

# **Draft Standard Review Plan on Foreign Ownership, Control, or Domination**

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## ABSTRACT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this revision to the Standard Review Plan (SRP) on Foreign Ownership, Control, or Domination (FOCD) to provide guidance and establish procedures for NRC staff's review of whether an applicant for a nuclear facility license, issued under sections 103 or 104 of the Atomic Energy Act of 1954, as amended (AEA or Act), is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. Specifically, this revision of the SRP establishes guidance on graded negation action plan (NAP) criteria; provides for the consideration of site-specific criteria, as necessary; allows for the use of license conditions to incorporate NAPs and the staff's "totality of facts" review approach; and, incorporates provisions for analyzing foreign financing. This SRP will be used as the basis for the conduct of FOCD reviews associated with license applications for new facilities to be licensed under Title 10 of the *Code of Federal Regulations (10 CFR)* Parts 50 and 52; applications for the renewal of facility licenses; or, applications for approval of direct or indirect transfers of facility licenses.

The previous revision of this SRP was approved by the Commission in its staff requirements memorandum on SECY-99-165, "Final Standard Review Plan Regarding Foreign Ownership, Control, or Domination of Applicants for Reactor Licenses," dated August 31, 1999, and published in the *Federal Register* on September 28, 1999. Revision 1 to this SRP has been updated to reflect current NRC regulations and policy.

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## ACRONYMS AND ABBREVIATIONS

AEA (or Act)	Atomic Energy Act of 1954
BOD	Board of Directors
CFR	<i>Code of Federal Regulations</i>
FOCD	Foreign Ownership Control, or Domination
FOCI	Foreign Ownership, Control, or Influence
KMP	Key Management Personnel
NAC	Nuclear Advisory Committee
NAP	negation action plan
NRC	Nuclear Regulatory Commission
NRR	Office of Nuclear Reactor Regulation
NSIR	Office of Nuclear Security and Incident Response
OGC	Office of General Counsel
SNC	Special Nuclear Committee
SRP	standard review plan

## 1.0 **AREAS OF REVIEW**

### 1.1 **General**

The U.S. Nuclear Regulatory Commission (NRC) is issuing this revision to the Standard Review Plan (SRP) on Foreign Ownership, Control, or Domination (FOCD), to provide guidance and establish procedures for NRC staff's review of whether an applicant for a nuclear facility license issued under sections 103.d., "Commercial Licenses," or 104.d., "Medical Therapy and Research and Development," of the Atomic Energy Act of 1954, as amended (AEA or Act), is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (individually or collectively, a foreign entity). Specifically, this revision of the SRP establishes guidance on graded negation action plan (NAP) criteria; provides for the consideration of site-specific criteria, as necessary; allows for the use of license conditions to incorporate NAPs and the staff's "totality of facts" review approach; and, incorporates provisions for analyzing foreign financing. This SRP will be used as the basis for the conduct of FOCD reviews associated with license applications for new facilities, to be licensed under Title 10 of the *Code of Federal Regulations* (10 CFR), Parts 50 and 52; applications for the renewal of facility licenses; or, applications for approval of direct or indirect transfers of facility licenses.

Where there are co-applicants, each intending to own an interest in a new facility as co-licensees, the reviewer should consider each applicant to determine whether it is owned, controlled, or dominated by foreign entity. If a co-licensee of an existing facility owns a partial interest in the facility and is transferring that interest, the acquirer should also be considered to determine whether it is owned, controlled, or dominated by foreign entity.

The FOCD determination is to be made with an orientation toward the common defense and security. The provisions in the AEA for FOCD and inimicality, and the staff's reviews of these areas under NRC regulations, are derived from the same national security concerns, but appear in separate and distinct language in the AEA. The FOCD provisions in the AEA and NRC regulations are country-neutral, whereas the staff's inimicality review and its findings directly account for a license applicant's country of origin and any ties or interests that could result in a determination of inimicality. As such, while FOCD and inimicality are closely related, this SRP does not address the determination of whether issuance of a license would be inimical to the common defense and security or to the health and safety of the public.

### 1.2 **Relevant Statutory and Regulatory Provisions**

Sections 103d and 104d of the Act provide, in relevant part, that no license may be issued to:

...to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States 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 184 of the Act provides, in relevant part:

No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner



disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing.

In addition, 10 CFR 50.33(d) provides, in relevant part:

Each application shall state,

(d)(1) If applicant is an individual, state citizenship.

(2) If applicant is a partnership, state name, citizenship and address of each partner and the principal location where the partnership does business.

(3) If applicant is a corporation or an unincorporated association, state:

(i) The state where it is incorporated or organized and the principal location where it does business;

(ii) The names, addresses and citizenship of its directors and of its principal officers;

(iii) Whether it is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government, and, if so, give details.

(4) If the applicant is acting as agent or representative of another person in filing the application, identify the principal and furnish information required under this paragraph with respect to such principal.

Finally, 10 CFR 50.38 provides:

Any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license.

## **2.0 INFORMATION PROVIDED IN APPLICATION**

### **2.1 Areas of Review**

In this section, the reviewer should evaluate information that demonstrates that an applicant is not owned, controlled, or dominated by a foreign entity.

Areas of review include the information required by the applicant, pursuant to 10 CFR 50.33(d), as stated in Section 1.2 of the standard review plan, and 10 CFR 50.33(f).

### **2.2 Acceptance Criteria**

The application should include the following information, as applicable:

- Information regarding the name(s), address(es), and citizenship(s) of either individual applicants, partners, directors and principal officers or the principal, if the applicant is acting as agent or representative of another person
- Principal location of business or State of incorporation or organization, as appropriate
- Statement to identify whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government, and, if so, relevant details

### **2.3 Review Procedures**

#### **2.3.1 *Initial Review and Determination***

The reviewer should first analyze all of the information submitted by the applicant to determine compliance with 10 CFR 50.33(d). Additionally, the reviewer, as part of their “totality of facts” due diligence analysis of the application, should consider any other relevant information of which the reviewer is aware, to determine whether there is any reason to believe that the applicant is an alien or citizen, national, or agent of a foreign country, or an entity that is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government. (*Other relevant information* regarding the application can be gleaned from a variety of sources available to the reviewer, including relevant open-source information (e.g., internet search engines and media reports), consultation with other NRC Offices (e.g., Office of Nuclear Security and Incident Response (NSIR)), or consultation with other Federal agencies, as appropriate.)

If, based on the staff’s review of the information submitted by the applicant and other relevant information, there do not appear to be any FOCD concerns, no further review is required and the reviewer should document the determination that there is not an FOCD finding that would hinder approving the application.

Note: U.S. Federal Government and/or State-owned facilities are assumed not to have FOCD issues. As such, any questions to the contrary should be addressed with NRC management and the Office of General Counsel (OGC).

### 2.3.2 *Supplemental Review*

Based on the staff's initial review of information, if the reviewer has reason to believe that the applicant may be owned, controlled, or dominated by a foreign entity, the reviewer should:

- a) Request and obtain, at a minimum, the following additional information for review:
  1. If the applicant's equity securities are of a class that is registered pursuant to the Securities Exchange Act of 1934, copies of current Securities and Exchange Commission Schedules 13D and 13G, which are required to be filed by owners of more than, or equal to, 5 percent of such a class with the Securities and Exchange Commission, the security issuer (applicant), and the exchange on which the issuer's securities are traded. Identification of ownership of less than 5% should be included if the holder is entitled to control the appointment or tenure of any management position.
  2. Key management personnel (KMP) positions and board of directors (BOD) memberships held by non-U.S. citizens or foreign-appointed U.S. citizens, including information regarding whether any of the applicant's directors, officers, executive personnel, general partners, regents, trustees or senior management officials hold any positions with, or serve as consultants for, any foreign entities. If not provided with the application, copies of applicable by-laws or articles of incorporation that describe the affected position(s) should also be requested.
  3. The ability, direct or indirect, of a foreign entity(s) to control the election, appointment, or tenure of members of the applicant's BOD (or similar governing body), or other management positions, or have the power to control or cause the direction of other decisions or activities concerning nuclear safety or security of the applicant.
  4. Any other factor(s) that indicates or demonstrates a capability on the part of foreign entities to control or influence the operations or management of the applicant.
- b) Coordinate with NSIR staff to:
  - a. Ensure a concurrent inimicality review of the proposed licensing action is being performed and any relevant and appropriate information from the inimicality and FOCD reviews are shared among the reviewers in a timely manner.
  - b. Share recommended negation measures to address any FOCD, as appropriate. This coordination of FOCD and inimicality reviews will ensure that NAPs developed by staff consider the "totality of facts" of a particular licensing action.
- c) Consider the existence of the following conditions in determining whether the applicant is owned, controlled, or dominated by a foreign entity:
  1. Whether any foreign entities have management positions such as directors, officers, or executive personnel in the applicant's organization.

