

CINTAC

Civil Nuclear Trade Advisory Committee

June 5, 2015

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Secretary Pritzker,

The Civil Nuclear Trade Advisory Committee (CINTAC), as an advisor to you on issues important to the U.S. civil nuclear industry and the promotion of U.S. nuclear energy exports, requests your assistance on a matter pending in Congress that could seriously damage the ability of U.S. civil nuclear companies to export nuclear technology and expertise to China and other significant markets, and to share important lessons learned to support new nuclear energy facilities in the United States. The CINTAC requests that you promptly notify Congressional members and committees of jurisdiction regarding this issue and reiterate Administration objections raised in the May 12, 2015 Statement of Administration Policy.

The House of Representatives recently proposed a cumbersome modification to the already stringent Part 810 export control process that would add redundant and time-consuming reviews to what is currently a thorough and lengthy review process, and require additional and duplicative Presidential certifications to allow U.S. nuclear energy exports to a number of countries including China, the largest nuclear energy market in the world. China is constructing over one-third of the nuclear power plants currently under construction in the world, and the proposed legislation could lead to the loss of tens of thousands of U.S. jobs and billions in U.S. civil nuclear exports.

As you know, the U.S. Department of Energy (DOE) regulates exports of commercial nuclear technology and assistance under Section 57(b)2 of the Atomic Energy Act. DOE implements section 57(b)2 through the recently revised regulations at 10 CFR Part 810. The Department of Commerce plays a significant role in administering export controls for nuclear-related exports through its regulation of dual-use items and also participates in the Part 810 interagency review process. Adding additional review requirements would lengthen an already long and comprehensive process and negatively impact American companies.

During House consideration of the Fiscal Year 2016 National Defense Authorization Act, Section 3119 was included to amend Section 57(b)2 of the AEA. Section 3119 would add new burdensome and duplicative provisions to 10 CFR 810 and cause serious harm to U.S. nuclear

exports, U.S. industry, and U.S. influence on the development of nuclear energy in a number of significant U.S. nuclear export markets, including China, without enhancing U.S. security interests.

A general or specific authorization under Part 810 already requires an inimicality finding subsequent to an interagency review. To make this determination, DOE considers a broad set of factors, including implications of technology diversion. An interagency review is conducted which includes the Department of Defense and DOE's National Nuclear Security Administration (responsible for Naval Reactor technology), as well as the Nuclear Regulatory Commission, Commerce and State Departments, and others. Nuclear exports are more than adequately scrutinized, and requiring additional layers of approval will hinder U.S. exports and open the door for foreign competitors to displace U.S. technology.

With respect to China, intelligence agencies have just produced a Nuclear Proliferation Assessment Statement (NPAS) to support the successor Section 123 Agreement. Conducting a fresh assessment with each Part 810 license for China is redundant to the NPAS. Section 3119 would also have immediate impacts here at home on companies involved in the construction of the four AP1000 reactors in Georgia and South Carolina. The reference plants for these important U.S. nuclear new build projects are in China and Section 3119 would hamper information exchange and lessons learned between U.S. and Chinese partners. This information exchange is an important input to start-up testing, plant commissioning and training of plant personnel for these new U.S. reactors.

CINTAC believes in robust protections for nuclear exports to any country. Exporting U.S. technology, safety and security practices, and non-proliferation norms around the world is crucial to maintaining safe and secure nuclear power generation globally. U.S. policy should prevent the diversion of peaceful nuclear technologies to non-peaceful applications while also avoiding unnecessary disruptions to civil nuclear trade. We believe that balance has not been achieved by the language in Section 3119.

We appreciate your attention to this matter of great importance to industry and hope you will prevent the proposed legislation from becoming law.

Sincerely, and on behalf of the members of the CINTAC,



Chris Tye
Chair
Civil Nuclear Trade Advisory Committee



Gary Wolski
Vice Chair
Civil Nuclear Trade Advisory Committee

Members of the CINTAC

Chris Tye, CINTAC Chair, & Senior Vice President, Nuclear Power, Fluor Enterprises, Inc.

