109454

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

Statement of Elmer B. Staats
Comptroller General of the United States

GAO 00010

Before the
United States Senate Committee on Governmental Affairs

SEN 06600

On

The Reform of Federal Regulation Act of 1979 (S. 262)
and the Regulation Reform Act of 1979 (S. 755)

For Release on Delivery
Expected at 11:00 a.m.
May 23, 1979

005383

Mr. Chairman and Members of the Committee:

We are pleased to be here to testify on S. 262, the Reform of Federal Regulation Act of 1979, and S. 755, the Administration's regulatory reform bill. I especially want to take this opportunity to commend you, Mr. Chairman, for your leadership of this Committee's outstanding efforts to address the problems associated with Federal regulation. We agree with the observation in the Committee's thorough study on Federal regulation that despite certain shortcomings, Federal regulatory efforts have resulted in substantial improvements in the health, safety, and security of the American people.

I would like to concentrate on four primary points: First, the location of the responsibility for supporting congressional oversight of regulatory reform; second, the need for regulatory analysis and evaluation; third, the need to improve the administrative law process, and fourth, the proposed role of the Administrative Conference of the United States.

The GAO strongly supports the general thrust of these two bills that regulatory agencies should carefully and comprehensively evaluate the effects of proposed and existing rules, as has been required for Executive agencies by Executive

Order 12044. The requirements for evaluation are Titles I and III of S. 262 and in Title 1 of S. 755.

OVERSIGHT BY THE CONGRESS

Moreover, we believe that effective congressional oversight of this process is essential. Such oversight is all the more important because the proposed legislation would not permit judicial review of the regulatory analyses provided for in this bill. Therefore, we believe that S. 262 is correct in providing for an explicit oversight process. However, we strongly recommend that the oversight role that the bill vests with the Congressional Budget Office should be assigned to the General Accounting Office. The essence of proposed sections 606 and 645 is the review of compliance with legislative mandates on the part of executive and independent regulatory agencies, the evaluation of the performance of these agencies in discharging specific responsibilities, and the reporting to Congress the results of these evaluations. These are oversight functions that Congress has already vested with the General Accounting Office by the Budget and Accounting Act of 1921, the Legislative Reorganization Act of 1970, and the Congressional Budget Act of 1974.

Assigning this oversight role to the Congressional Budget Office would duplicate GAO's responsibilities, would be

wasteful, and would certainly prove confusing both to congressional committees and the agencies concerned.

GAO has extensive experience in reviewing agency compliance with legislative requirements, and we are increasing our capability in the area of program evaluation. Our work in that area, which includes a significant amount of economic analysis, constitutes approximately one-half of our work.1/ We suggest, therefore, that in S. 262 in proposed sections 606 and 645 of Title 5 of the U.S. Code, The Comptroller General of the United States be substituted for the Director of the Congressional Budget Office, thereby explicitly assigning the major oversight responsibilities of the bill to the General Accounting Office. The criteria for choosing agency proceedings and analyses for review and the standards for review are already well-formulated in the legislation.

S. 755 does not set forth an explicit role for congressional oversight. Instead, agencies are required to send copies of their initial and final regulatory analyses to the Office of Management and Budget although the bill does not say what OMB is to do with these analyses

---

1/ A list of GAO reports during the past three years on Federal regulatory activities is attached as Appendix I.

nor does it establish any specific responsibilities for OMB in monitoring agency compliance.

DEFINITION OF A MAJOR RULE

Both S. 262 and S. 755 define a major rule as one that is likely to result in an effect on the economy of at least $100 million. Additionally, S. 755 accounts for the problem of differential impact by adding to the $100 million threshold the additional standard that the rule is major if it will cause a substantial change in costs or prices for individual industries, geographic regions, or levels of government. The bills provide that a major rule is also any rule that an agency determines will have a "major impact," (S.755) or an "equally significant effect on the national economy" (S. 262).

It is not clear why the monetary standard is set at $100 million except that this is the amount that was used in Executive Order 12044. $100 million may be too high or not high enough. Or, it may be that no single dollar figure is appropriate and the purposes of the legislation may be served just as well by using qualitative standards.

If any specific dollar figure is to be used, the intended components of that figure need to be defined. As presently drafted, neither bill is clear about what is meant by a $100 million effect.

An effect on the national economy of $100 million might include new economic costs such as direct compliance costs and secondary costs, the shift of existing costs from one segment of society to another, and the transfer of monetary income from one group to another. Summing such costs is problematical because they are not additive and because that could result in double counting. Furthermore, an economic effect could also be interpreted as the sum of the costs and benefits of a rule. If you decide to retain a specific dollar criterion, we suggest that it be defined as the incremental costs of compliance to directly regulated industries or other entities (local governments, etc.). These projected compliance costs cannot be estimated precisely, but they are far easier to estimate in advance than any other specific economic effect. The ease of measurement is important because agencies should not be required to perform extensive analysis just determine if another analysis is required.

Although this triggering device cannot be too rigid or precise because it is based on prior estimates of cost impacts, setting a specific dollar figure in the legislation also could be troublesome. If there is continued inflation, an increasing number of regulations will come under this standard over the coming year. We therefore suggest that the

impact standard be indexed to an appropriate inflation index such as the GNP deflator so that the monetary threshold will be implemented in constant dollars. Alternatively, the President could be given authority to adjust the figure.

THE SECTORAL IMPACT OF REGULATION

We also believe that the purposes of this legislation will be better served by considering the varying impacts of regulations on differing industries and regions as is done in the definition of a major rule in S. 755. A proposed rule that might fall short of having a $100,000,000 impact nationally might still be of crucial importance to a small industry, a State or region, or municipal governments. Rules with such concentrated impacts should also be carefully analyzed. Therefore, we favor the more explicit language in S. 755 defining as major a proposed rule that may cause a substantial change in costs or prices for individual industries, geographic regions, or levels of government.

