

October 11, 2012

The Honorable Henry A. Waxman
Ranking Member, Committee on Energy
and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Waxman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC) and in response to your staff's request, I provide the following agency views on S. 3468, the "Independent Agency Regulatory Analysis Act of 2012."

Since the NRC's formation under the Energy Reorganization Act of 1974, Congress has prudently recognized that the health, safety, and security issues posed by nuclear energy necessitate an independent, technical oversight agency. The Supreme Court has likewise recognized that the NRC offers "special expertise at the frontiers of science" and has given great deference to our apolitical decisions on regulatory policy. Finally, regarding an appropriate level of Federal regulatory oversight, our licensees and other stakeholders understand NRC's unique role and generally recognize the importance for the industry of our high level of public involvement, analytical transparency, and measured, independent policymaking.

We are concerned that S. 3468, if applied to the NRC, would infuse our independent, science-based regulatory process with economic and political considerations. This could undercut international obligations and efforts by the United States to serve as a model of independent regulation, in which nuclear safety decisions are not impacted by broader economic or political concerns. We believe that applying this bill to the NRC is also inconsistent with one of the lessons learned from the tragedy at Japan's Fukushima nuclear plant: the overriding importance of clear lines of regulatory decision-making and the need to separate health and safety regulation from economic and political considerations.

Moreover, the requirements in S. 3468 could make it more difficult for the NRC to issue regulations and quickly issue guidance (which is included under the bill's expansive definition of covered "rules") to agency stakeholders. The NRC has demonstrated the need for such agility when its oversight process has identified emerging technical issues and in response to unanticipated events like Fukushima or the September 11th terrorist attacks.

The courts have determined that we must set regulatory requirements necessary for adequate protection without consideration of cost. It is not clear whether the bill's requirement that "to the extent permitted by law," agencies would "propose or adopt a rule only upon a reasoned determination that the benefits of the rule justify its costs" would trump the Atomic Energy Act's standards calling for adequate protection of the public health, safety, and security without regard to cost. Moreover, the NRC already routinely performs most of the regulatory analyses envisioned by the bill, such as assessing the cumulative effects of regulation, considering less burdensome ways of imposing new requirements, and considering costs before mandating protection at levels above those necessary for adequate protection of public health and safety.

Because S. 3468 would authorize limitations on our independent, science-based regulatory process, which we view as a vital pillar of a strong nuclear safety and security regime, in the absence of an exemption for our agency or other legislative amendment, we would not support enactment of legislation that would compromise NRC's regulatory independence.

We appreciate the opportunity to provide these views. I am available to answer any additional questions you may have.

Sincerely,

/RA/

Allison M. Macfarlane

cc: The Honorable Fred Upton
Chairman, Committee on Energy and Commerce