

Foreign Ownership Control and Influence of Fuel Cycle Facilities
Licensed under 10 CFR Part 70 Domestic Licensing of Special Nuclear Material

Regulations in Parts 70 and 76

Definition of “person” ...any foreign government or nation or any political sub-division of any such government or nation, or other entity.....

10 CFR 70.14 , “Foreign Military Aircraft” states that regulation of this part do not apply to persons who carry special nuclear material (other than plutonium) in aircraft of the armed forces of foreign nations subject to 40 USC 40103(d).

10 CFR 70.17, “Specific exemptions” ...the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part a it determines as authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

10 CFR 70.40(a) states that a license may not be issued to the Corporation (United States Enrichment Corporation) if the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. 10 CFR 76.22(a) states that a certificate of compliance may not be issued to the Corporation if the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. With this one specific exception applying to USEC, Part 70 does not prohibit foreign ownership of fuel cycle facilities.

10 CFR 70.22, “Contents of applications”, requires that an application for a license identify the citizenship of the applicant and information concerning the control or ownership exercised by the applicant by any alien, foreign corporation, or foreign government.

10 CFR 70.23, “Requirements for the approval of applications”, does not contain an approval criterion for control or ownership.

10 CFR 70.36, “Inalienability of Licenses”, states that “No license granted under the regulations in this part and no right to possess or utilize special nuclear material granted by any license issued pursuant to the regulations in this part 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 the Act, and shall give its consent in writing.”

Regulatory guidance

NRC staff uses the guidance in NUREG-1556, Vol. 15, Guidance about Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses, November 2000, to perform reviews and make decisions about applications for transfers of control. In addition, NRC staff prepared a Regulatory Issue Summary, RIS-2008-19 and NRC Information Notice 89-25 to further inform licensees of the regulations applicable to transfers of control.

NUREG-1757, Vol. 3, Consolidated NMSS Decommissioning Guidance – Financial Assurance, Recordkeeping, and Timeliness, provides guidance on the technical aspects of compliance with the decommissioning rules, the financial assurance requirements set forth as part of the decommissioning rulemaking, and the recordkeeping requirements set forth as part of the technical and financial criteria for decommissioning licensed nuclear facilities. Staff uses this guidance to support a finding that the new owner of a licensed facility will maintain decommissioning financial assurance.

NUREG-1520 section 1.2, “Institutional Information” reaffirms the contents within 10 CFR 70.22 and 10 CFR 95.

Recent Transfer of Control Amendments: GE-Hitachi and Westinghouse-Toshiba

In 2006, Westinghouse Electric Company requested NRC consent to a transfer of control of 2 of its licenses to a new company majority-owned by Toshiba. NRC staff verified that the new owners fully assumed financial responsibilities with respect to operations and decommissioning of the NRC-licensed facilities. The applicant committed to certain provisions concerning stock ownership and the citizenship of members of the Board of Directors.

In 2007, General Electric Company requested NRC consent to a transfer of control of 2 special nuclear material licenses and several certificates of compliance to a new entity GE-Hitachi. NRC staff also verified that the new owners fully assumed financial responsibilities with respect to operating expenses and decommissioning of the NRC-licensed facilities. The applicant committed to certain provisions concerning stock ownership and the citizenship of members of the Board of Directors.

Access to Classified Information

10 CFR Parts 25 and 95 contain the requirements for access to classified information. Licensees/applicants must be granted a facility clearance prior to receiving classified information. Licensees/applicants must pass a foreign ownership, control, or influence review prior to receiving the facility clearance.