A problem with some regulations in the past is that they had adverse effects on the structure of an industry. For example, regulations may impose such a heavy burden on small business, that smaller firms are shut down thereby increasing concentration in the industry. Conversely, regulations may create incentives

for inefficiently small scale operations. For example, in a recent report to the Congress, U. S. Refining Capacity: How Much Is Enough? (EMD-78-77, January 15,1979), GAO concluded that crude oil price reductions offered to small refiners under the Department of Energy Entitlements Program encourages the construction of small, inefficient refineries. The extent to which a regulation has an impact on the structure of an industry cannot be precisely known in advance. Nonetheless that potential projected impact should be part of a regulatory analysis and the potential for a significant structural change should lead to a regulatory analysis. Therefore, we suggest that in both S. 262 and S. 755 the definition of a major rule includes rules that the proposing agency estimates will cause a substantial change in costs or prices for individual industries, geographic regions, levels of governments, or have a substantial impact on the structure of an affected industry.

Similarly, inasmuch as there are numerous government programs to protect and promote small business, we recommend that the regulatory analysis include the special effects, if any, on small businesses within affected industries.

GUIDELINES FOR ANALYSIS

We support the guidelines for the initial and final regulatory analyses set forth in S. 262, and we would like to present our views on how those guidelines can be most effectively implemented.

The analysis is required to contain a succinct statement the need for and the objectives of the rule. The goal of regulation is often the correction of some undesirable condition such as the sale of hazardous products, deceptive advertising or unstable economic conditions. There are, however, many possible causes of these and other undesirable conditions that are regulated. For example, economists offer the case of the market failure, i.e., an imperfection in the working of a market that does not allow a satisfactory outcome. Examples of market failures include the existence of a natural monopoly, destructive competition, interdependencies in natural resource extraction, inadequate information in the marketplace, and externalities. Other reasons for regulation include concern over the distribution of income and the protection of those deemed worthy of special consideration.

In order to formulate a better regulatory analysis it will be useful for agencies to state their objectives in terms of the condition that requires correction, as well as the assumed cause of that condition. For example, the Consumer Product Safety Commission regulation of a hazardous product may be based on the belief that the product is too dangerous to use, or alternatively on the assumption that the product is safe if used correctly, but that too many consumers lack adequate information to use it properly. Such a statement of regulatory

rationale will also improve the evaluation and oversight of regulation by more clearly focusing on regulatory assumptions and objectives.

We support the approach implicit in S. 262 that the guidelines should go beyond a simple cost-benefit analysis. The bill requires a detailed analysis of projected economic effects and projected health, safety, and other noneconomic effects. These other considerations are important because estimating the costs and benefits of regulation is not a precise science.

A quantitative cost-benefit analysis requires information on all possible costs and benefits and the probabilities that they will occur. However, it is difficult to assess the outcomes of alternative approaches as demonstrated by the current debate over the health effects of specific food additives and pollutants. The difficulty of determining probabilities has been evidenced dramatically by the Nuclear Regulatory Commission's retraction of the Rasmussen report.

Furthermore, there are also qualitative benefits of regulation that reflect the values of our society. For example, how should we quantify the fear of parents for the long term health of children who have been exposed to excess radiation or toxic chemicals? It is equally difficult to place a value on the confidence in our financial institutions brought about by Federal regulation of banks. Providing

security and peace of mind, are important benefits. The fact that they are intangible does not make them any less important. Indeed, they often constitute the primary objective of some government intervention, and therefore must be taken into account if they analysis is to be complete.

There have also been substantial costs in not regulating such as the many millions of dollars that will be spent trying to rectify the dumping of toxic chemicals in the Love Canal.

We also urge that regulatory analyses focus not only on the magnitude of costs, but on the distribution of these costs among different segments of the population. Many of the costs attributed to health, safety, and environmental regulation are not new, but have always been incurred in various forms by different sectors of society. What has changed is who now pays those costs. For example, the Business Roundtable Cost of Government Regulation Study found that the 48 participating firms spent an estimated $2 billion in incremental costs to to comply with EPA regulations in 1977. This cost, however, may only represent a shift in one cost of production, pollution, from society to those firms and the consumers of their products. We as a nation, have decided that firms can no longer externalize those costs by the free dumping of wastes in the environment. Similarly, the reduction of workplace hazards involves the shift of a cost of production from the worker

(the expected loss from injury, illness, or death) to the firm and its customers (the costs of removing hazards).

Another area where the distributional consequences of regulatory action are important is the case of economic deregulation. In many areas of transportation and communications a substantial body of economic analysis already indicates that regulation is no longer needed and that society as a whole will be better off if competition replaces government protected monopolies and cartels.

Although society as a whole will benefit from deregulation in such instances, there will be dislocations and adverse effects on particular firms and regions. These dislocations can and should be analyzed. Deregulation will result in winners and losers, and the regulatory analysis should identify them. Whether and how to compensate the losers, however, remains a political decision, not an economic or technical one.

These cautionary notes on calculating economic effects are not meant to suggest that agencies should not seek the most effective and least burdensome regulatory strategy capable of meeting the need. We do urge, however, that attention be paid to these considerations in estimating the costs of various alternatives. In particular, we believe that the distribution of costs as well as the net effects

of regulation should be analyzed and stated so that the regulatory agencies and, ultimately, Congress, can make informed policy choices. In that sense, the guidelines of regulatory analysis in S. 755 which prescribe only a statement of adverse economic and other effects may be too narrow.

THE NEED FOR CONGRESSIONAL ANALYSIS

It is important to note that the obstacle to the choice of the least costly method of achieving regulatory goals is sometimes in the enabling legislation rather than in the implementation of that legislation. Congress occasionally has enacted legislation that mandates a particular regulation, and the regulatory agency is effectively foreclosed from considering alternative approaches. For example, the Motor Vehicle Information and Cost Savings Act, as amended, (15USC, 1901 et. seq.) set specific fleet fuel economy standards for cars that must be met by 1985. The Department of Transportation and EPA have only limited discretion in implementing the law and may not consider whether it is the optimal strategy to achieve the goal of reduced fuel consumption.

Similarly, the Water Pollution Control Act of 1972 required that publicly owned water treatment facilities were required to provide secondary treatment although in some cases the substantial expenditures would provide only mar-

ginal increases in water quality. Nonetheless, EPA was given discretion only to extend the deadline--in legislation enacted after the original deadline had already passed.

If Congress chooses to stipulate a particular regulatory requirement in legislation, it becomes most important for Congress to consider broadly the effects of that legislation just as agencies would be required to do by the bills being considered by this committee. Indeed, that kind of analysis is required by Senate Rule 29.5 which requires that a regulatory impact evaluation be included in the committee report accompanying all public bills and joint resolutions. This rule is important for consideration of regulatory legislation, but it has not yet been effectively implemented. 1/

REVIEW OF PAST REGULATIONS

Just as the projected effects of proposed regulations should be analyzed, the current effects of existing rules should also be evaluated in light of experience and changing circumstances. We have long supported the need for agencies to evaluate their own policies and programs. This is just as applicable to regulatory programs as to any other.

Both bills require continuing evaluation of past regulations, but they differ considerably in their standards for

---

1/ Senate Rule 29.5 attached as Appendix 2.

choosing matters to evaluate. We believe that the requirements in S. 755 are too rigid and burdensome and that the objective of requiring evaluation can better be met with the more flexible criteria of selection in S. 262.

Adhering to a 10 year schedule may be unrealistic in light of changes that occur in that period of time. Depending on the rule, such review might be too frequent or not frequent enough.

S. 262 and S. 755 provide similar but not identical guidelines for review. The guidelines set forth in both bills are well formulated as sufficiently flexible criteria for agency evaluation efforts. One difference is that S.262 allows the agencies to consider a series of closely related rules as one rule in carrying out the review while S. 755 requires simultaneous review of related items. The objective of weighing the effects of past rules would be better served by not merely allowing agencies to consider a series of closely related rules as one rule, but by requiring them to do so. If rules are indeed closely related, their effects would also be interdependent. Therefore, an evaluation of those joint effects should be made. Accordingly, we suggest that in lieu of the language in proposed section 642(b) of S.262 which states "The agency may consider a series of closely related rules as one rule" the legislation should prescribe that the agency <u>should</u> consider a series of closely-related rules as one rule.

THE REVIEW PROCESS SHOULD BE SUBJECT TO CONGRESSIONAL OVERSIGHT

As we noted in our comments on the requirements for analyses of proposed rules, Congressional oversight of evaluation of existing rules is also necessary. GAO continues to be willing to assist in that oversight. In the past we have urged that Congress strengthen the process of evaluation. We believe that authorizing legislation should set forth criteria for evaluating the program being authorized. These built-in evaluation guidelines are no less important for regulatory programs than they are for spending programs. When regulatory legislation is newly enacted or amended explicit criteria to evaluate the effects of regulation should be included.

POSSIBLE ADVERSE EFFECTS OF PERIODIC REVIEW

The need for periodic regulatory review must be balanced against the need for business confidence and the problems of regulatory compliance. Over-frequent, periodic review of regulations breeds uncertainty for those being regulated. Business needs some assurance that investments will not be immediately made obsolete by regulatory changes. The necessary attempt to modify and perfect regulations may create so much turbulance and uncertainty that businesses, for example, are unwilling to invest or enter new endeavors. A schedule of regulatory reviews may also create enforcement

problems by providing firms with an additional incentive to challenge regulations through legal actions and non-compliance in the hope that the onerous and costly regulations will be changed.

One method of achieving this balance is to insure that any regulations that require major capital investment will apply to firms for a set time that is congruent with the firm's lead time and with the useful economic life of the firm's capital equipment. For example, if an automobile manufacturer, with its long product lead time, plans its marketing strategy and its production equipment purchases on the assumption that certain environmental, fuel economy, and safety requirements will be in place, it should not be penalized if those requirements are changed substantially before the firm's next major re-design. New regulations and revisions of regulations should provide for a realistic lead time and could also have a schedule for compliance that takes into account the planning horizon of industries. These considerations do not argue against evaluation of regulations, but regulatory review processes should not hold out an incentive for noncompliance nor penalize firms who have invested in equipment needed to comply with existing regulations.

There may well be no way to revise regulations that is completely satisfactory. The only real solution to the

regulations are good enough to live with for a reasonably long time period in the absence of important changes in underlying conditions.

RELATION TO SUNSET LEGISLATION

This Committee is also considering S.2, the Sunset bill, which would require the review and reauthorization of government programs. Title V of S. 2 deals specifically with the review of regulatory agencies. This title would require the President to prepare for 16 major regulatory agencies a comprenensive analysis of the necessity, impact, and effectiveness of eacn agency and a legislative plan for improving their effectiveness. The analyses required of tne President are parallel to those required of the regulatory agencies under S. 262 and S.755 but with one major difference. Whereas the regulatory reform legislation requires reviews of specific regulations, Title V of S. 2 requires reviews of each agency as a whole. Thus the review requirements in principle are not duplicative, and could well be complementary if the review processes were coordinated. Indeed for agencies which operate largely by rulemaking, it may well be that the only way to prepare a useful analysis of the agency as a whole would be to rely on analyses of individual rules.

The main problem that we see is one of scheduling. To complement tne program review and reauthorization schedule in

Title I of S. 2, Title V of that bill requires the first presidential analyses by February 1, 1981 and the first presidential plans by April 1, 1981 for the FTC, SEC, and FCC, all of which are important rulemaking agencies. Rather than push back the schedule for sunset review, we suggest that the agencies scheduled for early review be urged to analyze more of their existing rules in the first 2 or 3 years after enactment of regulatory reform legislation. They should be provided with sufficient funding to enable them to contract out for review studies if necessary.

With a clear statement of congressional intent and proper coordination by the Executive Branch, the review process could be enhanced by passage of this legislation as well as S. 2. However, if both bills are passed without provision for coordination, the agencies and Congress would be burdened by producing and evaluating duplicative reviews. The entire process could then end up with an excess of paperwork and a lack of adequate analysis. We strongly recommend that should both regulatory reform and sunset legislation be enacted, provision be made for the coordination of the review function.

THE ADMINISTRATIVE BURDEN OF EVALUATION

In imposing greater analytic requirements on regulatory agencies, it is important to recognize that this process is

not costless. We have not seen any convincing hard numbers, but have received estimates that the required regulatory analyses cost up to a quarter of a million dollars for major rules. While it is more equitable for the Federal Government to absorb these planning and evaluation costs rather than have the burden of poorly formulated regulation fall on a particular segment of the private sector, the burden on the agencies should also be understood. Congress should be prepared to provide the added resources that may be necessary. Paradoxically it may be that for the costs of regulation to decrease, agencies must receive increased resources.

Similarly, the explicit assignment of oversight responsibilities to GAO would involve the commitment of substantial staff resources and would require the authorization of additional staff by the Congress.

IMPROVING THE ADMINISTRATIVE LAW PROCESS

Title II of S. 262, Improving the Efficiency of Administrative Proceedings, and Title II of S. 755, Reorganizing and Improving Agency Proceedings and Administrative Law Judge Selection and Evaluation, address many of the issues we raised in our report, "Administrative Law Process: Better Management Is Needed," (FPCD-78-25, May 15, 1978). We will shortly be issuing a follow-up report on agency responses and other developments since that report was issued. We support the provisions of the bills which:

--Clarify the agencies power to adopt streamlined methods of adjudicating administrative disputes.

--Limit discretionary agency review of Administrative Law Judge (ALJ) decisions to specific criteria (in S. 262), and to two review levels, including the agency itself, thus, affording ALJ decisions greater finality.

--Increase the number of qualified candidates referred to agencies for selection as ALJs, while prohibiting agency use of selective certification criteria, which have in the past raised doubts about ALJ impartiality.

Both S. 262 and S. 755 assign responsibility for Administrative Law Judge (ALJ) performance appraisal to the Administrative Conference of the U.S. (ACUS). We have several concerns about this provision, although we support the assignment of the ALJ performance appraisal function to an organization outside the agencies.

We found that there has been little active personnel management for ALJ's. Both the Office of Personnel Management (OPM) and the agencies employing ALJ have a "hands-off" approach. Agencies do not want to infringe upon ALJ independence. The OPM has not been actively involved in ALJ personnel management because it believes its role is limited to ALJ qualification, compensation, and tenure--in other words, to Section 11 of the Administrative Procedure Act.

Both S. 262 and S.755 partially remedy the current "hands-off" situation by clearly assigning ALJ performance appraisal to one organization outside the agencies employ-

ing ALJs. However, this provision does not relieve the agencies or the OPM of their responsibility for other ALJ personnel management functions. Although semi-independent from their agencies, ALJs remain civil service employees. Both the agencies as employers and the OPM as policymaker and evaluator should have clear authority to actively manage and oversee ALJs. Without that clarity ALJ personnel management functions could become further diffused, since the number of organizations involved will have increased from two to three with ACUS' new role. We specifically recommended clarifications about the OPM's performance of its normal personnel management functions in our report last May.

As one example of agency responsibility, we are concerned that the role of the chief ALJ, as first-line ALJ management, in the on-going ALJ performance appraisal process, should not be diluted by assignment of the formal appraisal function outside the agency. We support the latter, but would note that this is no way relieves the chief ALJ of his managerial responsibility. The ultimate objective of any performance appraisal system should be improvement of the quality of service provided to the public. Frequent feedback about expectations, and about performance and how it might be improved is best provided by someone in direct daily contact with the employee.

We strongly believe that effective employee performance appraisals serve many purposes, only one of which is discipline of non-productive personnel. Appraisal is the crucial foundation of any personnel management system. Both S. 262 and S.755 could be improved by clearly stating the purpose of ALJ performance appraisal, similar to the statement provided by Section 4302 of the Civil Service Reform Act of 1978. As they currently are written, S. 262 proposes to evaluate ALJ performance for the purpose of discipline, while S. 755 would do so also for the purpose of paying judges performance bonuses.

We have in the past recommended that performance appraisal systems should include four basic principles:

--First, that work objectives be clearly spelled out at beginning of the appraisal period so that employees will know what is expected of them.

--Second, that employees participate in the process of establishing work objectives thereby taking advantage of their job knowledge as well as re-enforcing the understanding of what is expected.

--Third, that there be clear feedback on employee performance against the present objectives.

--Fourth, that the results of performance appraisals

be linked to such personnel actions as promotion, training, assignment, and reassignment, as well as to discipline.

Establishing an effective system for the ALJs will require complex links between ACUS, the agencies and the OPM.

As an example, in order for performance appraisal by the outside evaluator to be effective, it will be necessary for agencies to have established their own criteria, since ALJ performance should be considered in the context of the ALJ's employing organization. We believe, therefore, that the proposed legislation would be clarified by noting that agencies may establish such standards for ALJ performance.

We are concerned about two other provisions of Title II of S.755--bonuses and establishment of an Administrative Law Judge Career Service. The administrator of ACUS 1/ is charged with prescribing those ALJs who are to receive pay performance awards based on the results of performance appraisals. However, the bill only provides for appraisals at least once every 7 years. If bonuses are going to be paid, they should be based on a current appraisal.

The bill also does not explain the rationale for ALJ performance pay bonuses. In the Senior Executive Service

---

1/ Or Chairman. The terminology in S.755 is not consistent.

(SES), for example, performance bonuses serve as an incentive for quality managers to participate in part as a "quid pro quo" for the risks involved. SES members are subject to an annual pay adjustment which is separate from the comparability process for other civil service employees, including ALJs.

Also, in S. 755, the Chairman, ACUS, has the sole authority for approval of bonus payments, as contrasted to SES members, whose bonuses must be reviewed and recommended by a performance review board. If ALJs are to receive bonuses, they too should be reviewed and recommended by performance and qualification review boards, to ensure that the awards are made on the basis of merit alone.

