



RIC 2012
Foreign Ownership, Control, or Domination (FOCD) and Globalization

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 March 14, 2012

FOCD Prohibition - Atomic Energy Act

- The Atomic Energy Act of 1954, as amended, sections 103 and 104, prohibits issuing a nuclear reactor license
 - to an alien or to any entity if the Commission knows or has reason to believe that is owned, controlled or dominated by an alien, a foreign corporation, or foreign government, or
 - if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public
- Section 50.80 of 10 CFR is the regulatory provision that implements this statute.

Foreign Ownership Control or Domination – Standard Review Plan

An applicant is considered to be foreign owned, controlled or dominated whenever a foreign interest has the "power," direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant.

Final Standard Review Plan on Foreign Ownership,
 Control or Domination
 64 Fed. Reg. 52,355 (Sept. 28, 1999)

NRC Staff Review Process

- **Threshold Review and Determination**
 - No safe harbor
- **Supplementary Review**
 - Case-by-case and fact dependent
 - **Includes:** Corporate structures, financial arrangements, operating agreements, voting requirements, oversight and decision making authorities)
- **Negation Action Plan**
 - Required if FOCD is present
 - Measures that will be required to negate foreign involvement in safety, security and reliability decisions.

Findings and License Conditions

4

Three Questions to Resolve

- Is the applicant subject to FOCD?
- If yes, what measures are provided to negate FOCD?
- Would issuance of the license be "inimical to the common defense and security?"

5

Negation Action Plans

Example Negation Measures:

- Diversification or reduction of foreign source income
- Financial viability independent of foreign interest
- Assignment of specific oversight duties and responsibilities to board members
- Formation of "Security Subcommittee" of the Board of Directors
- Adoption of special board resolutions

6

FOCD Perspectives

- FOCD prohibitions are broadly defined
- Governance documents must be reviewed
- “Unanimous Consent” = veto power
- Debt and financial arrangements may indicate control
- Determination and negation measures are fact dependent
- 100% foreign ownership is not permitted

7

NRC Staff Concerns

- Increased foreign involvement may require additional negation measures, even if no license transfer (recent Yankee enforcement)
- Responsibilities of licensee officials to monitor and report on foreign ownership
- Addressing evolving issues

8

Further Information

- Website: www.nrc.gov
- The Agencywide Documents Access and Management System (ADAMS) provides access to NRC regulatory guides, NUREG-series reports, Commission documents, correspondence, and other regulatory and technical information.

9

QUESTIONS?

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10