2. Whether any foreign entities controls, or is in a position to control the election, appointment, or tenure of any of the applicant's directors, officers, or executive personnel. If the reviewer knows that a domestic corporation applicant is held in part by foreign stockholders, the percentage of outstanding voting stock so held should be quantified. However, recognizing that shares change hands rapidly in the international equity markets, the staff usually does not evaluate power reactor licensees to determine the degree to which foreign entities own relatively small percentages of shares of the licensees' voting stock. The Commission has not determined a specific threshold above which it would be conclusive that an applicant is controlled by foreign interests.
3. Whether the applicant is indebted or has contractual or other agreements with foreign entities that may affect control of the applicant.
4. Whether the applicant has interlocking directors or officers with foreign corporations.
5. Whether the applicant has foreign involvement not otherwise covered by items 1-4 above.

The fact, however, that some of these conditions may apply does not necessarily render the applicant ineligible for a license. The reviewer should consider the totality of facts surrounding the licensing action and consult, as necessary, with OGC on Commission precedent, applicable statutes, and regulations prior to making a determination.

### *2.3.3 Supplemental Determination*

After reviewing the additional information specified in this section, if the reviewer determines that there is no evidence that the applicant is an alien or owned, controlled, or dominated by a foreign entity, no additional review is necessary. The reviewer should document the determination that there is not an FOCD finding that would hinder approving the application

If the reviewer finds that the applicant may be an alien or owned, controlled, or dominated by a foreign entity, or has some reason to believe that may be the case, the reviewer shall quantify:

1. The nature, extent, and degree of foreign ownership, control, or domination, to include whether a foreign entity has a controlling or dominant minority position.
2. The type of actions, if any, that would be necessary to negate the effects of foreign ownership, control, or domination to a level that is consistent with the AEA and NRC regulations, and Commission direction (refer to Section 4 of this document).

The reviewer should include a discussion of this finding in the recommendation regarding whether there is any FOCD concern to approving the application.

## **3.0 PROVISIONS FOR EVALUATING FOREIGN FINANCING**

### **3.1 Areas of Review**

In this section, the reviewer should evaluate financial information that demonstrates that any foreign financing presented by the applicant does not constitute ownership, control, or domination by a foreign entity.

Areas of review include the information required by the applicant pursuant to 10 CFR 50.33(d), as stated in Section 1.2 of the standard review plan, and 10 CFR 50.33(f). This information should include the source(s) of financing for the construction and operation of the referenced facility.

### **3.2 Acceptance Criteria**

The application should include:

- Information related to the source(s) and level(s) of financing for the construction and operation of the referenced facility sufficient to demonstrate that there is not an FOCD concern with the facility, as described below.

### **3.3 Review Procedures**

#### **3.3.1 *Initial Review and Determination***

The reviewer should first analyze all of the information submitted by the applicant to determine if there is any foreign financing present. Additionally, the reviewer should consider all other relevant information of which the reviewer is aware, to determine whether there is any reason to believe that the applicant has foreign financing for the construction or operation of the referenced facility. (*Other relevant information* regarding the application can be gleaned from a variety of sources available to the reviewer, including relevant open-source information (e.g., internet search engines and media reports), consultation with other NRC Offices (e.g., NSIR), or consultation with other Federal agencies, as appropriate.)

If, based on the foregoing information, there does not appear to be foreign financing, no further review is required and the reviewer should make a finding that there is no foreign financing.

#### **3.3.2 *Supplemental Review***

Based on the staff's initial review of information, if the reviewer has reason to believe that the applicant has foreign financing, the reviewer should:

- a) Request and obtain, at a minimum, the following additional information for review:
  1. Information regarding any contracts, agreements, understandings, or arrangements with a foreign entity(s).
  2. Information regarding any indebtedness, liabilities, or obligations, whether as borrower, surety, guarantor or otherwise, to a foreign entity(s) or if the debt is with a U.S. entity that is owned or controlled either directly or indirectly by a

foreign entity. If unknown, the applicant should so state. Information should include:

- Overall debt-to-equity ratio (in percentage).
- With respect to indebtedness or liability to a foreign entity, identity of entity to whom applicant is indebted or liable, what has been furnished or pledged, and any conditions or covenants of the loan agreement.
- If stock or assets have been furnished or pledged as collateral, provide a copy of the loan agreement or pertinent extracts thereof (to include procedures to be followed in the event of default).
- If any debentures are convertible, provide specifics.
- If loan payments are in default, provide details.

b) Coordinate with NSIR staff to:

- a. Ensure a concurrent inimicality review of the proposed licensing action is being performed and any relevant information from this review related to foreign financing, including confirmation of information disclosed by the applicant or new information discovered by alternative sources, is communicated to the FOCD reviewer in a timely manner
- b. Share recommended negation measures to address any FOCD with the NSIR staff, as appropriate. This outreach will ensure that NAPs developed by staff considers the “totality of facts” of a particular licensing action.

