

NRC Public Outreach and Stakeholder Input

As part of the fresh assessment of the foreign “owned, controlled, or dominated” (FOCD) provision of Section 03d. of the Atomic Energy Act (AEA) of 1954, as amended, directed by Staff Requirements Memorandum (SRM)-12-0186, the U.S. Nuclear Regulatory Commission (NRC) staff engaged in public outreach. The staff obtained input from industry representatives, public interest groups, government agencies, and other interested members of the public on issues associated with FOCD of commercial nuclear power plants. On June 3, 2013, the NRC published a request for formal written comments in the *Federal Register* (FR). The NRC received 17 written comments. On June 19, 2013, and August 21, 2013, the NRC hosted Category 3 public meetings in which oral comments were provided. Additionally, the NRC staff contacted several Federal agencies with foreign ownership review responsibilities to obtain information about their regulatory requirements, processes for reviewing foreign ownership, and experiences with implementing mitigation measures. The staff met with the Committee on Foreign Investment in the United States (CFIUS), the U.S. Department of Homeland Security (DHS), the U.S. Department of State (DOS), the Federal Communications Commission (FCC), the Defense Security Service (DSS), and the U.S. Department of Transportation (DOT).

This enclosure includes the location of the collected input in the NRC’s Agencywide Documents Access and Management System (ADAMS) by ADAMS Accession numbers. ADAMS can be accessed at www.nrc.gov.

Written Comments on Foreign Ownership, Control, or Domination

Below is information regarding the formal written comments received in response to the NRC's request for public comment published in the FR (78 FR 33121).

Commenter	Date	ADAMS Accession No.
Farshid Shahrokhi	06/14/2013	ML13168A400
Unknown Individual	06/14/2013	ML13177A114
R.D. Hall	06/14/2013	ML13177A115
Tammy Vitale	06/16/2013	ML13177A116
Elizabeth Lerer	06/19/2013	ML13177A117
Ann Farr	06/19/2013	ML13177A165
Peter Yelda	06/28/2013	ML13190A009
Marvin Lewis	07/02/2013	ML13190A354
Mark McBurnett on behalf of Nuclear Innovation North America, LLC (NINA)	08/02/2013	ML13220A016
Ellen C. Ginsberg on behalf of Nuclear Energy Institute (NEI)	08/02/2013	ML13219B155
Gregory T. Gibson on behalf of UniStar Nuclear Energy, LLC (UniStar)	08/02/2013	ML13220B032
Unknown Individual on behalf of North American Young Generation in Nuclear (NAYGN)	08/01/2013	ML13220B033
Richard S. DiSalvo on behalf of Toshiba America Nuclear Energy Corporation (TANE)	08/01/2013	ML13220B034
Devin Kelley on behalf of AREVA	08/03/2013	ML13220B035
Michael Mariotte on behalf of Nuclear Information and Resource Service, Beyond Nuclear, Public Citizen, Southern Maryland CARES, and 62 additional public interest groups	08/02/2013	ML13234A018
Senator Edward J. Markey	08/02/2013	ML13234A019
Raymond Lutz on behalf of Citizens Oversight Projects	09/06/2013	ML13255A022

Presentations and Oral Comments during Public Meetings on Foreign Ownership, Control, or Domination

DATE: June 19, 2013

PLACE: U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Below is information regarding the presentations and oral comments provided during the June 19, 2013, Category 3 Public Meeting.

Presentation Title	Presenter	ADAMS Accession No.
Foreign Ownership, Control, or Domination Public Meeting	Ho Nieh (NRC), Director – NRR/DIRS Jo Ann Simpson (NRC), Financial Analyst - NRR/DIRS/IFIB	ML13171A337
Considerations from a Financing Perspective	Paul Murphy, Special Counsel – Milbank, Tweed, Hadley & McCloy LLP	ML13169A118
Mitigation of Foreign Ownership, Control, & Influence; The Experience Under the NISPOM	Christopher Brewster, Special Counsel – Stroock & Stroock & Lavan LLP	ML13169A416
Foreign Ownership, Control, or Domination of U.S. Nuclear Reactors	Michael Mariotte, Executive Director - Nuclear Information and Resource Service	ML13169A180
Perspectives on Foreign Ownership, Control, or Domination Issues and the Global Nuclear Market	Ellen Ginsberg, Vice President, General Counsel, and Secretary – Nuclear Energy Institute	ML13170A231
Focusing the FOCD Restriction on National Security	John Matthews, Partner – Morgan, Lewis & Bockius LLP	ML13169A096

