



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 5515 – National Defense Authorization Act for Fiscal Year 2019

(Rep. Thornberry, R-TX, and Rep. Smith, D-WA)

The Administration appreciates the continued work of the House Armed Services Committee (Committee) on behalf of our national defense. The annual National Defense Authorization Act (NDAA) is an essential step in securing the Nation, and the Administration supports ultimate passage of an NDAA for the 57th consecutive year.

The Administration appreciates the bill's provisions that enable implementation of the National Security Strategy and the National Defense Strategy, both of which focus on a return to principled realism in an era of great power competition. The bill's overall authorizations of base national defense funding and Overseas Contingency Operations funding are consistent with the Bipartisan Budget Act of 2018 and the FY 2019 President's Budget request.

Further, the bill authorizes funding and supports our efforts to destroy the remaining forces of the Islamic State of Iraq and Syria (ISIS), rebuild readiness, execute the Administration's South Asia Strategy, deter potential adversaries, and bolster our allies. The bill also supports the Administration's requested pay raise, military end-strength levels, and many of the Nuclear Posture Review initiatives. It also includes important reforms to Department of Defense (DOD) management and business practices.

The Administration looks forward to working with the Congress to address its concerns, a number of which are outlined below. The Administration also looks forward to reviewing the classified annex to the committee report and working with Congress to address any concerns about classified programs.

Roles of Under Secretary of Defense for Policy (USD(P)) and Under Secretary of Defense for Intelligence (USD(I)). The Administration strongly objects to section 904(b), which would transfer certain technology protection functions related to export controls from the USD(P) to the USD(I). The USD(P) plays the lead role within DoD on ensuring that defense cooperation with foreign partners protects sensitive United States technologies and aligns with National Defense Strategy priorities. Technology security and export control activities directly support political-military relationships, security cooperation efforts, and multilateral non-proliferation export control activities. Technology security arrangements negotiated and implemented by the Defense Technology Security Agency in support of defense cooperation activities are worked in close coordination with the Department of State and other departments and agencies in the interagency. The USD(P) is the principal representative of DoD in the interagency and to the State Department.

Detention Facilities at Naval Station Guantanamo Bay. The Administration strongly objects to the absence of the authorization for military construction of a High-Value Detention Facility at Naval Station Guantanamo Bay. The President has ordered continued detention operations at Naval Station Guantanamo Bay. The current facility for high value detainees is experiencing structural and system failures that, if unaddressed, could in the future pose life and safety risks to our guard forces and the detainees being held there; it also does not meet the requirements of the aging detainee population.

Repeal of Certain Determinations Required for Grants of Exceptions to Cost or Pricing Data Certification Requirements and Waivers of Cost Accounting Standards. The Administration strongly objects to section 877, which would permit the waiver of the requirement to submit certified cost and pricing data without first establishing that the data cannot be obtained from the contractor when needed at the contracting officers' request to support a price reasonableness determination. Section 877 would place contracting officers at a significant disadvantage in negotiating fair and reasonable prices, resulting in increased cost to the taxpayers and the Department.

Advisory Boards Regarding Military Commissaries and Exchanges. The Administration strongly objects to section 624, which would establish an advisory board consisting of military service organization or veteran service organization representatives at each installation with either a commissary or exchange. This provision is duplicative of established advisory and feedback channels. The Department estimates this provision would establish approximately 255 new advisory boards and increase costs to DOD by at least \$145 million annually. In addition, many remote and overseas locations do not have appropriate military service organizations or veteran service organizations, or represent the primary customers at these locations.

Background investigation and security clearance-related provisions. The Administration strongly objects to section 1626, which would prohibit the obligation or expenditure of FY 2019 funds to transfer the background investigation mission from the National Background Investigations Bureau to DOD before December 31, 2019. The Administration is committed to achieving an efficient, fiscally viable, and secure background investigations operation, and looks forward to discussing its plan to reform this critical mission with the Congress. The Administration also objects to sections 541, 1622, 1623, 3111, and 3112, which pertain to the processes for conducting, reviewing, and adjudicating the security clearances of dual citizens and of personnel convicted of certain offenses. These provisions interfere with the governance structure for policy and oversight of the government's security clearance programs, duplicate existing policy, and would likely limit clearance reciprocity.

Additional Requirements for Negotiations for Noncommercial Computer Software. The Administration supports the general preference for negotiating specialized software licenses. However, the Administration strongly objects to section 871, which would prohibit DOD from requiring minimum license rights that are necessary to protect critical DOD operational and mission needs, including emergency repair activity, utilizing Modular Open Systems Approaches in the Development of Weapon Systems (required by 10 U.S.C. 2446a), and mitigating

cybersecurity vulnerabilities or other supply chain risks.

