

COMMS CONCERNING NRC

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 12, 1980

CHAIRMAN

The Honorable Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations
Committee on Interstate and Foreign Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The attached paper sets forth detailed responses to the series of questions you submitted to the Nuclear Regulatory Commission concerning the role and impact of the Office of Management and Budget in the administration of laws and the operation of this agency. If the Commission can be of further assistance to you on this matter, please do not hesitate to contact me.

Sincerely,

John F. Ahearne

Attachment as stated

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QUESTION 1.

Please provide a description of those agency actions or requirements which are subject to review by the Office of Management and Budget, including but not limited to budgetary requests, requests for changes in statutory authority, agency structure, personnel ceilings, prospective testimony before Congressional Committees and proposed agency regulations. Additionally, please describe for each the basis for that review, including but not limited to whether they are mandated by statute, occur at the request of OMB or by practice of the agency. Please state when these proposals are submitted to OMB (e.g., before or simultaneously with submittal to Congress) and whether OMB's response is considered mandatory or merely advisory to the agency.

ANSWER.

As explained more fully below, OMB's statutory authority to review NRC actions extends only to the areas of budgetary requests and personnel ceilings. We would also expect that the President, through OMB, could assert authority over NRC in matters relating to the efficiency of agency operations. However, this authority would not extend to matters before NRC which arise within the scope of this agency's action on substantive matters in the areas of adjudication, rulemaking, and policy formulation. The basis of OMB authority would be the constitutional responsibility of the President to take care that the laws be faithfully executed. See Article II, Section 3, U. S. Constitution. The NRC has voluntarily submitted to a limited review by the OMB of NRC actions in other areas as a matter of policy.

Budgetary and Personnel Ceiling Requests

NRC budgetary funding requests and requests for increases in personnel ceilings are subject to review by OMB, primarily in connection with the development each year of the President's Budget Request to Congress. NRC submits these requests by September 1 each year for OMB review and mark-up prior to the congressional submission, as specified in OMB Circular A-11. NRC also submits supplemental requests and budget amendments to OMB. We understand that NRC requests are reviewed by OMB for consistency with planning guidance provided to the agency earlier in the year and for consistency with the President's budgetary program.

NRC's budget structure (i.e., composition and identification of the organizations and decision units shown in the budget) is submitted to OMB in the spring of each year for approval of any changes to the prior year's budget structure. See OMB Circular A-11.

Proposed NRC testimony before Congressional committees on budget matters is submitted to OMB for approval prior to the Congressional hearings. See OMB Circular A-10.

With regard to the question of the legal basis for NRC budget referrals to OMB, the NRC General Counsel has concluded that:

31 U.S.C. § 23 states: "The head of each department and establishment shall submit his requests for appropriations to the Office of Management and Budget..."

Section 2 of Title 31, "Definitions", provides that the term "department and establishment" means: "any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including any regulatory commission or board, and the municipal government of the District of Columbia, but [does] not include the legislative branch of the Government or the Supreme Court of the United States." [Emphasis provided.]

It is beyond question therefore that NRC, along with other independent commissions, is included under the provisions of this title, and must submit budget requests to OMB.

A copy of the General Counsel's complete discussion of the legal basis for NRC budget referral to OMB is enclosed. (Enclosure 1). "Although no definitive legal judgment has been adopted by the Commission on this point, in the past, OMB's mark-up of NRC budget requests has been treated as binding, that is, the Commission would not voluntarily submit a different budget to Congress.

Nonbudgetary NRC Proposals

The statutory authority discussed above is limited to OMB review of budgetary proposals; in NRC's view, no statute authorizes OMB review of nonbudgetary actions, including NRC-initiated proposals for changes in statutory authority and agency structure, prospective testimony before Congressional Committees, and Congressional requests for NRC comments on proposed bills. OMB Circular No. A-19 states that every agency in the Executive Branch, including independent regulatory commissions, shall submit all such nonbudgetary proposals to the OMB for review at a time sufficiently prior to agency submission to Congress to allow for incorporation of OMB comments. As set out more fully below, NRC has voluntarily complied with portions of OMB Circular A-19 to the extent possible.

