



# THE COMMITTEE ON ENERGY AND COMMERCE

## MEMORANDUM

December 10, 2013

To: Members, Subcommittee on Environment and the Economy and  
Subcommittee on Energy and Power

From: Committee Majority Staff

Subject: Hearing entitled: “Oversight of NRC Management and the Need for Legislative Reform”

On Thursday, December 12, 2013, at 10:15 a.m. in 2322 Rayburn House Office Building, the Subcommittees on Environment and the Economy and on Energy and Power will conduct a joint hearing entitled “Oversight of NRC Management and the Need for Legislative Reform.” The hearing will examine U.S. Nuclear Regulatory Commission (NRC):

- implementation of the August 13, 2013, circuit court order regarding the Yucca Mountain license review;
- efficient use of resources and timeliness of decision-making; and
- the need for legislative reform of the commission’s authorities.

### **I. Witnesses**

Five NRC commissioners will appear as the only panel of witnesses: Chairman Allison Macfarlane and Commissioners Kristine Svinicki, George Apostolakis, William Magwood, and William Ostendorff.

### **II. Background—Nuclear Regulatory Commission**

The NRC is an independent agency established by Congress in the [Energy Reorganization Act of 1974](#). Its [mission](#) is “to license and regulate the Nation’s civilian use of byproduct, sources, and special nuclear materials to ensure adequate protection of public health and safety, to promote the common defense and security, and to protect the environment.”

The NRC fiscal year 2014 budget request is \$1,055 million, to support 3919 employees. Ninety percent of the agency’s budget is recovered through fees assessed on its licensees. The remaining ten percent is attributable to work benefitting the federal government and is appropriated accordingly. The Nuclear Reactor Safety Program, which encompasses NRC efforts to license, regulate, and oversee civilian nuclear power, accounts for approximately \$812 million of agency resources, and the work of roughly 2,985 employees. The Nuclear Materials

and Waste Safety Program, which encompasses the agency's efforts to license, regulate, and oversee nuclear materials and waste, accounts for approximately \$232 million in agency budget authority and 859 employees.

Under the legal framework for Commission governance and operation set out in the Energy Reorganization Act of 1974 and the [Reorganization Plan No. 1 of 1980](#), the five members of the Commission are responsible for policy formation, rulemaking, adjudications, and adjudicatory orders.

Commissioners share equal authority in all Commission decisions and access to all agency information pertaining to Commission responsibilities. The Chairman is the official spokesman of the agency and is responsible for administrative functions of the agency. The Chairman is governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission is authorized to make.

In addition to its ongoing safety oversight and licensing activities, the NRC has been focusing on "[lessons learned](#)" from the causes and consequences of the Fukushima Daiichi nuclear accident in Japan. Following the incident, an NRC task force reviewed NRC regulations and concluded that there was no imminent risk from continued operations of U.S. reactors, but that additional enhancements to safety requirements and emergency preparedness were warranted. It recommended orders and regulatory [reforms](#) for the Commission to consider applying to U.S. operating reactors. These recommendations were prioritized into three tiers. On [March 12, 2012](#), the Commission issued regulatory requirements in response to the Tier 1 recommendations. Industry implementation and related assessment of those actions is underway. Information on the status of various actions can be found on the NRC's [Japan Lessons Learned](#) webpage.

The [Reorganization Plan of 1980](#) (the Reorganization Plan later codified by [P.L. 98-614](#)) was proposed by President Carter in response to the Three Mile Island Accident. It provides for the Commission's role in formulating policy and the Chairman's role as principle executive officer. The Plan also provides for the appointment and reporting structure for agency officials.