It is not clear whether the proposed Administrative Law Judge Career Service is to be analogous to the SES in other provisions as well as performance bonuses. If so, we believe the new Service should closely parallel SES, instead of promulgating another, different personnel management system.

Both S.262 and S.755 assign responsibility for evaluation of ALJ's to the Administrative Conference. Additionally, S.755 assigns the Administrative Conference responsibility for ALJ recruitment, but does not restructure ACUS, as would S. 262, to accommodate its increased role in

ALJ personnel management. These functions, particularly the ALJ recruitment process, are far beyond the current mission of the Administrative Conference, which is basically a small research organization.

We recommend that responsibility for initial screening ALJ candidates should remain with the Office of Personnel Management in order to avoid wasteful duplication. If, however, Congress wishes to designate the Administrative Conference as the organization responsible for recruitment and/or evaluation of Administrative Law Judges, it will be necessary to restructure and increase the resources of the Administrative Conference as contemplated by S. 262. Currently, the size of the staff and its research orientation would make it impossible for the Administrative Conference to accomplish the ALJ personnel responsibilities set forth in S. 755. We are concerned that imposing these additional functions on the Administrative Conference would detract from the valuable function it presently provides to agencies in making recommendations concerning administrative law formulated by an organization with a unique mixture of governmental and private expertise.

THE OVERSIGHT ROLE OF THE ADMINISTRATIVE CONFERENCE

Title IV of S. 262 restructures and changes the functions of the Administrative Conference of the United States. Proposed section 593(3) of title 5, United States Code mandates that the Administrative Conference shall monitor compliance by agencies with Chapter 5, subchapter II, and Chapter 6 of title 5 of the United States Code, Chapter 15 of title 44, United States Code, or any other law governing the administrative procedures of agencies.

We have two reservations with regard to this section of S. 262. First, it includes in the oversight responsibilities of the Administrative Conference areas already assigned in the bill (in proposed Title 5, Chapter 6 of the U.S. Code) to the Congressional Budget Office and which we recommend be assigned to the General Accounting Office. Second, section 593(3) also duplicates the oversight responsiblity of the Office of Management and Budget and the Department of Justice for the Privacy Act and the Freedom of Information Act, respectively. Even if this section is intended to supplement the current oversight arrangements with Administrative Conference oversight, we believe that the guidance and monitoring responsibility for the Privacy Act and Freedom of Information Act are best left with the two executive agencies, rather than adding another

agency which might dissipate oversight responsibility. Both the Office of Management and Budget and the Department of Justice have considerably greater leverage in enforcing their views than does the Administrative Conference, even as expanded by S. 262. This is particularly true in the case of the Department of Justice which represents the agencies in Freedom of Information litigation.

PAPERWORK CONTROL RESPONSIBILITIES NEED TO BE CONSOLIDATED

Now, I would like to discuss an issue raised by proposed subsection 593(4) of S. 262. That issue is the current fragmentation of control over Federal information-gathering activities.

Proposed subsection 593(4) provides that the Administrative Conference shall issue guidelines with respect to reducing paperwork and monitor compliance with such guidelines. The guidelines are to be consistent with the objectives of the act which established the Commission on Federal Paperwork. As we understand it, this provision would further fragment the control over Federal information-gathering activities which are already scattered among four Federal organizations. We believe these controls should be consolidated, preferably in OMB. Therefore, we would suggest that subsection 593(4) be dropped.

AGC 00843

The act which established the Commission on Federal Paperwork outlined the following objectives:

--assure that necessary information was made available to Federal officials;

--minimize the burden imposed by Federal reporting requirements;

--guarantee appropriate standards of confidentiality;

--provide that information was processed and disseminated to maximize its usefulness to all Federal agencies and the public;

--reduce the duplication of information collected by the Federal Government and by State and local governments; and

--reduce the costs of Federal paperwork.

Responsibility for achieving these objectives is consistent with OMB's Federal Reports Act responsibilities for controlling the paperwork burdens on the public and is closely related to the Department of Commerce's responsibility for setting statistical policy with regard to information collected by the Federal Government. We believe that progress toward achieving these aims is hampered because central management responsibility of the Government's statistical and paperwork control activities is fragmented among four organizations--the Office of Management and Budget, the General Accounting Office, the Department of Commerce, and the Department of Health, Education, and Welfare.

Fragmentation of these responsibilities occurred by virtue of individual legislative and executive actions over

the past few years. Until 1973, the responsibility for statistical policy and paperwork control was consolidated in the Bureau of the Budget--later the Office of Management and Budget.

In 1973, the Trans-Alaska Pipeline Authorization Act amendment to the Federal Reports Act shifted responsibility for review and approval of the independent regulatory agencies' information-gathering requirements from OMB to GAO. The factors leading to removal of OMB as the central review authority were rooted in the Congress' concern that the executive not possess the power to control the activities of the independent regulatory agencies.

Difficulties we have experience in administering the review functions required by the Pipeline Act amendment support our position for consolidated, central management of the Federal Reports Act responsibilities. These difficulties are a result of ambiguities in both the original and amended Federal Reports Act and unclear jurisdictional lines between GAO and OMB.

Central management authority was further fragmented by President Carter's 1977 plan for reorganizing the Executive Office of the President. This plan included transferring OMB's statistical policy functions to the Department of Commerce. These functions include planning and coordinating the decentralized Federal statistical activities and developing statistical standards and definitions.

In 1976, the Congress amended the Public Health Service Act and established in HEW a broad program for collecting data on health professions personnel. The amendment provided that the program not be subject to OMB's central review authority under the Federal Reports Act. Similarly, 1978 amendments to the General Education Provisions Act gave the Secretary of HEW control over all Federal data collections related to educational institutions and programs. The only role provided for OMB was to review an agency's appeal of denial by the HEW secretary of a proposed information collection. Consequently, two major information-collection activities were removed from OMB's authority.

Although several options exist for consolidating and restructuring Federal statistical policy and paperwork controls, we strongly favor consolidation within OMB. The "Paperwork and Redtape Reduction Act of 1979," H.R. 3570, was introduced in the House of Representatives by Congressmen Horton, Brooks, Steed, and Preyer, to reconsolidate the paperwork and statistical policy activities in an Office of Federal Information Management Policy in OMB. The new office is structured along the lines of the Office of Federal Procurement Policy. The bill would also amend the Federal Reports Act, strengthening and clarifying the authority of the central control agency, as well as creating a central

locator system to aid in eliminating the collection of duplicative information. My staff has worked closely with Congressman Horton's staff in developing this bill. We hope that a similar bill will soon be introduced in the Senate.

Reconsolidating statistical policy and paperwork controls in OMB is a viable option despite three important concerns. We believe these concerns can be overcome.

First, we think the Congress' concern for preserving the independence of the regulatory agencies' information-gathering programs can be readily dealt with by providing for override of an OMB denial by majority vote of the independent regulatory agency's commissioners. This provides for a "second look" by the senior regulatory agency officials in cases where the proposed information-collection activity appears questionable or seems to require revision.

Second, the problem of ensuring that adequate resources are provided to deal effectively with statistical policy and paperwork issues is crucial. We believe the Congress would have to provide specific resource allocations to the OMB unit charged with carrying out these responsibilities. One mechanism to do this would be to provide separate appropriations--a method used in establishing the Office of Federal Procurement Policy with in OMB some years ago.

Finally, the basic objectives of statistical activities and paperwork control activities, although closely related, are to some degree in opposition to one another. The principal objective of statistical activities is to acquire sufficient high-quality data to develop soundly based analyses for policymaking, program management and evaluation, and for other purposes. Paperwork control activities, on the other hand, have the primary objective of curtailing the amount of data collected. Any organization charged with achieving both of these objectives must be structured in such a way to ensure that one does not dominate the other, such as by establishing separate units on the same level for carrying out the two responsibilities. Any conflicts between the two units can be arbitrated by the head of the office, or in unusually important instances, by the OMB Director.

The "Paperwork and Redtape Reduction Act of 1979," as introduced in the House, contains provisions which we believe adequately address the first two concerns. The OMB Director will determine the structure of the new office, but we would hope that the statistical and paperwork control functions will be given equal status.

In our view, reconsolidating these functions in OMB offers many advantages, not the least of which is the intangible one of the inherent stature resulting from

association with the central management arm of the Federal Government. An adequately staffed unit in OMB would have the advantage of direct association with top-level budgetary, organizational, and management decisions. It would have direct access, through the Director of OMB, to the President, if necessary. Also, its relationship with associated activities, such as the Council of Economic Advisers and the Domestic Policy Staff, would be greatly enhanced.

This concludes our formal presentation, and we will be happy to answer any questions.

APPENDIX I

REPORTS ISSUED BY GAO ON FEDERAL REGULATORY ACTIVIES

May 1, 1976 through April 30, 1979

BROADCASTING AND COMMUNICATIONS

Cable Television and a Regulatory Policy (Released November 1 by the Chairman, Subcommittee on Interstate and Foreign Commerce, CED-76-124, July 16, 1976).

The Role of Field Operations in The Federal Communications Regulatory Structure. (CED-78-151, Aug. 18, 1978).

CONSUMER PROTECTION

Department of Transportation -- Effectiveness, Benefits, and Costs of Federal Safey Standards for Protection of Passenger Car Occupants Released July 19 by the Chairman, Senate Committe on Commerce, CED-76-121, July 7, 1976).

Better Enforcement of Safety Requirements Needed by the Consumer Product Safety Commission (HRD-76-148, July 26, 1976).

Need to Resolve Safety Questions on Saccharin (Released September 19 by Senator Gaylord Nelson, HRD-76-156, August 16, 1976).

The Consumer Product Safety Commission Needs to Issue Safety Standards Faster. (HRD-78-3, December 12, 1977).

Why Are New House Prices So High, How Are They Influenced By Government Regulations, and Can Prices Be Reduced? (CED-78-101, May 11, 1978).

Problems in Preventing the Marketing of Raw Meat and Poultry Containing Harmful Residues (HRD-79-10, April 17, 1979).

ENERGY

Contract Award by the Federal Power Commission for Developing and Installing a Regulatory Information System (Released June 16 by Rep. John E. Moss, RED-76-59, April 2, 1976).

The Energy Research and Development Administration (ERDA) and NRC -- This Country's Most Expensive Light Water Reacter Safety Test Facility (Released June 11 by the Chairman, Senate Committee on Government Operations, RED-76-68, May 26, 1976).

Actions Taken by The Federal Power Commission on Prior Recommendations Concerning Regulation of the Natural Gas Industry and Management of Internal Operations (Released July 9 by the Chairman, Subcommittee on Oversight and Investigation, House Committee on Interstate and Foreign Commerce, RED-76-108, May 24, 1976).

Management Improvements Needed in Federal Power Commission's Procesing of Electric-Power-Rate Increases (Released September 9 by Rep. John J. Moakley, EMD-76-9, September 7, 1976).

An Evaluation of the Federal Power Commission's Rulemakig on Utilities' Construction Work in Progress, (Released January 17 by the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, EMD-77-7, December 2, 1976).

Reducing Nuclear Powerplant Leadtimes: Many Obstacles Remain, (EMD-77-15, March 2, 1977).

Security at Nuclear Powerplants--At Best Inadequate, (EMD-77-32, April 7, 1977).

Nuclear Energy's Dilemma: Disposing of Hazardous Radio-Active Waste Safety, (EMD-77-41, September 9, 1977).

Transportation Charges for Imported Crude Oil -- An Assessment of Company Practices and Government Regulation, (EMD-76-105, October 27, 1977).

Need to Improve Regulatory Review Process for Liquefied Natural Gas Imports, (ID-78-17, July 14, 1978).