NRC's voluntary compliance with Circular A-19 may have contributed to the confusion which surrounds the status of NRC and other independent commissions relative to the OMB. Senator Glenn, in his comments on the proposed Independent Regulatory Commission Act, S. 3240, 95th Congress, 2nd Session, (Enclosure 3), addresses this confusion.

Over the years the proper independent status of the Commissions has been eroded - not through explicit Congressional action, but instead by executive action sometimes not based on statute.... A major problem ... is the confusion, inconsistency and uncertainty that characterizes the present status of these bodies.

Congressional Record, June 23, 1978 Vol. 24, No. 97. See also, the enclosed Commission comments on Proposed bill S. 3240, p. 4, concerning NRC independence from Executive Branch (Enclosure 4).

The NRC policy has been to submit nonbudgetary actions to OMB to the extent feasible, with due regard to the independent responsibilities of the Commission. Proposals for changes in statutory authority and agency structure are generally submitted to OMB for prior comment, to avoid unnecessary inconsistencies with Administration policy. Prospective testimony before Congressional committees is generally not submitted to the OMB for comment, although it is ordinarily sent to the OMB shortly before presentation to keep OMB informed. For the first few years of NRC's existence, until Summer of 1977, the Commission made a practice of sending responses to Congressional requests for agency views on proposed legislation to OMB for comment. However, after experiencing major delays in receiving OMB views, the NRC adopted a practice of forwarding responses to the Congressional requester without awaiting OMB comment.

The Commission believes that OMB review of NRC nonbudgetary matters can be beneficial. OMB review of Commission proposals helps keep NRC informed about Administration policy. With this information NRC can either alter its actions or policies to conform to Executive Branch policy in order to promote uniformity or efficiency (absent offsetting considerations) or be prepared to explain the reasons for its decision to depart from Administration policy. In addition, OMB can serve as a clearinghouse with regard to matters of concern to several agencies, providing NRC a useful vehicle for

making comments on the proposals of other agencies which may affect the Commission. OMB can alert NRC about government-wide proposals that may affect it and can help to reconcile conflicting positions of different agencies.

On nonbudgetary matters affecting the substantive responsibilities of the agency, NRC considers OMB's response as advisory.

Proposed Agency Regulations

The NRC voluntarily complies with Executive Order 12044, March 23 1978, entitled "Improving Government Regulations" (Enclosure 4). The purpose of this Order is to make Federal regulations clearer, less burdensome and more cost effective. The Order specifically exempts independent regulatory commissions from its requirements. However, in a March 23, 1978 letter to the heads of independent regulatory agencies (Enclosure 5), President Carter requested their voluntary compliance. OMB's role is to assure effective implementation of the Order.

Proposed agency regulations are not submitted to OMB for review.

QUESTION 2.

Please describe the process by which your agency makes proposals to OMB and the manner in which OMB reviews and acts upon those proposals. Include any self-initiated reviews by OMB. Please provide for the past five years, by name and title the individual or individuals within your agency who works (worked) directly with OMB personnel as well as the name of the individual or individuals within OMB who are (were) directly responsible for the review of your agency's proposals.

ANSWER.

As indicated above, the NRC submits detailed annual budget proposals to OMB by September 1, in the decision unit format set forth in OMB Circular A-11. Thereafter, formal office presentations are made by the directors of the various staff offices to the OMB examiners responsible for the NRC budget. These presentations typically generate further questions and meetings between these parties on specific issues.

NRC follows a less formal approach to forwarding nonbudgetary proposals to OMB. Generally, NRC sends a copy of such proposals to OMB for review and comment, and for circulation to other agencies which might be affected by the proposal. NRC considers any response from OMB or other agencies. Ordinarily, NRC submits only actions and proposals approved by the Commissioners. OMB does not generally participate in the development of NRC proposals before they are considered at the Commissioner level.

We are aware of only one OMB-initiated review in the past five years, excluding informal meetings requested by OMB to discuss specific issues. This is a review of NRC programs to determine the methods that are used to establish manpower requirements for those programs. This review was commenced in January 1980 and is still in progress.