Limitation Pending Certification on the Joint Surveillance Target Attack Radar System (JSTARS) Recapitalization Program. The Administration objects to section 214, which would restrict the obligation of funds for the Advanced Battle-Management System (ABMS) and reduce DOD's proposed divestment of legacy E-8C aircraft until the Secretary of the Air Force certifies that the JSTARS recapitalization program is proceeding unhindered with the plan in the President's 2018 Budget request. The JSTARS recapitalization program will be unable to perform its mission in high-end contested environments, which is counter to the National Defense Strategy. As such, the Administration strongly believes the JSTARS recapitalization program does not meet the needs of the warfighter across the full spectrum of conflict and that investing in ABMS is prudent and better postures DOD for the future warfighting environments.

Open Skies Treaty. The Administration objects to the elimination of the \$222.2 million FY 2019 funding request in section 4101 for the C-135B as "ahead of need." The Air Force expects to be in a position to execute this procurement and requires the FY 2019 funding to replace the existing fleet of 1960s-era OC-135B U.S. Open Skies Treaty (OST) observation aircraft with modern, capable, and cost-effective aircraft. At present, the United States is not able to fully exercise its rights under the OST as some Open Skies airfields are not accessible to the current OC-135B aircraft. The Administration also objects to section 1232, which would tie U.S. votes on Treaty decisions at the Open Skies Consultative Commission (OSCC) to the completion of an unrelated certification.

Unfunded Navy Ships. The Administration appreciates the Committee's support for increasing the size of the fleet and shares the Committee's desire to increase our submarine and carrier force. However, the Administration objects to specific provisions which may inadvertently restrict the ability to invest in our fleet in a responsible and sustainable manner. For instance, section 130 prohibits the Navy from fully exercising the FY 2019 Virginia-class submarine (SSN) five-year multi-year procurement authority until the Navy certifies it will procure two more SSNs than are currently in the budget. In addition, section 122(b) provides incremental funding authority over an indefinite period for CVN-81 as well as CVN-80, which is inconsistent with acquisition best practices. Additionally, section 121 increases the requirement for operational aircraft carriers from 11 to 12, which may not be sustainable within the Navy's current topline. The Administration looks forward to working with Congress to determine the most cost-effective and fiscally responsible path forward to deliver the Navy the Nation needs.

Missile Defense. The Administration appreciates the Committee's support for enhancing the Nation's missile defense system. However, the Administration has concerns with sections 1661 and 1662 as currently written. The Administration believes it is premature to mandate specific solutions while the Department continues to evaluate the best technical and fiscal approaches. The Administration will work with Congress to ensure that the Nation is provided with an enhanced, layered missile defense that is appropriate, affordable, and sustainable, consistent with the forthcoming Missile Defense Review.

Limitation on Availability of Funds for Army Lower Tier Air and Missile Defense Sensor. The Administration objects to section 1668. The inability to obligate fifty percent of Army Lower Tier Air and Missile Defense Sensor program funding will limit the Army's ability to meet the desired accelerated initial operating capability (IOC) timeline. The Administration also objects to

the requirement in section 1668 to submit a report that contains a funding profile and schedule to ensure that such sensor would achieve IOC by December 31, 2023.

Principal Advisor on Countering Weapons of Mass Destruction. The Administration objects to section 1072, which would require the Secretary of Defense to designate a Principal Advisor on Countering Weapons of Mass Destruction (CWMD) with responsibility to supervise activities across the Department. On April 9, 2018, the Deputy Secretary directed the establishment of a CWMD Unity of Effort Council. The Council will expeditiously address issues that affect the CWMD mission.

Sanctions Relating to Russia. The Administration has taken numerous actions against Russia as well as Russian corporations and individuals, in response to their wide range of malign activities, including continuing to occupy Crimea and instigate violence in eastern Ukraine, supplying the Assad regime in Syria with material and weaponry as they bomb their own citizens, attempting to subvert Western democracies, and malicious cyber activities. Even as these actions are enforced, the Administration appreciates that section 1236 would provide some additional flexibility in granting waiver relief from certain Russian-related sanctions under the Countering America's Adversaries Through Sanctions Act, which are required for persons engaging in significant transactions with Russian defense and intelligence sectors and which could ensnare key United States partners and allies should they so engage to support their defense requirements. As expressed in the joint letter from Secretary Mattis and Secretary Pompeo to the key House committees and leadership on May 8th, the Administration seeks adequate flexibility to avoid inadvertent damage to our efforts to build and sustain key relationships with allies and partners. As United States allies and partners support United States national security activities while they transition to non-Russian systems, it is important that waiver relief for this purpose be included in this legislation.