Meeting Summary Documentation	Author	ADAMS Accession No.
Summary of Category 3 Public Meeting on Foreign Ownership, Control, or Domination	Jo Ann Simpson (NRC), Financial Analyst – NRR/DIRS/IFIB	ML13189A325 ML13190A268 (Package)
Transcript of Foreign Ownership, Control, or Domination Public Meeting	Tara Stromberg, CART Transcriber	ML13184A091

DATE: August 21, 2013

PLACE: Webinar

Below is information regarding the presentation and oral comments provided during the August 21, 2013, Category 3 Public Meeting.

Presentation Title	Presenter	ADAMS Accession No.
Foreign Ownership, Control, or Domination Webinar	Ho Nieh (NRC), Director – NRR/DIRS Jo Ann Simpson (NRC), Financial Analyst - NRR/DIRS/IFIB	ML13233A129

Meeting Summary Documentation	Author	ADAMS Accession No.
Summary of Category 3 Public Meeting Webinar on Foreign Ownership, Control, or Domination	Jo Ann Simpson (NRC), Financial Analyst – NRR/DIRS/IFIB	ML13248A261 ML13248A254 (Package)
Transcript of Foreign Ownership, Control, or Domination Public Meeting	Transcriber	ML13239A242

Below is information regarding the NRC outreach to other Federal agencies.

Federal Agency	Date	ADAMS Accession No. of Meeting Summary
DOS	05/29/2013	ML13162A645
CFIUS	05/30/2013	ML13176A408
DHS	05/30/2013	ML13176A396
FCC	06/04/2013	ML13219B158
DSS (part of the U.S. Department of Defense)	06/11/2013	ML13260A166
DOT	09/13/2013	ML13260A187

Summary of the Input Received from Nongovernmental Organizations

Two sets of comments were received from nongovernmental organizations (NGOs), one of which was submitted on behalf of 66 NGOs. Generally, the NGOs argued against any increase in the amount of permissible foreign ownership. Instead, the NGOs argued that the NRC should impose an upper limit for foreign ownership (e.g., 25 percent or 33 percent). The NGOs supported additional clarification of review criteria but questioned the NRC's legal authority to unilaterally change its procedures absent Congressional action. One NGO commenter argued that, because Section 103d. uses the term "or" rather than "and," the AEA precludes the NRC from creating exceptions to Section 103d. for indirect foreign ownership, from qualifying or modifying the meaning of the statutory term "owned," from deferring the resolution of FOCD issues until after license issuance, and from interpreting the FOCD provision as an "integrated" concept. The NGOs further asserted that the statutory provision "owned, controlled, or dominated" represents three prohibitions that need to be evaluated independently of one another and that the Commission should not issue a license if any one of these three elements—foreign ownership, foreign control, or foreign domination—is present.

The NGOs recommended updating the NRC guidance on FOCD: (1) to provide standards to determine control or domination (2) to provide that both "direct" and "indirect" FOCD are prohibited, (3) to address the use of shell companies and other attempts to evade NRC regulations, (4) to impose an upper limit for foreign ownership, and (5) to require negation action plans in cases of foreign ownership below this limit.

Summary of the Input Received from Industry Representatives

Comments submitted by various industry representatives (NEI, NINA, UniStar, NAYGN, TANE, AREVA) were supportive of changes to the NRC's FOCD policy and guidance. These commenters argued that the NRC's interpretation of the FOCD provision has become more restrictive, creating regulatory uncertainty and precluding substantial foreign participation in U.S. nuclear power plant development and reactor operations. They believe that foreign investment and participation in the U.S. nuclear power industry is beneficial and can bring operating experience and safety enhancements to the U.S.