The NRC is not in a position to describe in detail the OMB internal review process. However, we generally understand that OMB circulates NRC proposals among those other federal agencies which, in OMB's judgment, might be affected by the proposals. OMB collects comments and proposals from the other agencies, as well as comments and views reflecting the Administration's policies. If there is agency and/or OMB disagreement concerning the NRC proposal, the OMB forwards the opposing comments and criticisms to NRC. Interagency meetings may be arranged to discuss and to attempt to resolve differences between agencies. The NRC has participated in this process in regard to its own proposals and matters arising in areas administered by other agencies.

The personnel within NRC primarily responsible for working directly with OMB on budget matters and the individuals within OMB who have been responsible for reviewing the NRC budget since FY 1977, when NRC prepared its first budget request as an agency, are as follows:

NRC	OMB
<p><u>NRC Chairman</u> John Ahearne Joseph Hendrie Marcus Rowden William Anders</p> <p><u>Controller</u> Robert J. Friedman - 1976 Learned W. Barry - 1977 to present</p>	<p><u>Deputy Associate Director, Energy and Science Division</u> Hugh Loweth - 1976 to present</p>

Budget Division

Bruce A. Cooper - 1976, 1978 to present
 Richard P. Shumway - 1976 to present
 Nicholas Monaco - 1976 to present
 David C. Stumbaugh - 1976 to present
 Charles Beckwith - 1976-1977

Chief, Energy Technology Branch

Dan Taft - 1976
 Joseph P. Kearney - 1977-1979
 Thomas M. Palmieri - 1979-1980

Principal Budget Examiners

Joel Rosenblatt - 1976
 Douglas Pewitt - 1976-1978
 Ina Garten - 1977
 Claire Stuart - 1978
 Dominic Repici - 1978-1979
 Mark Kerrigan - 1979-1980

NRC personnel who have worked directly with OMB on non-budgetary matters and the individuals within OMB who have been directly responsible for these matters include:

NRCGeneral Counsel

Leonard Bickwit
 James Kelley (Acting)
 Jerome Nelson
 Peter Strauss

Deputy General Counsel

Carlton R. Stoiber

Asst. General Counsel forLegislation

Guy Cunningham

OMB

Jim Murr
 Clare Stewart
 Jim Nix
 Ronald K. Peterson
 Bob Carlstrom
 Ron Keinlan
 Bill Dinsmoore
 Susan Conner
 Harrison Wellford
 Nye Stevens
 Dominic Repici

QUESTION 3.

For each of the last five fiscal years supply the following information:

- a. The amount of budget authority requested of the Office of Management and Budget for your agency, including supplemental requests, as well as the amount approved by OMB in each instance. If such requests were made based upon particular laws or programs, please provide that information by law or program.

ANSWER.

Budget authority requested of and approved by OMB for FY 1977-1981 is shown on Enclosure 1).

- b. The number of personnel for the agency requested of OMB as well as the number of personnel approved by OMB. If such personnel was requested based upon particular laws or programs, please provide that number according to such law or program. Include a discussion of how the personnel ceiling was reached for your agency and the extent to which that ceiling has necessitated contracting by your agency with outside consultants.

ANSWER.

Personnel requested of and approved by OMB for FY 1977-1981 is shown on Enclosure 1). Personnel ceiling requests are arrived at through the normal budget formulation process which assumes little or no use of consultants other than those normally used by the Advisory Committee on Reactor Safeguards (ACRS), Atomic Safety and Licensing Appeal Board (ASLAB), and Atomic Safety and Licensing Board Panel (ASLBP). At the time the OMB dollar mark is received, the mark on the personnel request is also received. In only one instance (FY 1980) and in one program (Office of Nuclear Reactor Regulation (NRR)) did OMB allow increased funds to offset the reduction made in requested personnel.

- c. All proposals which you have submitted to OMB for changes in statutory authority affecting your agency as well as a description as to the manner in which OMB has or has not acted upon those proposals.

Answer.

