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Statement of Morton A. Myers, Deputy Director
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Before the Subcommittee on Special Small
Business Problems of the
Committee on Small Business
United States House of Representatives

HSECS312

on

The Small Business Impact Statement Act of 1979
(H.R. 1306), and The Small Business Regulatory
Relief Act (H.R. 1745)

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Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to share with you our views on the need to consider the adverse impact of government regulation on small business. In particular, we will direct our comments to two bills, H.R. 1306, the "Small Business Impact Statement Act of 1979," and H.R. 1745, the "Small Business Regulatory Relief Act."

We agree with the objective of H.R. 1306 and H.R. 1745, that regulators should consider ways to reduce disproportionate adverse effects of regulation on small business. Moreover, we believe, that consistent with regulatory goals, the burden of regulatory compliance should be minimized for all members of our society. Therefore, GAO would prefer to see the regulatory review and reform objectives of H.R. 1306 and H.R. 1745, incorporated in more comprehensive regulatory reform legislation, such as S.262 or S.755, which contain proposed amendments to the Administrative Procedure Act.

The comprehensive approach to regulatory reform which we support does not diminish our concern for regulation's impact on small business. Rather, we would prefer to remind agencies of the full range of concerns which they should consider in order to devise regulations which achieve the goals of society in the most effective, efficient, and fair manner. We believe that comprehensive rulemaking reform can achieve the objectives of these bills by making regulation less burdensome to small business.

In the absence of Congressional action establishing comprehensive guidelines to improve agency rulemaking, we would support legislation designed specifically to ease the regulatory burden on small business.

ALTERNATIVES FOR REDUCING REGULATORY BURDENS

Both H.R. 1745 and H.R. 1306 require agencies to consider exempting or setting lesser standards for compliance by small businesses. A number of agencies, including OSHA, EPA, and DOE, currently use various forms of such tiered regulation. This tiering is useful so long as it does not sacrifice important regulatory goals and does not create artificial incentives to become or remain inefficiently small. 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 the crude oil price reduction offered to small refiners under the DOE Entitlements Program "encourages the construction of small, inefficient refineries."

In addition, the use of tiered regulation necessitates defining small business. H.R. 1306, for example, incorporates the definition of small business provided by SBA under its loan program. In H.R. 1745, Subsection (e) of proposed section 206 authorizes each agency to independently establish the meaning of "small business" to be applied to either a single rule or regulation, a set of rules and regulations, or every rule and regulation issued by the agency. Subsection (j)

provides that for the purpose of the proposed section 206, "small business" shall include those businesses as defined under the provisions of section 632 of title 15 of the United States Code. This section of the U.S. Code establishes criteria by which the Administrator of SBA shall define small business. Thus, the definition of small business in H.R. 1745 is not completely clear to us.

In addition to ~~regulation~~ ^{with a} tiered by firm size, various forms of flexible regulation exist which could also reduce the regulatory burden and meet the goals of these bills without the problems of tiered regulation. Types of flexible regulation which are applicable in some circumstances include performance oriented regulation, and the use of positive or negative incentives. Performance oriented regulation specifies a desired outcome without specifying the methods by which that outcome must be achieved. It offers regulated bodies an opportunity to devise their own means of compliance, which should be less costly than one uniformly imposed technological solution. Some regulatory goals can also be attained by using financial incentives to bring about compliance. Negative incentives, such as emission fees, taxes or penalties, and positive incentives like subsidies or tax credits, can be arranged to achieve a desired level of aggregate compliance. These approaches to flexible regulation allow firms to choose the best and

least costly method of meeting regulatory goals.

NEED FOR REGULATORY REVIEW

Section 4 of H.R. 1306 and Subsection (g) of proposed section 206 in H.R. 1745 require one-time reviews of certain agency rules already in effect. GAO has a strong commitment to periodic program evaluation and review. We feel that good management requires careful monitoring of ongoing programs to see that they fulfill their intended goals at the lowest cost to society.

254 At the same time, we recognize that 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 its investments will not be immediately made obsolete by regulatory changes. The necessary attempt to modify and perfect regulations may create so much turbulence and uncertainty that businesses, for example, may be 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. Finally, the schedule of regulatory review must be feasible from the standpoint of the regulatory agency itself.

To balance the need for review with the problems of business confidence, effective enforcement and compliance, and agency staff demands, consideration should be given to either including in the bill, or requiring each agency to develop, criteria for choosing which regulations will be reviewed, and when. These criteria should be based on such things as the date of the last review of the rule, its economic impact, altered social, economic or technological conditions, and changes in public priorities.

Thus, we feel that the ~~one-time~~ review of rules, contained in H.R. 1745, and in H.R. 1306, needs reconsideration.

ROLE OF GAO

Subsection (n) of proposed section 206 in H.R. 1745 provides that the Program Analysis Division of the GAO "... is authorized to furnish, upon request, advice and assistance to agencies..." in performing regulatory analyses. The GAO, as a part of the legislative branch of the government, generally furnishes advice and assistance to the Congress. An appropriate role, consistent with GAO's mandated responsibilities, would be, upon request, to assist Congress in reviewing the analyses carried out by agencies, rather than

to provide direct assistance to the executive branch. Such authority for GAO to assist the Congress already exists.

We do not wish to jeopardize either the substance, or the appearance of the GAO's objectivity in evaluating regulatory agencies by becoming directly involved in promulgating their regulations.

This concludes our prepared statement. We will be happy to address any questions which you may have.