Liquefied Energy Gases Safety, (EMD-78-28, Three Volume, July 31, 1978).

Federal Regulation of Propane and Naptha: Is It Necessary? (EMD-78-73, October 24, 1978).

Reporting Unscheduled Events at Commercial Nuclear Facilities: Opportunities to Improve Nuclear Regulatory Commission Oversight, (EMD-79-16, January 26, 1979).

High Penalties Could Deter Violations of Nuclear Regulations, (EMD-79-9, February 16, 1979).

ENVIRONMENT

Problems and Progress in Regulating Ocean Dumping of Sewage Sludge and Industrial Wasts, (CED-77-18, Janaury 21, 1977).

Noise Pollution -- Federal Program to Control It Has Been Slow and Ineffective, (CED-77-42, March 7, 1977).

Suffolk County Sewer Project, Long Island, New York: Reasons for Cost Increases and Other Matters, (CED-77-44 or CED-77-45, March 22, 1977).

Problems Affecting Usefulness of the National Water Assessment, (CED-77-50, March 23, 1977).

Pollution From Cars on the Road - Problems in Monitoring Emission Controls, (Released March 21 by the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, CED-77-25, February 4, 1977).

Environment Protection Issues Facing the Nation, (CED-77-82, July 8, 1977).

Actions Needed to Improve the Safety of Coal Mine Waste Disposal Sites, (CED-77-82, September 21, 1977).

Improvements Needed in the Corps of Engineers' Regulatory Program For Protecting the Nation's Waters, (CED-78-17, December 23, 1977).

National Water Quality Goals Cannot Be Attained Without More Attention To Pollution From Different or "Nonpoint" Sources, (CED-78-6, December 20, 1977).

Special Pesticide Regulation by the Environmental Protection Agency Should be Improved, (CED-78-9, Janauary 9, 1978).

The Environment Protection Agency Needs Congressional Guidance and Support to Guard the Public in a Period of Radiation Prolification, (CED-78-27, January 20, 1978).

Efforts by the Environmental Protection Agency to Protect the Public from Environmental Nonionizing Radiation Exposures, (CED-78-79, March 29, 1978)

Secondary Treatment of Municipal Wastewater in the St. Louis Area - Minimal Impact Expected, (CED-78-76, May 12, 1978)

Waste Disposal Practices - A Threat to Health and the Nation's Water Supply, (CED-78-120, June 16, 1978)

Congressional Guidance Needed on the Environmental Protection Agency's Responsibilities for Preparing Environmental Impact Statements, (CED-78-104, September 13, 1978)

16 Air and Water Pollution Issues Facing the Nation (CED-78-148B, October 11, 1978), Executive Summary (CED-78-148A, October 11, 1978), Appendix (CED-78-148C, October 11, 1978)

More Effective Action By the Environmental Protection Agency Needed to Enforce Industrial Compliance with Water Pollution Control Discharge Permits, (CED-78-182, October 17, 1978)

Environmental Protection Issues Facing the Nation, (CED-79-63, March 15, 1979)

Improvements Needed in Controlling Major Air Pollution Sources, (CED-78-165, January 2, 1979)

Better Enforcement of Car Emission Standards - A Way to Improve Air Quality, (CED-78-180, January 23, 1979)

Hazardous Waste Management Programs Will Not Be Effective: Greater Efforts Are Needed, (CED-79-14, January 23, 1979)

FINANCIAL INSTITUTIONS AND MARKETS

Highlights of a Study of Federal Supervision of State and National Banks, (OCG-77-1A, Janaury 31, 1977)

Financial Disclosure Systems in Banking Regulatory Agencies, (FPCD-77-29, March 23, 1977)

The Debate on the Structure of Federal Regulation of Banks, (OCG-77-2, April 14, 1977)

The Federal Deposit Insurance Coporation's Financial Disclosure Regulations Should be Improved, (FPCD-77-49, June 1, 1977)

Supervision of Banks by the Federal Deposit Insurance Coporation Can Be More Efficient, (FOD-77-8, December 22, 1977)

The Securities and Exchange Commission's Regulation of Public Utility Holding Companies: In Evaluation of Commission Comments on a Critical Report, (FGMSD-78-7, January 4, 1978)

Regulation of the Commodity Futures Markets - What Needs to be Done, (CED-78-110, May 17, 1978)

Savings and Loans Associations: Changes Needed in The Regulation of Their Service Coproations, (FOD-78-4, June 14, 1978)

Securities and Exchange Commission Should Strengthen Its Inspection Oversight of the National Association of Securities Dealers, (FGMSD-78-65, October 5, 1978)

Banks Having Problems Need Better Identification and Disclosure, (FOD-79-1, January 24, 1979)

HEALTH AND SAFETY

Federal Fire Safety Requirements Do Not Insure Life Safety in Nursing Home Fires, (Department of Health, Education, and Welfare, MWD-76-136, June 3, 1976)

Federal Efforts to Protect the Public From Cancer - Causing Chemicals Are Not Very Effective, (MWD-76-59, June 16, 1976)

Federal Control of New Drug Testing is Not Adequately Protecting Human Test Subjects and the Public, (HRD-76-96, July 15, 1976)

Shortcomings in the System Used to Control and Protect Highly Dangerous Nuclear Material (Released July 27 by the Chairman, Subcommittee on Actaivities of Regulatory Agencies, House Committee on Small Business, unclassified digest of a classified report, (EMD-76-3A, July 22, 1976)

Radiation Exposure from Diagnostic X-rays Could Be Reduced, (To the Secretary, HEW, HRD-77-22, November 24, 1976)

Stronger Measures Needed to Insure that Medical Diathermy Devices Are Safe and Effective, (Released November 17 by the Chairman, Senate Committee on Government Operations, HRD-76-153, September 2, 1976)

Federal Efforts to Protect Consumers from Polybrominated Biphenyl Contaminated Food Products, (Released June 27 by the Chairman, Senate Committee on Commerce, Science, and Transportation; Chairman, Subcommittee on Science, Technology, and Space, Senate Committee on Commerce, Science, and Transportation; and Senator Donald W. Riegle,Jr. HRD-77-96, June 8, 1977)