*NOTE:* While the additional information related to foreign financing may be sought and may be taken into consideration in determining whether the applicant is foreign owned, controlled, or dominated, the fact that the applicant is indebted to foreign interests or has contractual or other agreements with foreign entities that may affect control of the applicant does not necessarily render the applicant ineligible for a license. The reviewer should consult with OGC on Commission precedent, applicable statutes, and regulations.

### *3.3.3 Supplemental Determination*

After reviewing the additional information specified in Section 3.2, if the reviewer determines that there is no further reason to believe that any foreign financing present results in ownership, control, or domination by a foreign person or entity, no additional review is necessary. The reviewer should document the recommendation that there is not a FOCD concern in approving the application.

If the reviewer continues to conclude that, based on the source or level of foreign financing, the applicant may be owned, controlled, or dominated by foreign interests, or has some reason to believe that may be the case, the reviewer shall determine:

1. The nature and extent of the financing and the effect on foreign ownership, control, or domination, to include whether an alien, a foreign corporation, or foreign government has, or may obtain, a controlling or dominant minority position.

2. The source of foreign financing including investment and lending institutions.
3. The type of actions, if any, that would be necessary to negate the effects of foreign ownership, control, or domination to a level that is consistent with the Atomic Energy Act and NRC regulations, and Commission direction (refer to Section 4 of this document).

The reviewer should include this information in the recommendation regarding whether there is any FOCD concern to approving the application.

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## **4.0 REVIEW AND ASSESSMENT OF NEGATION ACTION PLANS**

### **4.1 Areas of Review**

In this section, the reviewer should evaluate information that demonstrates that a NAP proposed by an applicant is sufficient to negate the effects of any FOCD concern associated with a licensing action.

Areas of review should include the following:

- Provisions of a proposed NAP related to the level of FOCD and totality of facts surrounding the licensing action.

### **4.2 Acceptance Criteria**

The information provided in the application should include the following:

- A NAP commensurate with the level of FOCD presented in the application, consistent with Table 1 and Appendix A of this document.

### **4.3 Review Procedures**

Based on the information obtained by staff in Sections 2 and 3 of this document, including the staff's conclusion that an applicant may be owned, controlled, or dominated by a foreign entity, the reviewer should request a NAP, unless already presented in the application. When factors not related to ownership are present, the NAP shall provide positive measures that effectively deny foreign control or domination.

The reviewer should compare the NAP provided by the applicant to Table 1 and Appendix A of this SRP, which describes generic negation measures assigned to varying degrees of FOCD.

Additional negation measures, other than those suggested in Table 1 and Appendix A, could be implemented on a case-by-case basis to negate higher levels of potential risk presented by foreign interests. Dependent upon the totality of facts of each specific case and as deemed appropriate by staff and approved by the Commission, a NAP could be enhanced with additional negation measures not included in Table 1 and Appendix A of the FOCD SRP or related guidance.

When developing the final NAP, the reviewer should consult with the appropriate stakeholders, including NSIR and other Federal agencies, on the totality of facts surrounding the licensing action and OGC on Commission precedent, applicable statutes, and regulations. The reviewer should incorporate each individual negation measure in the form of a proposed license condition in the recommendation regarding whether there is any FOCD concern in approving the application.



## 5.0 EVALUATION FINDINGS

The reviewer should verify that sufficient information has been provided to satisfy the regulations and this SRP. In consideration of the guidance in this SRP, the reviewer should draft an analysis and recommendation, based on the applicable information specified in Sections 2 and 3 above, concerning whether the reviewer knows, or has reason to believe that the applicant is an alien, or is a corporation or other entity that is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government, and whether there are conditions that should be imposed, as specified in Section 4 above, before granting the application so as to effectively deny foreign control of the applicant.