The industry representatives argued that the NRC should interpret the statutory provision "owned, controlled, or dominated," to focus on national security. Thus, they argued that 100 percent indirect foreign ownership should not be automatically prohibited unless such ownership would be contrary to national security. They proposed that the NRC distinguish between direct and indirect foreign owners, since the implications of an indirect foreign owner for foreign control or domination may be less than the implications for a direct foreign owner or foreign applicant.

The industry representatives proposed using the National Industrial Security Program Operating Manual (NISPOM) as a model for FOCD reviews and recommended that the NRC consider the practical effect of adopting an approach to FOCD that deviates significantly from the U.S. national policy that is incorporated in the NISPOM. The industry also proposed that the NRC apply a "graded approach" based on the foreign entity's home country and recognize that

foreign debt financing is not a national security concern absent the foreign lender being given special control rights, or being from a country of concern (e.g., Iran or North Korea).

In addition, industry commenters suggested the use of license conditions to make a positive FOCD finding at the time of licensing. They asserted that these license conditions should be objectively verifiable and should resolve FOCD issues through the use of negation action plans tailored to ensure the protection of national security. The industry commenters argued that this would provide needed certainty for investors.

The industry commenters also suggested that the NRC consider whether the foreign entity is a member of the Nuclear Suppliers Group (NSG) when evaluating the requirements to negate foreign control. The industry proposed that the NRC revise the FOCD Standard Review Plan to include a graded scale with a presumption of “no control.” This means that no mitigation would be required where the situation involved no national security concerns or involved no control over special nuclear material, where a foreign party possesses less than 10 percent of the voting control, or where a foreign entity owns less than 20 percent, files a Schedule 13G with the Security Exchange Commission, and is not an embargoed or restricted destination country. The industry also proposed that no negation action plan would be needed if the foreign entity holds less than 50 percent voting control of an owner-licensee that does not have operating authority, provided that the foreign entity is from an NSG country. One industry commenter stated that the NRC should accept a positive supportive finding by appropriate Federal bodies, such as CIFIUS and DOS, that a proposed negation action plan can mitigate FOCD in situations of greater than 50 percent and up to and including 100 percent foreign ownership. The industry commenter also asserted that the NRC inspection and enforcement program would cover issues relevant to FOCD in Inspection Procedure (IP) 88005, “Management Organization and Controls.”¹

Another industry commenter stated that the NRC's current FOCD guidance and almost 50 years of NRC precedent and practice have properly interpreted and applied the AEA's FOCD provision as a mandate to ensure that foreign commercial involvement in U.S. nuclear power projects does not hinder nuclear safety, security, and reliability or compliance with NRC orders, regulations, and other requirements put in place to help achieve those ends and that FOCD guidance that further codifies this substantial body of NRC precedent and practice should be the goal of the current fresh assessment. The industry commenter concluded that such a codification would help restore regulatory certainty in an area that the commenter believes has been eroded by apparent departures in recent combined license decisions.

Summary of the Input Received from Members of Congress

On August 2, 2013, a letter was received from U.S. Senator Edward J. Markey in response to the *Federal Register* Notice request for public comment. Senator Markey expressed concern with the NRC's consideration of changes to its interpretation of the FOCD provision. He stated that the NRC should continue to maintain strict and strong restrictions on foreign ownership,

¹ IP 88005 addresses facility organization, procedure controls, internal reviews and audits, plant safety committees, and program management for operational safety, radiation protection, fire protection, nuclear criticality safety, and quality assurance programs for all fuel cycle facilities. (ADAMS Accession No. ML061800401).

noting that nuclear weapons programs in several countries, including India and Pakistan, began through access to civilian nuclear technology. Senator Markey also argued that the current NRC approach to FOCD is inconsistent with the approach taken by the Federal Communications Commission and the Federal Aviation Administration.

Senator Markey further argued that the FOCD provision cannot be overridden by Commission rulemaking and that proposals to loosen the foreign ownership restriction would violate the law, are in conflict with both the text and legislative history of the guiding statutes of the Commission, and should not be made, absent Congressional direction.

Senator Markey also stated that the NRC should promulgate rules that prohibit an entity from possessing a nuclear power plant license if foreign entities own or control more than 25 percent of the voting interest of that entity.