

Senate Bill Would Restrict US Civil Nuclear Cooperation with Russia

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Senator Benjamin Cardin (D-MD), along with a bipartisan group of senators that includes John McCain (R-AZ), Marco Rubio (R-FL), Lindsey Graham (R-SC), Amy Klobuchar (D-MN), and Dick Durbin (D-IL), introduced S.94, the “Counteracting Russian Hostilities Act of 2017.” While widely reported on for its proposed sanctions on the Russian Federation for cyberattacks on the United States, S.94 also contains a little-discussed provision aimed at civilian nuclear trade with Russia.

Section 209 of the bill would penalize any person who makes an investment that directly and significantly contributes to enhancing the ability of the Russian Federation to construct civil nuclear power plants. While the bill certainly covers the construction of civil nuclear plants in Russia, it is broadly phrased in a manner that could cover Russia’s construction of civil nuclear plants in other countries as well. The restriction on investments is limited to nuclear power plant construction, but the bill also would penalize any person who sells, leases, or provides goods, services, technology, information, or support to the Russian Federation that “could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of civil nuclear plants by the Russian Federation.” The dollar threshold for investments or goods, services, etc. is \$1 million per transaction and \$5 million per 12-month period.

For real-world application, these restrictions would appear to cover support for power uprates, vessel head repairs, and steam generator replacements, among other nonconstruction activities. The bill does not distinguish between current or advanced designs, or between consulting services or the sale of major plant equipment. However, the restrictions could be read to exclude research and development activities, which indirectly facilitate nuclear plant construction and operations. Finally, the bill applies only to actions on or after the date of enactment of the legislation, so any investment or support provided before that time would not be covered.

Penalties for violating the sanctions would be severe. The bill contains 12 possible penalties and requires that the president impose at least five of them on any person who violates Section 209. The penalties include debarment from government contracts, denial of export licenses, and freezing of banking accounts, as well as prohibiting a US financial institution from issuing more than \$10 million in loans over a 12-month period.

S.94 continues the trend of imposing additional restrictions on civil nuclear trade with Russia. Although nuclear-related exports are already controlled under 10 C.F.R. Parts 110 and 810 and the Export Administration Regulations (EAR) in 15 C.F.R. Parts 730-774, Congress in recent years has imposed additional restrictions on the transfer of technology to Russia. For example, in the National Defense Authorization Act of 2015 (NDAA), Pub. L. 114-92, § 3136, codified at 42 U.S.C. § 2077a, Congress imposed additional reviews by administrative agencies, including the Office of the Director of National Intelligence, of proposed transfers of civil nuclear technology to Russia. The NDAA also requires regular reports to Congress of any approved transfer of civil nuclear technology to Russia pursuant to Section 57b.2 of the Atomic Energy Act and 10 C.F.R. Part 810.

S.94 has been referred to the Senate Committee on Foreign Relations, where it awaits further action.

This post was prepared with the help of David B. Mendelsohn, a research assistant in our Washington strategic government relations and counseling practice.

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