Examples of evaluation findings to be included with a discussion of the particular licensing action and associated FOCD information include, but are not limited to, the following:

- No FOCD concerns found –

*Based on the information provided in the application, including information provided in responses to subsequent RAIs, the NRC staff does not know or have reason to believe that [Applicant(s)] or its parents, is(are) owned, controlled, or dominated by a foreign interest.*

- FOCD concerns that result in NAP –

*The NRC Staff reviewed the information provided in the application regarding FOCD matters, including the NAP and additional information provided in a letter dated [Month Day, Year] (MLXXXXXXXXXX). Based on this review and the implementation of the NAP as reviewed, the staff finds that the licensee will not be foreign owned, controlled, or dominated, subject to the following conditions:*

*(a) The Operating Agreement provided to the NRC for review may not be modified in any respect concerning decision-making authority over “safety issues” as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.*

*(b) At least half the members of [Applicant's] Board of Directors must be U.S. citizens.*

*(c) The Chief Executive Officer (CEO), Chief Nuclear Officer (CNO) and Chairman of the Board of Directors of [Applicant] must be U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure and shall ensure that the business and activities of [Applicant] with respect to the [Facility] license is at all times conducted in a manner consistent with the public health and safety and common defense and security of the United States.*

*(d) [Applicant] will establish a Special Nuclear Committee (SNC) composed of U.S. citizens, a majority of whom are not officers, directors, or employees of [Applicant], [Parent], or any other [Parent] subsidiaries. The SNC will report to the [Applicant] Board of Directors on a quarterly basis for informational purposes. The SNC will make available to the NRC for review these and any other reports regarding foreign ownership and control of nuclear operations.*

## **6.0 REFERENCES**

1. Sections 103, 104, and 184 of the Atomic Energy Act of 1954, as amended (42 USC 2133, 2134, and 2234).
2. Part 50, "Domestic Licensing of Production and Utilization Facilities," of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50).

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**TABLE 1**  
**GRADED GENERIC NEGATION ACTION PLAN CRITERIA – COUNTRY NEUTRAL**

Level of FOCD <sup>1</sup>	Minimum Negation Action Plan <sup>2</sup>
<ul style="list-style-type: none"> <li>• Minority (&lt;50%) indirect foreign ownership; <b>and</b></li> <li>• No control identified: <ul style="list-style-type: none"> <li>○ no foreign or foreign-appointed board members or U.S. board members with existing ties to foreign parent companies or subsidiaries have been identified; <b>and</b></li> <li>○ percent of foreign ownership is <u>insufficient</u> to elect board members</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Board Resolution</li> <li>• U.S. KMP <ul style="list-style-type: none"> <li>○ Chairman of the BOD</li> <li>○ Chief Executive Officer</li> <li>○ Chief Nuclear Officer</li> </ul> </li> <li>• License Condition for Notification of Change to Negation Action Plan</li> <li>• NRC Oversight</li> </ul>
<ul style="list-style-type: none"> <li>• Minority (&lt;50%) indirect foreign ownership; <b>and</b></li> <li>• Potential control identified: <ul style="list-style-type: none"> <li>○ foreign or foreign-appointed board members or U.S. board members with existing ties to foreign parent companies or subsidiaries exist; <b>or</b></li> <li>○ percent of foreign ownership is <u>sufficient</u> to elect board members;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Board Resolution</li> <li>• U.S. KMP</li> <li>• Majority U.S. BOD</li> <li>• Special Nuclear Committee (SNC) <ul style="list-style-type: none"> <li>○ Quarterly report to BOD</li> <li>○ Annual Report to the NRC</li> </ul> </li> <li>• License Condition for Notification of Change to Negation Action Plan</li> <li>• NRC Oversight</li> </ul>
<ul style="list-style-type: none"> <li>• Majority (50% to ≤ 99%) indirect foreign ownership</li> </ul>	<ul style="list-style-type: none"> <li>• Board Resolution</li> <li>• U.S. KMP</li> <li>• Majority U.S. Board of Directors</li> <li>• Special Nuclear Committee (SNC)</li> <li>• Nuclear Advisory Committee (NAC) <ul style="list-style-type: none"> <li>○ Annual Report to the NRC</li> </ul> </li> <li>• License Condition for Notification of Change to Negation Action Plan</li> <li>• NRC Oversight</li> </ul>

<sup>1</sup> Generic grading aligns with the Defense Security Service FOCI analysis and mitigation.