Minimum Confinement Period for Convictions of Certain Sex-related Offenses Committed by Members of the Armed Forces. The Administration appreciates the Committee's continued focus on DOD's efforts to eliminate harassment and sexual assault. However, the Administration objects to section 531 because it is contrary to established Federal practice and, given the broad scope of sex-related offenses in the military justice system, would likely adversely impact the interests of justice, including those of crime victims. This change discourages offers to plead guilty and takes away flexibility from a General Court-Martial Convening Authority and prosecutors.

Authorities and Responsibilities of the Chief Management Officer (CMO) of the Department of Defense. The Administration objects to expanding the CMO's authority, direction, and control with respect to all the Defense Agencies and DOD Field Activities. Section 911 would create contradictory and conflicting authorities and relationships between the CMO and Office of the Secretary of Defense (OSD) Principal Staff Assistants. While the Department appreciates the congressional intent, the CMO has all of the necessary authorities required to oversee efficiency and effectiveness related to the business aspect of covered activities.

Transition of Certain Defense Agencies and Department of Defense Field Activities. The Administration objects to directing the Department to transfer all information technology contracting, acquisition, and senior leader communication services of the Defense Information Systems Agency (DISA) to other DOD elements. This action would increase the cost of acquiring information technology, weaken the Department's ability to secure its cyber

networks, and inhibit DISA's mission to provide seamless communication to warfighters and senior leaders. The Administration also urges Congress to include the Washington Headquarters Services in the review of all the Defense Agencies and DOD Field Activities directed in section 913(c) instead of eliminating it as section 913(b) directs.

Improvements to Acquisition System, Personnel, and Organization of Space Forces. The Administration appreciates the Committee's continued focus and attention as it executes its oversight responsibilities of our nation's military space capabilities and forces. However, the Administration believes that section 1601 is premature. The Department currently is conducting a review of its space organizational and management structure as required by section 1601 of the FY 2018 NDAA. Once complete, the Administration will review these findings and deliver the required report and consult with Congress.

Cloud Services. The acceleration of cloud technologies is critical to developing technologies such as artificial intelligence and machine learning. In order to maintain our military advantage, the Administration will responsibly leverage foundational infrastructure and platform technologies from the commercial sector. The Administration looks forward to providing the information requested in section 1053 to both enable proper congressional oversight and prevent delays in the delivery of new capabilities to the warfighter.

Plan for Elimination or Transfer of the Strategic Capabilities Office (SCO) of the Department of Defense. The Administration objects to section 218, which would require DOD to develop a plan to eliminate or transfer the SCO. The Administration views the SCO's work as critical to maintaining our advantage over our strategic competitors and is concerned that its elimination and transfer of functions would place our operating forces at risk.

Defending United States Government Communications. The Administration supports the general approach of section 880. However, we are concerned about the unintended consequences of such a broad prohibition. The Administration looks forward to working with Congress to ensure the scope of the provision both protects our national security and maintains our ability to execute our mission.

Transition of Administration by Defense Health Agency (DHA) of Military Medical Treatment Facilities (MTFs). The Administration supports language in section 711, which would permit phasing the transfer of the administration and management of MTFs from the Services to DHA over a two-year period. However, the Administration objects to language that would prohibit the Secretary of Defense from closing any MTFs, limit the health services provided by an MTF, or take any action to begin such a closure or limitation until after the transition. The Administration also objects to section 721, which would create a TriService Dental Research Program at the Uniformed Services University of the Health Sciences (USUHS), since a TriService Center of Oral Health Studies already exists at USUHS and the center could broaden its research role.

Per Diem Allowance Policies. The Administration objects to section 605, which would prevent the Secretaries of the military departments from implementing a reduced per diem for uniformed Service members and civilian employees who travel to one location for more than 30 days. This provision is unnecessary because DOD has already implemented a policy allowing the Services to pay travelers' actual expenses up to the full per diem rate when the reduced flat rate for meals and incidental expenses is insufficient for the assignment.

Military Housing Privatization Initiative (MHPI). The Administration objects to section 604, which would require the Secretary to pay lessors of covered housing five percent of the basic allowance for housing (BAH) amount. While the section's intent is to ensure that MHPI project entities are able to sustain and recapitalize privatized family housing, the United States government does not have the authority to mandate how these entities manage increased payments. Section 604 also would effectively provide financial support to MHPI project entities that is not afforded to other private entities that have service member tenants, creating different housing standards for military families living in private housing on an installation compared to those living off-installation. This provision would cost as much \$200 million in FY 2019 and more than \$1 billion over the next 5 years to subsidize privatized family housing, which would divert resources critical to build a more lethal, resilient, agile, and ready Joint Force. Finally, it is not possible for DOD to make monthly payments, except in arrears, because of the time and complication involved in establishing the amount owed under the provision.

