:

- ! Record on Appeal: OHA has had and projects that it will continue to have a singularly successful record of having its decisions upheld upon judicial review.
- ! Number of Cases Resolved: OHA resolved 1,402 refund cases during FY 1999, and expects to resolve 1,300 in FY 2000, and nearly all remaining refund cases, other than crude oil cases, in FY 2001.
- ! Distribution of Refunds: OHA has returned nearly \$5 billion in petroleum overcharge funds to individual refund applicants, the states and the federal government. During FY 2001, OHA expects to direct a payment of at least \$14 million in excess overcharge funds. In FY 2000, OHA intends to commence the first of the final two remaining distributions in the crude oil refund proceeding.
- ! Public Availability of Information and Decisions: OHA makes all of its decisions available on the Internet to interested persons within one day

of issuance. OHA provides public access through its home page to much of its refund application database.

**DEPARTMENT OF ENERGY
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 ECONOMIC REGULATION
 (dollars in thousands)**

PROGRAM FUNDING PROFILE

OFFICE OF HEARINGS AND APPEALS

<u>Activity</u>	<u>FY 1999 Enacted</u>	<u>FY 2000 Enacted</u>	<u>FY 2001 Base</u>	<u>FY 2001 Request</u>	<u>Program Change Request v. Base</u>	
					<u>Dollar</u>	<u>Percent</u>
Office of Hearings and Appeals Operating Expenses	\$ 1,785	\$ 1,992	\$ 2,000	\$ 2,000	\$ 0	0 %
TOTAL	<u>\$ 1,785</u>	<u>\$ 1,992</u>	<u>\$ 2,000</u>	<u>\$ 2,000</u>	<u>\$ 0</u>	<u>0 %</u>
Summary Operating Expenses	\$ 1,785	\$ 1,992	\$ 2,000	\$ 2,000	\$ 0	0%
Total Program	<u>\$ 1,785</u>	<u>\$ 1,992</u>	<u>\$ 2,000</u>	<u>\$ 2,000</u>	<u>\$ 0</u>	<u>0%</u>
Staffing — HQ FTEs	<u>25</u>	<u>17</u>	<u>16</u>	<u>14</u>		

Authorizations:

Pub. Law 95-91, DOE Organization Act; Pub. Law 99-509, Petroleum Overcharge Distribution and Restitution Act of 1986.

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ECONOMIC REGULATION
(dollars in thousands)**

SUMMARY OF CHANGES

OFFICE OF HEARINGS AND APPEALS

FY 2000 Enacted	\$ 1,992
- Non-Discretionary	0
FY 2001 Base	\$ 2,000
 <u>Office of Hearings and Appeals</u>	
— Increase due to inflation, promotions, and step increases.	<u>\$ +8</u>
 FY 2001 Congressional Budget Request	 \$ 2,000

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ECONOMIC REGULATION
(dollars in thousands)

PROGRAM PERFORMANCE SUMMARY

I. Mission Supporting Goals and Objectives: Office of Hearings and Appeals

The Office of Hearings and Appeals (OHA) is an essential component of the Department's effort to equitably terminate the regulatory program implementing the Emergency Petroleum Allocation Act of 1973. OHA resolved the last compliance case under the regulatory program in FY 1996. However, the refund applications that OHA decides do not arise until after each individual compliance case is resolved. As a result, refunds of petroleum overcharges are the last portion of the original regulatory program that will be concluded. Through these refund proceedings OHA returns the moneys received in restitution for EPAA regulatory violations to those who were injured by the violations. Pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), all funds remaining in a refund proceeding after all direct claims are satisfied are distributed to federal energy conservation programs as a means of providing indirect restitution to states and their citizens. These annual payments have replaced appropriated U.S. Treasury funding and have always been many times the size of OHA's budget in each prior year. However, as of FY 2000, OHA anticipates that there will be no more annual payments.

The largest ongoing refund proceeding is the crude oil proceeding, which distributes funds recovered by the Department arising from overcharges in the sale of crude oil. Because the regulatory program tended to equalize the cost of crude oil to refiners, overcharges on crude oil sales were passed through to the ultimate consumers of petroleum products. Twenty percent of crude oil overcharge funds are distributed to consumer claimants, including individuals, farmers, businesses, hospitals, school districts, cooperatives, public utilities, and governmental entities. Crude oil claimants receive a payment once their application is approved and supplemental payments as additional crude oil overcharge funds are collected by the Department. OHA divides the remaining 80 percent of crude oil overcharge funds equally between the states and the federal government for indirect restitution to injured consumers. OHA's goal has been to pay all valid claims and conclude the refund program as soon as circumstances permit.