Gary Wolski, CINTAC Vice Chair, & Vice President, Curtiss-Wright

John Bendo, Nuclear Energy Business Manager, ASME

David Blee, Executive Director, U.S. Nuclear Infrastructure Council

George Borovas, Partner, Shearman & Sterling

Omer F. Brown, II, Attorney-at-Law and Legal Counsel to Contractors International Group
on Nuclear Liability

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Ralph L. Hunter, Jr., Chief Operating Officer, Exelon Nuclear Partners, LLC

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Kevan Weaver, Director, Technology Integration, TerraPower, LLC

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Lockheed Martin Corporation

Edward J. Wolbert, President and Chief Executive Officer, Transco Products, Inc.

William S. Woodward, Senior Vice President, International Projects, Holtec International

Todd Wright, Executive Vice President of Operations, Nuclear & Environment, AECOM

Attachment:

STATEMENT OF ADMINISTRATION POLICY, H.R. 1735 – National Defense Authorization Act for FY 2016 (page one and page nine regarding Administration objections to Section 3119).



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

May 12, 2015
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 1735 – National Defense Authorization Act for FY 2016

(Rep. Thornberry, R-TX, and 1 cosponsor)

The Administration appreciates the House Armed Services Committee's continued support of our national defense and supports a number of provisions in H.R. 1735, the National Defense Authorization Act for Fiscal Year (FY) 2016, such as authorities that support ongoing operations. The Administration also appreciates many of the acquisition reform measures included in the bill and looks forward to continued cooperation with the Committee on further progress in this area.

While there are areas of agreement with the Committee, the Administration strongly objects to a number of provisions in the bill. First, the President has been very clear about the core principle that he will not support a budget that locks in sequestration, and he will not fix defense without fixing non-defense spending. Sequestration levels will damage our ability to restore readiness, advance badly-needed technological modernization, and keep faith with our troops and their families. Unfortunately, the bill fails to authorize sufficient funding for our military's priorities, and instead uses Overseas Contingency Operations (OCO) funding in ways that leaders of both parties have made clear are inappropriate. Shifting base budget resources into OCO risks undermining a mechanism meant to fund incremental costs of overseas conflicts and fails to provide a stable, multi-year budget on which defense planning is based. The use of OCO funding to circumvent budget caps in defense spending also ignores the long-term connection between national security and economic security and fails to account for vital national security functions carried out at non-defense agencies.

Further, the bill fails to adopt many of the needed force structure and weapons system reforms included in the President's Budget, including failing to provide an authorization for a new Base Realignment and Closure (BRAC) round to allow the Department of Defense (DOD) to properly align the military's infrastructure with the needs of its evolving force. It also includes non-germane provisions, such as those undermining the Endangered Species Act, that have nothing to do with national defense. The President's defense strategy depends on investing every dollar where it will have the greatest effect, which the Administration's FY 2016 proposals will accomplish through critical reforms that divest unneeded force structure, slow growth in compensation, and reduce wasteful overhead. The Committee's changes would constrain the ability of DOD to align military capability and force structure with the President's defense strategy and to reduce unneeded costs. The bill also continues unwarranted restrictions, and imposes onerous additional ones, regarding detainees at Guantanamo Bay. If this bill were presented to the President, the President's senior advisors would recommend to the President that he veto it.

Authorization of Production of Special Nuclear Material Outside the United States by Foreign Country with Nuclear Naval Propulsion Program: The Administration strongly objects to section 3119, which would limit and condition authorizations under 10 CFR Part 810 of technology transfers and assistance to countries that have a naval nuclear propulsion program. Countries with such programs include generally authorized countries such as the United Kingdom, France, and Brazil, as well as countries like Russia, China, and India, for which specific authorization is required. The Secretary would be prohibited from issuing authorizations with respect to such countries until the Director of National Intelligence and the Chief of Naval Operations submit an assessment to the specified committees of the risks of diversion of such nuclear technology transfer to a country's naval nuclear propulsion program, even if the technology or assistance has no relationship to or utility in naval propulsion. Halting these authorizations would have a significant negative financial impact on the U.S. nuclear industry and on diplomatic relations between the United States and the impacted countries.