Unrequested Re-prioritization of Military Construction Funding. The Administration objects to the bill's realignment of requested military construction funding from priority projects to other unrequested projects. Contrary to the Administration's fiscally responsible full funding policy, the bill instead proposes to incrementally fund 12 military construction projects, effectively passing the required \$900 million amount needed to fully fund the projects to future year budgets. Further, the bill diverts almost one billion dollars from the projects requested for full funding, or from rescissions of prior year funds, to other unrequested projects. Many of these unrequested projects are not ready for construction due to the lack of planning and design and are not included in DOD's Future Years Defense Program. By incrementally funding military construction projects to fund unrequested projects, the bill delays critical resources to complete high-priority projects initiated in FY 2019 and puts the burden on future budgets to make up the difference.

Improvements to Research and Development and Acquisition Processes of Missile Defense Agency (MDA). The Administration objects to section 1663(c), which would require MDA to publicly release the quarter and fiscal year execution of planned missile defense flight tests. Due to the need to safeguard critical defense information, DOD no longer discloses the dates and times of missile defense flight tests prior to the required safety notifications. The Administration also objects to section 1663(b), which imposes a 180-day waiting period to implement improvements to non-standard acquisition processes and restricts changes to requirements generation processes.

Provision of Space Situational Awareness Services and Information. The Administration objects to section 1603, which would terminate DOD's authority to provide space situational awareness data to commercial and foreign entities on January 1, 2024, and require the Secretary of Defense to enter into a contract with a federally funded research and development center to assess which department or departments should assume these authorities. This would interfere with ongoing Executive Branch efforts, including efforts led by the Vice President as Chair of the National Space Council. As noted by the Vice President during his speech at the Space Symposium on April, 16, 2018, the National Space Council staff is coordinating a space traffic management policy for the President's approval which already addresses roles and responsibilities for space situational awareness data and space traffic management services. The policy establishes a partnership between the Departments of Defense and Commerce with Defense maintaining the authoritative catalog and Commerce serving as the civil agency public interface.

Limitation on Availability of Funds for Joint Space Operations Center Mission System. The Administration objects to section 1609, which would restrict all funding for the Joint Space Operations Center Mission System, and funding for the Enterprise Space Battle Management Command and Control program to 75 percent of the funds made available for FY 2019 until the Deputy Secretary of Defense certifies to the congressional defense committees that the Secretary of the Air Force has entered into a contract to provide existing best-in-breed commercial space situational awareness processing software. This provision will add additional cost and schedule to both programs and delay delivery of a critical space situational awareness capability to the warfighter.

Designation of Navy Commanders. The Administration objects to section 905, which would require the Secretary of the Navy to designate a single commander within the Department of the Navy responsible for ensuring Navy forces are available for tasking and deployment, including those forces that may be operating from a forward deployed location. This section would also designate a single commander to oversee all shipyards, including those overseas. These provisions would intrude on the authority and the prerogative of the Secretary of the Navy to manage the organization to provide the best support to the Secretary of Defense and the President.

Surface Warfare Officers (SWOs) Career Paths. The Administration objects to section 502, which would establish a specialized career path for SWOs. Separating SWOs into two career paths would limit mastery of core skillsets that are fundamental in developing a warfighter to lead, fight, and operate complex U.S. Navy warships. Pursuant to critical lessons-learned from the 2017 Strategic Readiness Review and Comprehensive Review, the introduction of new classroom courses, enhanced simulator training, and frequent career milestone evaluations strengthen the core skillsets required for every SWO, and optimizes the development, assessment, and sustainment of proficiency across the SWO career path.

Purchase of Vessels Using Funds in National Defense Sealift Fund. The Administration appreciates the Committee's support in section 1022 of the Department's efforts to recapitalize the Ready Reserve Force and the U.S. Navy's Military Sealift Command (MSC) surge fleet by increasing the amount of used foreign-built vessels authorized for purchase. However, the Administration objects to withholding 25 percent of MSC's funds in FY 2019 as restrictions on funding will limit MSC's ability to support worldwide sealift and other ongoing operations (replenishment of U.S. Navy vessels at sea, oceanographic survey and surveillance, expeditionary sea bases for SOF, mine counter measures, and special mission support).

