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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D.C. 20548

B-163628

March 24, 1981

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

We appreciate the opportunity to [comments on H.R. 746], the Regulatory Procedures Act of 1981. As you know, we provided testimony and bill comments last year on H.R. 3263, the predecessor to the current bill, and we are pleased to note that our suggestion for an explicit GAO oversight role was incorporated in H.R. 3263, as reported, as well as in the current bill. The GAO strongly supports the general thrust of this bill 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 12291. We do, however, want to make a number of specific suggestions for improving this bill.

[Executive Order] 12044, promulgated under President Carter and Executive Order 12291, which is more restrictive, both require that agencies perform detailed analyses of proposed major regulations. We anticipate a lively debate over just how restrictive and how detailed those analyses should be. We hope that Congress does not lose sight of one underlying problem, however. While we all support better information and analysis for decisionmaking, we are dealing here with the highly inexact science of estimating regulatory impacts, and information and analysis are not free.

The Senate is already required, under Senate Rule 27.6 to specify the regulatory impact of all reported legislation. To assist the Senate in discharging this responsibility, this Office has issued A Technical Guide To Assessing and Preparing Economic Impact Analyses of Regulatory Legislation (PAD-81-03), a copy of which is enclosed. As the report states,

Preparing an estimate of the economic impact of regulatory legislation is, of necessity, a very complex exercise Although interested parties may devoutly wish that a short and easy approach exists to obtain cost estimates, such is not the case. Even when done with sufficient skill and comprehensiveness, a full scale economic impact analysis may be wide of the mark.

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This complexity results in substantial administrative costs when preparing regulatory impact analyses because of the amounts of information which must be collected and analyzed. One estimate is that each regulatory impact analysis costs in the neighborhood of \$250,000.

DEFINITION OF A MAJOR RULE

In defining the rules requiring regulatory analyses, caution must be exercised not to end up with a system in which every agency action is accompanied by a lengthy and expensive analysis. In requiring regulatory analyses only of major rules, H.R. 746 gives implicit recognition to the practical necessity of having a screening device. Section 621 defines a major rule as one that is likely to result in an effect on the economy of at least \$100 million. Additionally, the bill accounts for the problem of differential impact by providing as an alternative standard to the \$100 million threshold that a rule is major if it will cause a substantial change in costs or prices for individual industries, geographic regions, or levels of government. The bill provides that a major rule is also any rule that an agency otherwise determines will have a "major impact."

The bill is not clear as to what is meant by a \$100 million effect. An effect on the national economy of \$100 million might include new economic costs, indirect costs, or the transfer of costs or monetary income from one segment of society to another. Under such broader definitions of "economic effects" nearly all rules would be subject to regulatory analyses. If a specific dollar criterion is to be included, we suggest that it be defined as the incremental cost of compliance to directly regulated industries or other entities (local governments, etc.). For purposes of determining whether to go ahead with a regulatory analysis, these costs are far easier to estimate in advance than other specific economic effects.

The Committee may also wish to reconsider the use of the \$100 million trigger level. That specific amount apparently originated during the Ford Administration inflation impact statement program. Today, precisely because of inflation, many more proposed rules would fall within the threshold level of \$100 million than 6 years ago, and the trend may well continue. An increasing number of proposed relatively minor rules would go through a full analysis resulting in higher administrative costs to the agencies, substantial regulatory delay, and little benefit to the country.

Because there was originally some confusion over which regulations should be subject to regulatory analyses under Executive Order 12044, we think it is important that Congress clearly set forth its criteria for when a regulatory analysis is required.^{1/}

GUIDELINES FOR ANALYSIS

We generally support the guidelines for the initial and final regulatory analyses set forth in the bill. It would also be advisable to use this legislation to consolidate into these regulatory analyses all required single purpose impact analyses.

The guidelines for a preliminary analysis require an explanation of the relative advantages and disadvantages of using performance rather than design standards. This provision may be needlessly confusing and redundant. First, there is not always the neat division between performance and design standards implied by the bill. Secondly, the state of the art of regulatory analysis is such that a consideration of this issue would be part of all competent analyses. We believe that requirements of such specificity are appropriately contained in whatever specific guidelines are developed administratively rather than in legislation.

REVIEW OF EXISTING REGULATIONS

Proposed Section 641 requires a review of significant regulatory requirements within a 10 year period. Work currently underway by our office shows the agencies have been slow to review existing regulations, even under President Carter's explicit executive order. President Reagan's recent order is stronger in that it gives the Office of Management and Budget the authority to designate rules for review if agencies do not do so voluntarily, but we believe statutory enactment of a mandatory review is warranted because of historically weak agency initiatives in the area.

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. We, therefore, support the bill's requirement for continuing evaluation of past regulations. Although this part of the bill is entitled "Periodic Review of Regulatory Requirements," the language of the section does not appear to us to explicitly require more than a one-time review of existing regulations.

^{1/} Office of Management and Budget, Improving Government Regulations: A Progress Report, September 1979.

LEGISLATIVE VETO

While we have opposed a legislative veto on policy grounds in the past, because of the burden that such review would place on Congress, the two House veto contemplated by H.R. 746 is preferable to a one House veto. We should point out, however, that with the addition of the analysis requirements of this bill, Congress would be in the position of overturning rules the formulation of which rests on a much greater body of evidence and analysis than is now the case.

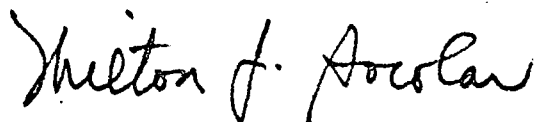
OVERSIGHT

We agree with the provision in Title I which requires periodic review of agency compliance with various segments of the bill by the Comptroller General. Under the recently signed E.O. 12291, the Office of Management and Budget has been given a very high degree of control over regulatory management process. Therefore, we think that it is important for Congress to monitor not just the regulatory rulemaking procedures but also the new, expanded OMB role in the regulatory process.

In conclusion, we feel this bill, with some modifications, would improve regulatory planning and management, require review of existing regulations, and strengthen congressional oversight over the regulatory process.

If we may be of further assistance, please feel free to contact us.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosure