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

CHAIRMAN

PDR

July 22, 1982

DESIGNATED ORIGINAL

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The Honorable Clement Zablocki, Chairman
Committee on Foreign Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your June 18, 1982 request for the Nuclear Regulatory Commission's views on H.R. 6318. This bill, which proposes major changes in U.S. law and policy regarding proliferation-sensitive nuclear activities abroad, addresses several areas which have been the subject of Commission interest for several years. Since the proposed changes would directly affect the Commission's export licensing responsibilities, it is appropriate that we provide comments on their impacts, bearing in mind that the Congress and the Executive Branch have the primary responsibility regarding the formulation of new statutory and policy initiatives in the nuclear export area.

The first major provision of H.R. 6318 would amend Section 402(b) of the Nuclear Non-Proliferation Act of 1978 (NNPA) to ban the export of major critical components and technology for reprocessing, enrichment or heavy water production facilities. The Commission has no comments on the merits of this proposal. While no such exports have ever been made from the U.S., we understand that the Executive Branch is considering the future approval of U.S. exports to Japan's proposed new reprocessing facility and to Australia's proposed uranium enrichment project. Significant U.S. support for these activities would, of course, be precluded under the proposed amendment to Section 402(b).

A second major provision of H.R. 6318 would prohibit U.S. approval of reprocessing or major plutonium retransfer subsequent arrangements until Congress finds that: (1) effective international safeguards (providing timely warning of diversion) would be applied; and (2) adequate international sanctions to deter diversions of material have been established.

With respect to the first proposed finding, the Commission's March 2, 1982 letter to Representative Ottinger responding to safeguards-related questions noted the significant technical difficulties in safeguarding large-scale reprocessing facilities and our inability to count on

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inspection alone to provide timely warning of diversion of separated plutonium to weapon use if the necessary preparatory work has been done. We believe that problems such as these would make it very difficult for Congress to make the proposed finding. The U.S. Government and the IAEA, with NRC support, are continuing their efforts to improve safeguards capabilities to correct existing deficiencies in this area. At the same time, the Commission recognizes that IAEA safeguards cannot be solely relied upon to provide assurances that weapons-grade material has not been diverted. Information from non-IAEA sources and the nonproliferation credentials of the country involved and its relationship to the U.S. also play a large role in determining whether or not U.S. approvals for the reprocessing or use of sensitive materials are granted. The existing statutory provisions of Section 131.b. of the Atomic Energy Act provide that "reprocessing or retransfer will take place under conditions that will ensure timely warning to the U.S. of any diversion ...." This formulation permits the reviewing agencies to consider both IAEA safeguards adequacy and other relevant factors, including very sensitive intelligence information, in connection with reprocessing and retransfer decisions.

With respect to the second proposed finding regarding sanctions, the Commission shares a concern regarding the importance of clearly defined and effective sanctions against violations. However, we note the significant practical difficulties in reaching a broad international consensus in this area.

The third major provision of H.R. 6318 would add a new Section 133 to the Atomic Energy Act which would transfer authority over nuclear retransfers to NRC and increase U.S. statutory controls over retransfers to cover such activities as brokering. It is possible that transferring additional authority to NRC could dilute the Commission's attention to the primary health and safety issues encountered in regulating the U.S. nuclear industry. Thus this transfer may not be in the overall national interest. Nevertheless, the Commission believes that the factors involved in reviewing retransfer requests are essentially identical to those involved in the review of the initial export licensing requests and notes that, while other factors would be involved in such a decision, administratively consolidating in one agency the authority to control both export and retransfer activities would not be unprecedented. The Department of Commerce exercises control over the export and

retransfer of non-nuclear commodities. In any event, the wording of §133(a) and (b) would be unworkable: an NRC license shall be required for "any activity which . . . . indirectly assists in any way . . . ." This is too broad to be manageable.

With regard to the proposed expansion of the scope of the U.S. Government's control over transfers outside the U.S., the Commission agrees that some changes to current practice may be warranted. Both the Department of Energy and the State Department have recently agreed to expand existing U.S. control mechanisms under 10 CFR Part 810 regarding foreign nuclear activities by U.S. firms or individuals. It is our understanding that there is already an adequate statutory basis for changing DOE's regulations and, accordingly, it may not be necessary to adopt any statutory amendments. The Commission, under the provisions of Section 57.b. of the Atomic Energy Act, will be consulted regarding the proposed amendments to Part 810 and intends to support those changes which would further tighten DOE's Part 810 controls so that they coincide with the export controls on nuclear material and equipment exercised by the Commission under 10 CFR Part 110. In connection with this review we will examine closely the merits of extending Part 810 controls to cover such activities as brokering by U.S. firms.

The final provision in H.R. 6318 would amend Section 127 of the Atomic Energy Act to require that the IAEA safeguards to be applied with respect to nuclear exports will be adequate to provide "timely warning to the U.S. of any diversion ... of special nuclear material" prior to the time it could be converted into a nuclear explosive device. This relates to the technical objective of IAEA NPT-type safeguards agreements, which is to assure the "timely detection of diversion of significant quantities of nuclear material...." However, the ability to meet this objective depends on how "timely detection" and "significant quantity" are defined. At the present time, the IAEA-defined goals are not being met at all facilities because of technological, legal, and resource constraints, and operational problems. This provision of H.R. 6318 is similar to the current wording of the NNPA (§131b(2)) which is that "foremost consideration. . . under conditions that will ensure timely warning to the United States. . ." (emphasis added). However §131b(2) allows consideration of the very sensitive intelligence information and the US-other country relations. The

proposed language for §127 restricts the finding to IAEA safeguards, which cannot provide such information.

As you are aware, Congress has never clarified its intent regarding the issue of "adequacy" with respect to the export licensing safeguards criterion. The proposed amendment to Section 127 would provide such a clarification. In this regard, it should be noted that the provision, as drafted, would not give the Commission the discretion to license exports where it could not make a positive finding, on a case-by-case basis, that IAEA safeguards were adequate to provide "timely warning of diversion." This would, in effect, stop exports unless the NRC were to obtain sufficient detailed safeguards information to be assured that the criterion is met. It should be noted that there are instances, particularly in nations with good nonproliferation credentials, where the U.S., through means other than IAEA safeguards, has adequate assurance against diversions. Arrangements to obtain the detailed information would have to be made with the importing country, since sufficient detailed information would not be available through the current IAEA system. Another possibility would be to request fundamental changes to current IAEA practices regarding the dissemination of safeguards information and information collected.

Commissioner Ahearne expresses appreciation for Congress finally explicitly addressing the question of whether the Commission must consider adequacy of IAEA safeguards and how adequacy is to be defined.

We appreciate the opportunity to comment on the proposed legislation.

Sincerely,

Nunzio J. Palladino