May 11, 2000

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Karen D. Cyr **/RA by Joseph R. Gray Acting For/** General Counsel

SUBJECT: ELIMINATION OF UNNECESSARY STATUTORY PAPERWORK BURDENS

On April 14, 2000, Congressmen McIntosh and Kucinich, the Chairman and Ranking Member, respectively, of the House Government Reform Committee's Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, invited the agency to recommend "changes in specific laws which impose unnecessary or overly burdensome paperwork and are good candidates for elimination or reduction." The Subcommittee oversees implementation of the Paperwork Reduction Act (PRA) and has heard testimony indicating that some burdens could be reduced by amendment of statutes. The incoming letter asks for a response by May 15, but the agency has been given until the 19th. The committee will require a written explanation of any delay beyond the 19th.

The attached draft letter recommends some modest changes to the Federal Advisory Committee Act and the Ethics in Government Act. Suggestions for changes were gathered from the NRC staff and OGC. One group of changes would make records maintenance easier for the NRC's advisory committees, which are currently under an obligation to keep all documents for as long as the relevant committee exists. The other group would make employees' annual financial disclosure easier and more sensible, mainly by no longer requiring them to report financial assets that could not possibly give rise to a conflict of interest, assets such as U.S. Government securities.

The list of changes is perhaps disappointingly short. However, the NRC-related paperwork burdens our licensees face are for the most part the result of NRC regulatory requirements, not statutes. For example, a statute may require that a certain activity be licensed, but the agency has determined how much information must be in the application for that license.

One other noteworthy aspect of the list: it focuses exclusively on burdens sustained by government employees and advisory committees, and would have the ultimate effect of making available less information to the public -- information of very little use one might argue (though some citizens watch for unexplained large increases in an employee's conflict-free holdings), but in any case less information. The Congressmen may have been more interested in burdens sustained by private persons and organizations, and local and state governments, the objects of the Paperwork Reduction Act's special concern (see 44 U.S.C. 3501(1)). On the other hand, Federal employees are also "persons" under the Act, and the second stated aim of the Act is to "minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information."

We have discussed, but have not included, some other suggested changes. The most interesting one, from members of the staff in communications with the OCIO, would amend "Environmental Protection Agency statutes to eliminate duplication with NRC statutes in areas for regulating releases of radioactive material from NRC licensed facilities." This proposal, unlike the two already discussed, has the virtue of being aimed at the principal beneficiaries of the PRA. However, it has the drawback of being very much a matter under the jurisdiction of other congressional committees, including our authorizing committees. The attached draft avoids any matter that is not principally a matter of paperwork reduction. Moreover, the agency's authorization bill that passed the Senate, S. 1627, does not call for changes to EPA statutes, and we are currently proceeding under House Appropriations Committee direction to work on an MOU with EPA that would avoid dual regulation. The reply to Congressmen McIntosh and Kucinich would appear not to be the appropriate vehicle for recommending significant and substantive revisions of the environmental statutes.

Some other changes that were suggested would reduce burdens of current statutory requirements for NRC reports to Congress. One, from the staff, would amend section 182c. of the Atomic Energy Act, which now requires four consecutive weekly Federal Register notices of power reactor license applications. Again, the proposed change has appeal, and one might be tempted to add the similar requirement in section 274(e)(1) of the Act, which requires four consecutive weekly notices of intent to enter into a section 274 agreement with a State. However, the attached draft response does not include any proposals for reductions in noticing or reporting requirements imposed on the NRC. In the mid 1990s, the Commission successfully sought reduction of some reporting burdens. The agency is no longer required to annual reports of its Price-Anderson Act activities, the ACRS is no longer required to report annually on reactor safety research, and Abnormal Occurrence reports are now annual, not quarterly. (The agency notably failed, as did other agencies, to persuade Congress to make Inspector General's reports on audit results, and agencies' responses to those audits, annual rather than semi-annual.) However, the Commission's efforts then were in response to a specific Senate request for suggestions on which reports to Congress might be eliminated. Rep. McIntosh's very different request is in furtherance of the PRA, which does not list among its aims the reduction of the burdens of reporting to Congress or providing notice to the public.

Contact: Steve Crockett, OGC
415-1622

Attachments: 1. Draft Response to Congressman McIntosh (Identical letter to Congressman Kucinich)

ATTACHMENT 1

The Honorable David M. McIntosh Chairman
Subcommittee on National Economic
Growth, Natural Resources, and
Regulatory Affairs
Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515-6143

Dear Representative McIntosh:

This letter is in response to your April 14, 2000, request for recommendations for changes to specific laws which appear to impose unnecessary or overly burdensome paperwork requirements and are good candidates for elimination or reduction.

In the attached, you will find described some statutory provisions that we believe could be modified to reduce unnecessary burdens. For each statute, we have given the citation, our proposed change, and the rationale for our proposal. Each of the changes we recommend is aimed either at reducing unnecessary paperwork burdens on individuals, or minimizing the cost to the agency of maintaining or disseminating information.