The NRC does not submit proposals for changes in statutory authority to OMB for approval. Proposals are forwarded to OMB for comment and circulation to other potentially affected agencies. One such proposal was the NRC's draft of a bill to establish a revised regulatory framework for dealing with uranium mill tailings. NRC drafted proposed legislation which it sent to OMB, to provide for the licensing and regulation of uranium mill tailing. OMB subsequently sent the proposal to other affected agencies and convened an interagency meeting involving representatives from OMB, CEQ, EPA, DOE, Department of Interior and NRC to discuss concerns the other agencies had about certain features of the NRC draft bill. NRC agreed to review its proposal with the intent to accommodate the concerns raised by the other agencies. The bill as ultimately proposed incorporated NRC's response to the points raised by these other agencies. See the enclosed NRC memorandum of June 22, 1978, "Inter-agency Comments on NRC's Mill Tailings Bill," from C. Stoiber to the Commissioners. (Enclosure 6).

Another example of OMB involvement in developing an NRC legislative proposal involved a proposed amendment to the Atomic Energy Act to broaden the Commission's ability to protect reactor safeguards information. Section 302 of the NRC FY 80 authorization bill (H.R. 2608, S. 562), provides for the addition of a new Section 147 to the Atomic Energy Act that would authorize NRC to protect certain safeguards information. After NRC submitted the proposed change in NRC authority to Congress, OMB (on behalf of several agencies including DOE, Justice, GSA and NSC) sought to persuade NRC to modify certain features of the proposal. OMB coordinated inter-agency discussions to arrive at a compromise. Enclosed is a letter from Mr. McIntyre to Senator Jennings Randolph setting forth the Administration's views on the FY 80 NRC authorization bill. (Enclosure 7).

- d. Copies of all testimony prepared for delivery to Congressional Committees which have undergone changes or proposed changes as a result of OMB review. If possible, please provide copies of the testimony as it was submitted to OMB before such changes or proposed changes were made. If copies of pertinent testimony are not available, then please provide as detailed a description as possible of such changes or proposed changes that have been made by OMB.

ANSWER.

OMB has made no changes in NRC budget testimony prepared for delivery to Congressional committees. As stated earlier, non-budget testimony is not submitted to OMB for prior review, but rather for information and comment.

- e. Any other decision or action on the part of OMB which has had an impact, whether to hinder, enhance or alter, the current mission of your agency or the development of any new regulatory programs or activities.

ANSWER.

This response does not cover all OMB decisions or actions which may have had an impact on the NRC. OMB exercises government-wide responsibilities in the areas of management and budget which affect all federal agencies. Presented here are two recent examples of OMB actions significantly and particularly affecting NRC's functions and operations.

Proposed NRC Reorganization Plan

In response to the Report of the Presidential Commission on the Accident at TMI, the President decided that he would submit to Congress a reorganization of the NRC. The President requested OMB to prepare a reorganization plan. The Commission's submitted its views to OMB on the proposed reorganization and provided further comments on drafts of the plan. Although OMB did change certain aspects of the plan, the plan submitted to Congress by the President varied in several respects from the approach advocated by a majority of NRC Commissioners. See the enclosed Statement of John F. Ahearne, Chairman, NRC; Letters of Jan. 7, 1980, Feb. 6, 1980 and Feb. 21, 1980 from Chairman Ahearne to the OMB; the proposed Reorganization Plan No. 1 of 1980 and the Plan as amended May 5, 1980 (Enclosure 8).

Nuclear Safety Oversight Committee

Another OMB action affecting the NRC has been the development of legislation to establish a Nuclear Safety Oversight Committee to give statutory recognition to the committee established on March 18, 1980 by the President pursuant to Executive Order 12202. The stated role of this committee is to advise the President on progress being made to improve nuclear safety. The characterization of the committee's function as an "oversight" rather than advisory one could raise questions about the Commission's independence from the Executive Branch. This concern was conveyed by the Commission to OMB during the drafting process. At this time, the OMB has not formally submitted the bill to Congress. (See enclosed: Commission's comments to OMB on the draft bill, text of draft bill, and Executive Order 12202. (Enclosure 9).