Previously, OHA planned to substantially complete the refund program (other than for additional matters that may arise) by the end of FY 1998. However, Departmental-wide funding and staffing reductions have prevented it from doing so. OHA continues to receive refund applications and currently projects that it will require funding for this activity at least through FY 2001. The Department of Energy will deposit \$206 million in the U.S. Treasury by January 31, 2001. In this regard, the Office of General Counsel has filed petitions during FY 1999 asking that OHA take

jurisdiction over funds collected through 26 new, separate enforcement proceedings. OHA expects these 26 refund proceedings to generate a significant number of refund claims. OHA also provides adjudications pertaining to other Interior-funded programs, e.g., requests for exception from Energy Information Administration reporting requirements, and whistleblower complaints. OHA is seeking Congressional guidance on how these activities should be funded in the future once the refund proceedings are completed.

II. Funding Table: Office of Hearings and Appeals

<u>Program Activity</u>	<u>FY 1999 Enacted</u>	<u>FY 2000 Enacted</u>	<u>FY 2001 Request</u>	<u>% Change</u>
Case Resolution				
Compliance and Refund Cases	\$ <u>1,801</u>	\$ <u>1,992</u>	\$ <u>2,000</u>	0 %
Subtotal, Case Resolution	\$ <u>1,801</u>	\$ <u>1,992</u>	\$ <u>2,000</u>	0 %
Total, Office of Hearings and Appeals	\$ <u>1,801</u>	\$ <u>1,992</u>	\$ <u>2,000</u>	0 %

III. Performance Summary

<u>Program Activity</u>	<u>FY 1999</u>	<u>FY 2000</u>	<u>FY 2001</u>
Case Resolution Compliance & Refund Cases	<p>OHA resolved 1,402 refund claims in FY1999 and refunded \$8.74 million in direct restitution to these applicants. OHA's case closure rates for refund applications have declined substantially from prior levels, since most of the remaining cases are complex and are not susceptible to the "batch processing" that was used in the past to process refund claims.</p> <p>OHA concluded nearly all of the distribution started in FY1995 of \$275 million in supplemental refunds to applicants who had previously been granted crude oil refunds. By year end, OHA had distributed over 98% of the supplemental refunds.</p>	<p>OHA expects to resolve approximately 1,300 cases in FY2000 and to refund at least \$14 million in direct restitution to these applicants.</p> <p>OHA will begin final payments to successful crude oil applicants. This is conditioned upon conclusion of all enforcement proceedings, so that OHA will know the total amount of crude oil overcharge funds that are available for distribution to injured claimants.</p>	<p>OHA expects to resolve nearly all remaining refund cases, other than crude oil refunds in FY2001.</p>

Program Activity

FY 1999

FY 2000

FY 2001

Petroleum
Overcharge
Distribution and
Restitution Act
(PODRA)

\$64 million in overcharge funds that were not required for restitution to injured parties were declared excess and made available to state governments for use in four energy conservation programs. This was more than thirty times the amount of OHA's Interior appropriation. In addition, \$24 million in crude oil funds was disbursed to the states.

No estimate has been made at this time of the amount of crude oil overcharge funds that will be distributed to the states. These amounts depend in part upon matters beyond the control of OHA, such as the effect of court decisions and the amount of oil overcharges that are recovered by the Department and made available for distribution by OHA.

No accurate estimate can be made at this time of the amount of crude oil funds that will be distributed to the states.

Program Activity

FY 1999

OHA continued to provide advice and litigation support to the Economic Regulatory Administration (now part of the Office of General Counsel) in cases where judicial review is sought of OHA compliance and refund determinations. OHA resolved the last compliance case in its inventory involving the regulations issued pursuant to the Emergency Petroleum Allocation Act of 1973 in FY1996. Unless additional cases are filed or remanded to OHA, this will have completed OHA's compliance work.

FY 2000

OHA is concluding a number of vigorously contested refund cases, some of which will be litigated. OHA will support that litigation effort.

In order to accomplish these goals, OHA has received funding of \$2.0 million for personnel compensation (\$1,520K), travel (\$4K), and other services (\$468K). Other services include employee training, and the Working Capital Fund for base services: rent, telephone, supplies, postage, building operations, equipment maintenance, printing and Automated Office Support System support and maintenance (\$428K). OHA will also pay certain support items directly, including purchase of computer equipment and software, and contractual computer support (\$40K).

FY 2001

OHA will continue to support and assist, as needed, in all litigation involving OHA compliance and refund decisions.

In order to accomplish these goals, OHA requests funding of \$2.0 million for personnel compensation (\$1,455K), travel (\$15K), and other services (\$530K). Other services include employee training, and the Working Capital Fund for base services: rent, telephone, supplies, postage, building operations, equipment maintenance, printing, and Automated Office Support System support and maintenance (\$470K). OHA will also pay certain support items directly, including purchase of computer equipment and software, and contractual computer support (\$60K).