The need for statutory clarification concerning the governance of the NRC has come into focus in the wake of controversial actions by NRC leadership in recent years. NRC Inspector General review of these actions highlighted ambiguities in the statute governing NRC functions. For example, on June 6, 2011, the NRC Inspector General (IG) issued a report entitled "[NRC Chairman's Unilateral Decision to Terminate NRC's Review of DOE Yucca Mountain Repository License Application.](#)" The IG concluded that former Chairman Gregory Jaczko, had unilaterally and improperly terminated the Yucca Mountain license review in part by utilizing the Chairman's budget execution authority under the Reorganization Plan. The IG also found that the Chairman had acted to control information provided to the Commission based on his interpretation of his statutory authorities. A year later, on June 26, 2012, the IG issued a second report entitled "[Possible violations of the Reorganization Plan of 1980 and NRC's Internal Commission Procedures.](#)" The IG concluded that the Chairman had, among other actions,

attempted to control the content and flow of information to the Commission in part because of “conflicting” statutory interpretations over the Chairman’s authority.

In considering how best to amend the Reorganization Plan to clarify NRC governance and authorities, where necessary, concerns were raised about whether the Reorganization Plan was a true Act of Congress that could be modified by amendment or an executive instrument merely approved by Congress.

During his presidency, President Carter sought [presidential reorganizational authority](#) to reorganize the Executive Branch of the Federal government. To do so, he requested a four-year renewal of the Reorganization Act of 1949. In 1977, Congress passed Reorganization Act of 1977, which incorporated a legislative veto; with no legislative action, a plan submitted to Congress under the Act would take effect. President Carter proceeded to submit ten such plans, including the Reorganization Plan of 1980 regarding the NRC. In 1983, The Supreme Court ruled, in *INS v. Chadha*, that the legislative veto process was unconstitutional. In 1984, Congress amended Chapter 9 of Title 5 of the U.S. Code, which embodied the 1977 Reorganization Act to eliminate the legislative veto. However, concerns remained about the validity of reorganization plans, which had gone into effect under the legislative veto process. Consequently, Congress passed legislation, [P.L. 98-614](#), ratifying as law all the plans that had gone into effect under the now-unconstitutional procedure. As such, the Reorganization Plan of 1980 regarding the NRC remained in effect without being discretely acted on by Congress.

To avoid confusion about the appropriate means for legislating reform, Congressman Terry chose to codify the Reorganization Plan, complete with the preferred changes and complimentary provisions. Hence the short title “*Nuclear Regulatory Commission Reorganization Plan Codification and Compliments Act.*”

### **III. Summary of H.R. 3132**

Section 1: This section provides the short title.

Section 101: This section provides the general functions of the Commission.

Section 101(a) enumerates the functions of the Commission including policy formulation, rulemaking, orders and adjudications, and distribution of appropriated funds. Any commissioner may propose an issue for policy consideration and request a vote.

Section 101(b) grants authority to the Chairman to initiate the appointment of officers subject to commission approval, and includes a process for managing vacancies. This section also provides for the appointment of office directors, members of the Advisory Committee on Reactor Safeguards, and the supervision of agency staff.

Section 101(c) establishes that each commission shall appoint, remove, and supervise the personnel employed in their office.

Section 101(d) retains authorities for the Commission as originally established in the Energy Reorganization Act of 1974.

Section 102: This section enumerates the Chairman's functions.

Section 102(a) establishes the Chairman's functions including his role as official spokesman.

Section 102(b) describes the Chairman's role as principle executive officer and supervision of the Executive Director for Operations.

Section 102(c) provides that the Chairman and Executive Director for Operations shall be governed by the policies of the Commission and will be jointly responsible for keeping the Commission fully and currently informed about matters within its functions. This subsection also directs the Commission to report to the President and congressional authorizing committees if it determines the Chairman has not acted in accordance with this subsection.

Section 103: This section clarifies the Chairman's emergency authority.

Section 103(a) establishes the Chairman's emergency authority and the conditions under which that authority may be exercised including notification of the Commission and the congressional authorizing committees within 24 hours.

Section 103(b) authorizes the Chairman to delegate his emergency authority.

Section 103(c) encourages the Chairman to consult with the Commission to the extent practicable and such consultations are exempted from the Government in the Sunshine Act.

Section 103(d) requires the Chairman to conform to the policies of the Commission.

Section 103(e) requires notification of the Commission, the public, and the congressional authorizing committees immediately upon termination of the emergency.