National Guard Promotion Accountability. The Administration objects to section 513. By mandating an effective date of promotion after Federal Recognition based upon the actions of a Governor of a State, the provision infringes on the authority of the President and Secretaries of military departments to appoint officers in the National Guard of the United States, which is part of the military's Reserve Component. This provision would result in inequitable treatment among National Guard officers and similarly situated Regular Army, Regular Air Force, United States Army Reserve, and United States Air Force Reserve officers who are also subject to review before their appointment is tendered.

Unjustified Reductions to Operational and Personnel Accounts. The Administration objects to reducing certain operation & maintenance and military pay accounts by \$2.6 billion based on prior-year under-execution in those accounts. If enacted, these reductions would be applied to critical

programs, such as Military Services' readiness, depot maintenance, base operations support, and military pay and allowances for Service members. Reducing these programs would directly impact the lethality and readiness of DOD, undermining the National Defense Strategy.

Dual Status Military Technicians. The Administration objects to section 506, which would guarantee Title 5 employment to any dual status technician (National Guard or Reserve) who loses their position "for any reason other than disqualification." The Administration is concerned that this section, as currently worded, would create an unlimited obligation to provide Title 5 positions to military technicians who simply abandon their military memberships, retire militarily, or are released from military service due to force-shaping measures or administrative discharges.

Limitations on Authority to Revoke Certain Military Decorations Awarded to Members of the Armed Forces. The Administration objects to section 571 because it infringes on the Service Secretaries' authority to revoke certain military decorations awarded to Service members in order to preserve the prestige and integrity of these awards. This provision would also be inconsistent with sections 3744, 6249, and 8744 of title 10, United States Code, which prohibit an award to a member whose service has not been honorable.

Accelerating Payments. The Administration strongly supports improved cash flow to small businesses and small business subcontractors, but has concerns regarding the extent to which the accelerated payment actions required by section 852 will achieve tangible benefits for small business subcontractors. Because payment practices are industry specific, the benefits of an across-the-board acceleration of payment by the government to large business prime contractors is unlikely to produce in-kind benefits for small business subcontractors, but will create new costs for the Department to monitor and enforce, and could create other unintended consequences for the Department in ensuring payment integrity.

Transition Assistance Program. The Administration objects to section 552, which would replace the current requirement for all Transitioning service members to participate in the Department of Labor Employment Workshop (DOLEW) by limiting required instruction related to employment to only one day, instead of the three days in the current Transition Assistance Program (TAP). Such prescriptive legislation is premature and would restrict the Administration's flexibility to shape TAP based on the needs of the participants and findings of ongoing analysis and evaluation.

Coast Guard Contracting. The Administration objects to section 3523, which would create a wholly new contract requirement that applies only to the Coast Guard and is outside of general government requirements under the FAR by requiring Coast Guard contracting officers to include new clauses in future contracts to prepare for potential terminations. This section is unnecessary and duplicative.

Workforce Issues for Military Realignment in the Pacific. The Administration appreciates the important authorities enacted last year in the FY 2018 NDAA, which authorize admission before October 1, 2023 of H-2B workers in the region to perform certain military-related work necessary for the relocation of Marines to Guam on planned timelines. Section 1043 extends exemption from the nation-wide cap on H-1B and H-2B workers for Guam and the Commonwealth of the Northern Mariana Islands and adds health care workers as exempt from H-2B requirements that the work be temporary in nature. The Administration urges the Congress to

focus on the Administration's 2018 requested authorities and fully adopt them to address specified needs in both Guam and the Commonwealth of the Northern Mariana Islands.

Procurement of Ammonium Perchlorate and Other Chemicals for Use in Solid Rocket Motors. The Administration is concerned by the fragile state of the defense industrial base for many specialty chemicals that are required for, sensitive technologies. The Administration supports efforts to ensure that the materials and chemicals needed for weapon systems are secure and reliable. The Administration therefore strongly supports Section 1682, which directs the Secretary of the Army to explore the possibility of using a government-owned, contractor-operated model to securely supply specialty chemicals to the Department of Defense for warfighter needs.

Prohibition on Acquisition of Sensitive Materials from Non-Allied Foreign Countries. The Administration strongly supports section 873, which directs the Secretary of Defense to purchase, to the maximum extent possible, rare earth permanent magnets and certain tungsten, tantalum, and molybdenum products from sources other than China, Russia, Iran, and North Korea. The global markets for rare earths and tungsten are currently dominated by China, which has pursued an aggressive strategy to control the supply of these critical materials, resulting in the loss of American jobs and technology. This section demonstrates that the United States will seek alternate sources of supply when foreign nations seek to unfairly disrupt a marketplace in pursuit of economic and military advantages at variance with the strategic interests of the United States.

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