[7590-01-P]

NUCLEAR REGULATORY COMMISSION

Final Standard Review Plan on
Foreign Ownership, Control, or Domination

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Standard Review Plan.

SUMMARY: The NRC is issuing its Final Standard Review Plan (SRP) on Foreign Ownership, Control, or Domination. The SRP documents procedures and guidance used by the staff to analyze applications for reactor licenses, or applications for the transfer of control of such licenses, with respect to the limitations contained in sections 103 and 104 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 50.38 against issuing a license for a production or utilization facility to an alien or an entity that is owned, controlled, or dominated by foreign interests.

EFFECTIVE DATE: The SRP was approved by the Commission on August 31, 1999.

ADDRESS: Examine copies of comments received on the interim SRP, which preceded the final SRP, and copies of the attachments as stated in the final SRP at: The NRC Public Document Room, 2120 L Street, N.W. (lower level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steven R. Hom, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415-1537, e-mail srh@nrc.gov.

IDR-5 Foreign Investment

DS11

Pub. on 9/28/99
at 64FR52355

SUPPLEMENTARY INFORMATION: The SRP on Foreign Ownership, Control, or Domination, attached hereto, contains the review procedures used by the staff to evaluate applications for the issuance or transfer of control of a production or utilization facility license in light of the prohibitions in sections 103d and 104d of the Atomic Energy Act and in 10 CFR 50.38 against issuing such reactor licenses to aliens or entities that the Commission "knows or has reason to believe" are owned, controlled, or dominated by foreign interests. The procedures expressly provide for requests for additional information and consideration of a negation action plan if the information described in 10 CFR 50.33(d) initially required to be provided in an application indicates that there may be some degree of foreign control of the applicant. The SRP also sets forth substantive guidance consistent with existing Commission precedent on what may constitute foreign control. This SRP supersedes Section III.3 of NUREG-1577, Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (Draft Report for Comment) (containing review procedures regarding foreign ownership) in its entirety.

An earlier interim version of the SRP was published in the *Federal Register* on March 2, 1999 (64 FR 10166) for public comment. Four sets of comments were received from the Nuclear Energy Institute (NEI), AmerGen Energy Company, LLC (AmerGen), Florida Power and Light Company (FPL), and PECO Energy (PECO). These comments, and the staff's response to them, are set forth below.

Comments and Responses

NEI and FPL

NEI stated that, in general, the criteria and review process outlined in the interim SRP provide an "appropriate degree of regulatory flexibility." In addition, NEI specifically provided its view that "a foreign entity should be allowed to own a significant share of a nuclear power

plant," provided that special nuclear material is not under the control of the foreign entity, the foreign entity has no control over the day-to-day nuclear activities at the plant, and ownership would not be inimical to the common defense and security. Further, NEI stated its belief that foreign ownership of a licensee's parent company "should be allowed unless the foreign entity has legal control over the conduct of licensee activities involving common defense and security." Such control can be "overcome" by "special arrangements, such as special operating committees, which vest effective control and operation of licensed activities with U.S. citizens," according to NEI.[1]

FPL stated that it "supports the approach set forth in the SRP." It also stated that it endorses NEI's comments.

Response

Section 103d of the Atomic Energy Act of 1954, as amended, provides that no license may be issued to an alien, or to a corporation owned, controlled, or dominated by an alien, foreign corporation, or foreign government. As the SRP now indicates, a (U.S.) applicant that is *partially* owned by a foreign entity may still be eligible for a license under certain conditions. However, the intent of NEI's comment that a foreign entity "should be allowed to own a significant share of a nuclear power plant" is not entirely clear. If NEI is suggesting that a foreign entity may become a *direct* owner of a substantial percentage of the facility, its position would not appear to be consistent with the Commission's interpretation of the statute, even if the foreign entity is only a co-owner. In *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 200-01 (1978), the Appeal Board held that each proposed co-owner of a nuclear facility must be an applicant for a license.

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[1]NEI also stated its support for amendment of the Atomic Energy Act to remove the foreign ownership prohibition, while preserving the authority to protect the common defense and security.

Accordingly, each co-owner is subject to the foreign ownership or control prohibition contained in the Act.

NEI's other major comment (i.e., that foreign ownership of a licensee's parent company should be allowed unless the foreign entity has legal control over common defense and security activities, which control is not overcome by special arrangements such as limiting such activities to U.S. citizens) appears to go beyond the guidance in the SRP that deals with foreign parent companies. The SRP states that (based on the Commission's determinations in the *Hoffmann-LaRoche* and initial *Cintichem* matters discussed in the attachments to the SRP), an applicant with a foreign parent will not be eligible for a license, unless the Commission knows that the foreign parent's stock is largely owned by U.S. citizens, and certain conditions or "special arrangements" are imposed, such as having only U.S. citizens within the applicant's organization be responsible for special nuclear material. NEI has not presented any compelling argument why the scenario it set forth, which is devoid of any indication of ultimate control of the parent by U.S. stockholders, is consistent with the statutory prohibition on foreign control, in light of the Commission's interpretation in the *Hoffmann-LaRoche* and initial *Cintichem* matters.[2]