Section 103(f) requires the Chairman to report to the congressional authorizing committees within 30 days regarding actions taken utilizing emergency authority.

Section 103(g) directs the Commission to revise its procedures within 90 days of enactment to comply with these requirements.

Section 104. This section describes the reporting relationships for agency officers and allows for direct communication with the Commission by any officer or employee.

Section 105. Approval of the Reorganization Plan of 1980 is rescinded.

Section 201. This section requires that documents transmitted to a chairman or ranking member of a congressional committee are transmitted with a certification that both the chairman and the ranking member both receive the documents.

Section 202. This section sets time limits for Commission consideration of appeals of Atomic Safety and Licensing Board decisions.

Section 203. This section requires that any allegation of wrongdoing on the part of the Chairman be immediately referred to the Inspector General and the Chairman's supervisory authority over the Inspector General be delegated to a commissioner.

Section 204. This section clarifies the Chairman's process for approving international travel.

Section 205. This section directs the Commission to revise its procedures to conform to this Act within 180 days of enactment.

#### **IV. Background – Spent Nuclear Fuel**

On July 29, 2011, the States of South Carolina and Washington, Aiken County, SC, Nye County, NV, the National Association of Regulatory Utility Commissioners, and others asked the U.S. Court of Appeals for the District of Columbia Circuit to compel NRC to resume consideration of the Department of Energy's 2008 application for a license to build the Yucca Mountain repository for spent nuclear fuel and high level nuclear waste.<sup>1</sup> The court granted the requested order on August 13, 2013.<sup>2</sup>

On November 18, 2013, the NRC issued an [order](#) detailing the course of action to address the writ of mandamus. The Commission directs the staff to complete and issue the Safety Evaluation Report documenting the staff's conclusions with regard to Yucca Mountain license application and requested that DOE complete a supplemental Environmental Impact Statement regarding groundwater protection.

According to the Government Accountability Office, nearly \$15 billion has been spent on site characterization and development of Yucca Mountain.<sup>3</sup> Delays in opening this repository pursuant to NWPA resulted in 78 utilities filing lawsuits against DOE to recover the costs of storing used fuel, which were paid out of the Department of Treasury's judgment fund for a total of \$2.6 billion in claims.<sup>4</sup> Furthermore, DOE estimates taxpayer liability will amount to \$19.7 billion in claims through 2020, which is the date DOE had determined Yucca Mountain could begin disposal

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<sup>1</sup> See *In Re: Aiken County, et. al On Petition for a Writ of Mandamus*, [Brief of Petitioners](#)

<sup>2</sup> See [In Re: Aiken County](#) – U.S. Court of Appeals D.C. Circuit.

<sup>3</sup> See *Commercial Nuclear Waste: Effects of a Termination of the Yucca Mountain Repository Program and Lessons Learned*, [GAO-11-229 April 8, 2011](#), and *DOE Nuclear Waste: Better Information Needed on Waste Storage at DOE Sites as a Result of Yucca Mountain Shutdown*, [GAO-11-230 March 23, 2011](#)

<sup>4</sup> See *Spent Nuclear Fuel: Accumulating Quantities at Commercial Reactors Present Storage and Other Challenges*, [GAO-12-797 August 15, 2012](#)

operations when it filed the license application in 2008. To date, the program is estimated to have been delayed by eight years, with each year of delay increasing taxpayer liability for DOE's failure to take custody of the used fuel.

**V. Issues**

Issues to be examined at the hearing may include:

- Commission efforts to ensure safe operation of generating stations;
- Commission actions to implement regulatory changes following the events at the Fukushima Daiichi nuclear power plant in Japan;
- Commission actions to implement the District of Columbia Circuit Court's August 13, 2013 writ of mandamus, compelling the NRC to resume its review of the Yucca Mountain repository license application;
- Commission's efficient use of resources and staffing; and
- Legislative reform to commission governance.

**VI. Staff Contact**

If you have any questions regarding this hearing, please contact Annie Caputo of the Majority Committee staff at (202) 225-2927.