Food Additive Acrylonitrile, Banned in Beverage Containers, (HRD-78-9, November 2, 1977)

Improving the Safety of Our Nation's Dams - Progress and Issues, (CED-79-30, March 8, 1979)

Grain Dust Explosions - An Unsolved Problem, (HRD-79-1, March 21, 1979)

OCCUPATIONAL SAFETY AND HEALTH

Better Data on Severity and Causes of Worker Safety and Health Problems Should Be Obtained from Workplaces, (HRD-76-118, August 12, 1976)

States' Protection of Workers Needs Improvement, (HRD-76-161, September 9, 1976)

Health Monitoring Needed for Laboratory Employees, (CED-76-160, October 8, 1976)

Delays in Setting Workplace Standards for Cancer - Causing and Other Dangerous Substances, (HRD-77-71, May 10, 1977)

OSHA's Complaint Procedures, (HRD-79-48, April 9, 1979)

TRANSPORTATION

Better Information Needed in Railroad Abandonments, (To the Chairman, ICC, CED-76-125, July 23, 1976)

Increased Attention Needed to Insure that Bridges Do Not Create Navigation Hazards, (CED-76-103, August 25, 1976)

Management Actions Needed to Improve Federal Highway Safety Program, (CED-76-156, October 21, 1976)

The Federal Aviation Administration Should Do More to Detect Civilian Pilots Having Midical Problems, (CED-76-154, November 3, 1976)

Needs of the U.S. Coast Guard in Developing an Effective Recreational Boating Safety Program, (CED-77-11, December 3, 1976)

Issues and Management Problems in Developing an Improved Air Traffic Control System, (PSAD-77-13, December 15, 1976)

Efficient Railcare Use: An Update of the Interstate Commerce Commission's Compliance and Enforcement Program, (CED-77-21, January 12, 1977)

Lower Airline Costs Per Passenger Are Possible in the United States and Could Result in Lower Fares, (CED-77-34, February 19, 1977)

Comments on the Study; "Consequences of Deregulation of the Scheduled Air Transportation Industry," (CED-77-38, February 25, 1977)

The Federal Motor Carrier Safety Program: Not Yet Achieving What the Congress Wanted, (CED-77-62, May 16, 1977)

Energy Conservation Competes With Regulatory Objectives for Truckers, (CED-77-79, July 8, 1977)

Improvements Needed In Regulating Household Goods Carriers, (CED-77-104, August 1, 1977)

Why the Federal Airline Subsidy Program Needs Revision, (CED-77-114, August 19, 1977)

Changes Needed In Procedures for Setting Freight Car Rental Rates, (CED-77-138, November 11, 1977)

New Interstate Truckers Should Be Granted Temporary Operating Authority More Readily, (CED-78-32, February 24, 1978)

Issues In Regulating Interstate Motor Carriers, (CED-78-106, June 20, 1978)

ICC's Expansion of Unregulated Motor Carrier Commercial Zones Has Had Little or No Effect on Carriers and Shippers, (CED-78-124, June 26, 1978)

Stronger Federal Aviation Administration Requirements Needed To Identify and Reduce Alcohol Use Among Civilian Pilots, (CED-78-58, March 20, 1978)

Unwarranted Delays By the Department of Transportation To Improve Light Truck Safety, (CED-78-119, July 6, 1978)

Commercial Safety Regulations Are Avoided By Some Large Aircraft Operators, (CED-79-10, November 21, 1978)

Need For Improved Action on Railroad Safety Recommendations, (CED-78-171, December 29, 1978)

GENERAL REGULATORY PROCEDURES

Status of GAO's Responsibilities under the Federal Reports Act, (Independent Federal Regulatory Agencies OSP-76-14, May 28, 1976)

Work Performed and Underway by GAO on Federal Regulatory Acativities January 1, 1974, through April 30, (To the Chairman, Senate Committees on Government Operations and Commerce, CED-76-122, July 20, 1976)

Problems with the Financial Disclosure System, (FPCD-76-50, August 4, 1976)

Actions Needed to Improve the Federal Communication's Communication Financial Disclosure System, (FPCD-76-51, December 21, 1976)

Analysis of Travel Activities of Certain Regulatory Agency Commissioners During 1971-1975, (Released February 1 by Seantor Warren G. Magnuson, CED-76-155, October 6, 1976)

Government Regulatory Activity: Justifications, Processes, Impacts, and Alternatives, (PAD-77-34, June 3, 1977)

Federal Regulatory Programs and Activities, (PAD-78-33, March 16, 1978)

Federal Paperwork: Its Impact on American Businesses, (GGD-79-4, November 17, 1978)

APPENDIX 2

Senate Rule 29.5

Rule XXIX of the Standing Rules of the Senate was amended at the beginning of the 95th Congress by the addition of clause 5, as follows:

5. (a) The report accompanying each bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations) shall contain-

(1) an evaluation made by such committee, of the regulatory impact which would be incurred in carrying out the bill or joint resolution. The evaluation shall include (A) an estimate of the number of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses, (B) a determination of the economic impact of such regulation on the individuals, consumers, and businesses affected, (C) a determination of the impact on the personal privacy of the individuals affected, and (D) a determination of the amount of additional paperwork that will result from the regulations to be promulgated pursuant to the bill or joint resolution, which determination may include, but need not be limited to, estimates of the amount of time and financial costs required of affected parties, showing whether the effects of the bill or joint resolution could be substantial, as well as reasonable estimates of the record-keeping requirements that may be associated with the bill or joint resolution; or

(2) in lieu of such evaluation, a statement of the reasons why compliance by the committee with the requirements of sub-paragraph (a) is impracticable.

(b) It shall not be in order in the Senate to consider any such bill or joint resolution if the report of the committee on such bill or joint resolution does not comply with the provisions of this paragraph.