Please let me know if you have any questions regarding our recommendations.

Sincerely,

Richard A. Meserve

Enclosure: Recommendations for statutory changes to reduce unnecessary paperwork

cc: The Honorable Dan Burton
The Honorable Henry A. Waxman

ENCLOSURE

NRC RECOMMENDATIONS FOR CHANGES IN SPECIFIC LAWS WHICH IMPOSE UNNECESSARY OR OVERLY BURDENSOME PAPERWORK

Ethics in Government Act, 5 U.S.C. App. 4, §102.

The public financial disclosure report (SF 278), which all senior employees must file annually, should be reformed. That would require amending a section of the Ethics in Government Act of 1978 that specifically mandates certain reporting categories (e.g., $1,001 to $15,000, etc.). These categories no longer usefully reflect the financial thresholds requiring recusal from participating in certain Government matters.

For example, the first two categories for the reporting of assets are $1,001-$15,000 and $15,001-$50,000. However, under Office of Government Ethics (OGE) regulations in 5 C.F.R. Part 2640, issued in 1996, an employee can work on a Government matter affecting an entity in which the employee has a financial interest if the value of the interest does not exceed $5,000; and if the Government matter is generic, such as a rulemaking, then the threshold is raised to $25,000. Thus, an ethics counselor cannot determine from the form alone whether someone checking, say, the $1,001-$15,000 category might need to recuse herself from a matter affecting the entity in which she has an investment. Congress wisely gave OGE authority to determine the thresholds requiring recusal, because OGE can update those figures more easily than can Congress. However, in 1978 Congress also established numerical reporting categories that, because they reflect then current dollar values, are no longer always useful in making recusal determinations We recommend allowing the Office of Government Ethics to establish numerical reporting categories that match its recusal categories.

The same section of the Ethics in Government Act that establishes numerical reporting categories also requires that employees report any U.S. Government assets they own, such as U.S. saving bonds or Treasury notes. We believe that these assets should not be reported. They clearly do not present a conflict of interest. The same is true of savings, checking, and money market accounts. Indeed, requirements governing what is reported on the confidential financial disclosure reports specifically exclude reporting these accounts and U.S. Government assets.

Federal Advisory Committee Act, 5 U.S.C. App. 2.

Section 10(b) of the Act requires that, subject to 5 U.S.C. 552 (FOIA), "the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the

advisory committee or agency to which the advisory committee reports until the advisory committee ceases to exist." (After that point, retention and disposition of the committee's records are addressed by other statutes.) Because of the Act's requirements, a statutorily permanent advisory committee, such as the NRC's Advisory Committee on Reactor Safeguards, must retain huge amounts of paper. The following changes in the requirements of section 10(b) would be useful:

The statute should be amended to eliminate from section 10(b) working papers and drafts prepared by an advisory committee or a subcommittee of an advisory committee, or committee staff or consultants, except when they reflect the final work product of the committee on a topic or agenda item.

The statute should place a time limit of six years on the required availability of other documents listed in section 10(b), except transcripts and minutes, which would continue to be retained for the life of the committee.

The statute should make clear that availability of listed documents through the Public Document Room (PDR) of the agency to which the advisory committee reports satisfies the requirements of section 10(b), even when the PDR is not the only publicly accessible location in which the committee's documents are maintained. (In order that the public may know which documents were made available to the committee with respect to a meeting agenda item, an appendix to the minutes or transcript of the meeting involving that agenda item could be required to list those documents.)

Conforming changes should also be made to *section 8(b)(2)*, which requires each agency's Advisory Committee Management Officer (required to be designated by the head of each agency that has an advisory committee) to "assemble and maintain the reports, records, and other papers" of any committee during its existence, and (to the extent applicable) to the requirement of *section 10(c)* that the minutes of each advisory committee meeting shall contain "copies of all reports received, issued, or approved by the advisory committee.".

Section 13 of the Act requires the Administrator of General Services to "provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants." The Librarian of Congress must, in turn, "establish a depository for such reports and papers where they shall be available to public inspection and use." This requirement was enacted at a time when Government-wide use of electronic media was not envisioned. It would now seem appropriate to amend this requirement to permit the provision of one copy electronically to the Library of Congress in lieu of filing eight (paper) copies.

Under *section 14(a)* of the Act, unless Congress provides otherwise with respect to an advisory committee, the committee terminates automatically not later than two years after its establishment, unless renewed. Section 14(b)(1) requires that upon the renewal of an advisory committee, the committee "shall file a charter" as provided for a new committee in section 9(c). Except where an item of information required to be included in the original charter has changed significantly, the filing of a brief notice of renewal with those required to receive the charter under section 9 should be sufficient, and would save paper and time of agency staff. While this saving may appear inconsequential when viewed in the context of one small agency, such as the NRC, the saving would be significant when viewed on a Government-wide basis.