<sup>2</sup> Additional information on Minimum Negation Action Plan requirements can be found in Enclosure 1. This information includes membership requirements for the Special Nuclear and Nuclear Advisory Committees, and clearance requirements for U.S. Citizens.

## APPENDIX A

### GRADED GENERIC NEGATION ACTION PLAN CRITERIA – COUNTRY NEUTRAL

#### GRADING LEVEL OF FOREIGN OWNERSHIP, CONTROL, OR DOMINATION (FOCD)

##### Ownership (Indirect)

- Minority – less than 50% ownership/investment
- Majority – 50% to ≤ 99% ownership/investment

##### Control

Potential control identified if:

- Foreign or foreign-appointed board members exist; **or**
- U.S. board members with ties to foreign parent companies or subsidiaries exist; **or**
- Foreign ownership is sufficient to elect board members; **or**
- Foreign or foreign appointed key management personnel (KMP)
  - Chairman of the Board of Directors (BOD)
  - Chief Executive Officer
  - Chief Nuclear Officer

##### Domination

Level of domination is determined by analyzing factors other than ownership and control, including factors related to financing, and is negated with existing minimum negation action measures or other negation measures as deemed appropriate by the NRC.

#### NEGATION ACTION MEASURES<sup>3</sup>

##### Minimum Negation Measures Imposed via License Condition

- Board Resolution – a resolution of the BOD that identifies the foreign shareholders and their representatives and includes a certification that the foreign shareholders and their representatives will be effectively excluded from NRC licensed activities, and will not be permitted to occupy positions that may enable them to influence the organization's nuclear policies and practices. Copies of such resolutions shall be furnished to the NRC and, all board members, and principal management officials.
- U.S. KMP – the Chairman of the BOD, the Chief Executive Officer, and the Chief Nuclear Officer must be citizens of the United States.

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<sup>3</sup> Referenced U.S. Citizens, including KMP, shall provide evidence that they have been examined to the appropriate level that provides high assurance they are "trustworthy and reliable," such that they do not constitute an unreasonable risk to public health and safety, or the common defense and security. This would be, at a minimum, equivalent to the Personnel Access Authorization requirements for nuclear power plants under 10 CFR 73.56.

- License Condition for Notification of Change to Negation Action Plan (NAP) – a condition placed on the facility license that requires any changes to the existing NAP be noticed to and approved by the NRC.
- NRC Oversight – monitoring to ensure compliance with the implemented negation action plan.

#### Additional Generic Negation Measures Based on Level of FOCD

- Majority U.S. BOD – company BOD must be made up of a majority of U.S. citizens, none of whom are foreign-appointed or have existing ties to foreign parent companies or subsidiaries.
- Special Nuclear Committee (SNC) – comprised of outside directors, who must be U.S. citizens and have authority to vote for the Board of Directors, as necessary, on matters related to nuclear safety, security, or reliability. The SNC is required to report to the BOD on a quarterly basis for informational purposes only. The SNC is required to file an annual report to the BOD and NRC for review regarding any identified FOCD issues and a summary of how such issues were resolved.
- Nuclear Advisory Committee (NAC) – composed of U.S. citizens who are not officers, directors, or employees of any parties or affiliates of those involved in the licensing action. The NAC will report on an annual basis and provide transparency to the NRC and other U.S. Federal agencies, as required, regarding foreign ownership and control of nuclear operations.

#### Site-Specific Negation Action Measures

The use of additional negation measures could be implemented on a case-by-case basis to negate specific instances of foreign ownership, control, or domination that are not sufficiently addressed by the *Graded Generic Negation Action Plan Criteria*. The decision to implement additional measures would be driven by the totality of facts surrounding the transaction and the resulting NRC staff analysis. Factors that may increase required negation measures in a specific transaction, both in quantity and complexity, include, but are not limited to:

- Level of financing
- Source of financing
- Terms of financing arrangement
- FOCD review analysis and findings

Additional negation measures available include tools utilized in past negation action plans, mitigation tools utilized in the facility clearance (FOCI) process, or any other measures deemed necessary and legal by the NRC. Examples of additional negation measures include:

- Modification or termination of loan agreements, contracts, and other understandings with foreign interests
- Diversification or reduction of foreign source income
- Demonstration of financial viability independent of foreign entity
- Elimination or resolution of foreign debt
- Technology Control Plan

- Electronic Communications Plan
- Affiliated Operations Plan
- Security Control Agreement
- Special Security Agreement
- Facilities Location Plan
- Divestiture from foreign parent company, as appropriate

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