UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
GENERAL COUNSEL

12/4

Approved with attached edit.

November 19, 1997 Greta Joy Dicus 12/8/97

COMSECY-97-030

MEMORANDUM TO: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan

RELEASED TO THE PDR
12/24/97 date DFW initials

FROM: Karen D. Cyr
General Counsel

SUBJECT: S.981, THE REGULATORY IMPROVEMENT ACT OF 1997

PURPOSE:

The main purpose of this memorandum and its first Attachment is to describe for the Commission the most recent legislative proposal on "regulatory reform," namely, S. 981, entitled the "Regulatory Improvement Act of 1997." The memorandum also discusses the impact the bill might have on the independence of the NRC and provides a draft of a letter that the Commission could send to the Senate Committee on Governmental Affairs to urge that the bill be modified to preserve the independence of the agency. See Attachment 2. Also attached are the full text of the bill, Senator Thompson's statement in the Senate when he introduced the bill, and testimony on the bill by Sally Katzen, Administrator of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

BACKGROUND AND SUMMARY:

Efforts in the last Congress to change the regulatory process in major ways failed in part for lack of bipartisan support of some of the more controversial features of the bills that proponents of reform introduced, such as cost-benefit decision criteria that would in effect have supplanted existing statutory health, safety, and environmental standards. Despite the lack of support for major reform, Congress did enact the more modest Congressional Review Act (CRA), which was a portion of the Small Business Regulatory Enforcement Fairness Act (SBREFA). Under the CRA, every "rule" (where "rule" is defined broadly enough to include policy statements and guidance documents) must be sent to Congress before the rule can become effective, and Congress can use expedited procedures to enact legislation that would modify or repeal "major" rules.

In the current session, however, there is in the Senate a renewed effort, now bipartisan, to address long-standing and widely-shared concerns that the regulatory process is too costly; that it overlooks less costly alternatives; that it lacks sufficiently scientific underpinnings; that it does not take risk into account sufficiently; that it lacks centralized oversight of risk considerations; that it too often ignores social values, distributional effects, and equitable concerns; and that it does not provide the public with enough information.

DF02 1/1
L-4 Proposed Bill
OEM-6

CONTACT: Steve Crockett, OGC
(301) 415-1620

12

projects aimed at increasing the consideration of risk in the agency's decision making. For example, the agency is engaged in research on probabilistic risk assessment and has worked with several utilities to develop methods of ranking risks. Had the agency been subject to centralized review of every proposed regulation, final regulation, guidance document, and policy statement the agency wanted to issue during that decade, it is doubtful that the agency could have accomplished so much.

Adding to the agency's rule making the length and cost of OMB reviews of every proposed and final rule is unlikely to increase the scientific content or the effectiveness of NRC regulation, and it will certainly reduce its timeliness. As part of its reinventing government effort, the NRC is striving to reduce the time it takes to complete rule makings. Moreover, rules needed to promote nuclear safety might also be delayed or modified for unrelated to safety. This legislation would instead prolong an already lengthy process. There are surely other ways to achieve the aims of better and more consistent use of cost-benefit analysis and risk assessment in regulatory analysis performed by the independent regulatory agencies. An independent regulatory staffed and directed by the necessary expertise, as the NRC is, can adopt sound new practices more quickly than a regulator subject to continuous central oversight. The RIA seems to have recognized this principle in excluding from its reach several categories of rules issued by some of the independent regulatory agencies that regulate economic matters.

For these reasons, the Commission ~~therefore~~ would urge that independent regulatory agencies with public health and safety responsibilities be explicitly excluded from the reach of the RIA's subchapter on executive oversight.

Sincerely,

Shirley Ann Jackson

cc: The Honorable John Glenn