AmerGen

AmerGen commented that the SRP should provide more detailed guidance by establishing "safe harbors" with respect to certain types of ownership and/or operating arrangements. Specifically, AmerGen noted that although the SRP states that the Commission has not determined a specific threshold of stock ownership above which it would be concluded that the (foreign) owner would have control, it may be appropriate to establish a threshold below which there would be a presumption of no control, at least absent foreign involvement in management or operation. In addition, AmerGen stated that it might be helpful for the SRP to

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[2]However, for situations involving an applicant's proposed acquisition of less than a 100% interest in a reactor, see the discussion below in response to AmerGen's comments.

discuss specific types of activities in which a foreign entity could engage in connection with the operation of a reactor, and acknowledge that the statute does not preclude foreign nationals from "holding senior management positions with an applicant and/or managing and supervising licensed activities at a reactor site." AmerGen also stated that in the guidance section of the SRP, the SRP should discuss specific arrangements involving foreign entities that the Commission has found acceptable with the imposition of certain conditions, and confirm that similar situations would be eligible for "safe harbor" treatment.

Noting the discussion in the SRP that provides that further consideration is required concerning the ownership of a less than 100 percent interest in a reactor by a U.S. company which has a foreign parent, AmerGen stated its opinion that relevant precedents should be addressed (suggesting *Marble Hill* and *Cintichem*). AmerGen also stated that additional guidance would be helpful concerning the "further consideration," and concerning what additional information may be required from an applicant for such consideration. Finally, AmerGen believes the SRP should expressly confirm that where a particular applicant has recently been approved by the NRC subject to the imposition of certain license conditions, no material changes in the ownership or management of the applicant have since occurred, and the applicant agrees to similar conditions in connection with a subsequent application, the applicant will essentially receive summary approval.

Response

In general, it is recognized that articulating "safe harbors" in the SRP would be beneficial to license applicants by removing some degree of uncertainty from the license application process. However, in light of the perhaps limitless creativity involved in formulating corporate structures and arrangements, the difficulty in prescribing safe harbors is being able to account for every potential fact or circumstance that could be present in any given situation, which fact

or circumstance may not be addressed in the stated safe harbor criteria, but which could still be material to a determination of foreign ownership or control.

Regarding AmerGen's suggestion that a stock threshold be considered below which there would be presumptive non-control absent foreign involvement in management or operation, it is notable that while earlier drafts of the Atomic Energy Act contained a stock threshold (five percent) above which foreign ownership would have been barred, the final version of the Act, of course, does not. Thus, Congress declined to establish any threshold. Also, other statutes such as the Public Utilities Holding Company Act, while establishing thresholds above which control is presumed, are silent on "safe harbors." At least until further experience is gained in this area, the flexibility of the SRP in this regard should be maintained.

Concerning AmerGen's comment on stating permissible activities that a foreign entity or foreign nationals could engage in regarding the operation or management of a reactor, it should be noted at the outset that the statutory prohibition applies to the issuance of licenses. Thus, as long as foreign entities or nationals are not engaged in activities requiring a license, the foreign control prohibition does not apply specifically to them. This is not to say that the actual licensee -- the entity which does have control over licensed activities -- is unrestricted in its use of foreign entities or personnel. As provided in the Act, no license may be issued if issuance would be inimical to the common defense and security. Entering into this analysis would be the licensee's use of foreign entities or personnel. Because AmerGen's comment potentially involves considerations of the common defense and security, it would not appear that any meaningful purpose would be served for the SRP to attempt to simply list activities or positions in an organization that would presumptively not trigger the prohibition on foreign ownership or control when it would still be necessary to conduct a full separate analysis of whether a certain degree of foreign involvement would be inimical to the common defense and security.

With respect to AmerGen's comment that the SRP should discuss specific arrangements involving foreign entities that the Commission has found acceptable, the agency's dockets presently provide access to this information, which constitutes a substantial amount of material (agreements, organizational charts, by-laws, etc.) specific to each application which cannot be incorporated into the SRP, as a practical matter, due to their volume. Commission statements and analyses regarding applications involving the *Babcock & Wilcox/McDermott* and *Union Carbide/Cintichem* matters, which provide essentially a historical perspective and summary of the Commission's views on the foreign ownership prohibition, and which are more difficult to locate due to their age, are in a form that is more easily included as part of the SRP. These analyses were not published in the *Federal Register* notice requesting comments on the SRP, but are to be attachments to the SRP as indicated in Section 6, "References," of the SRP.

For situations involving an applicant which has, directly or indirectly, a foreign parent but which is seeking to acquire less than a 100% interest in a reactor, the attached version of the SRP has been expanded in response to AmerGen's comments concerning the "further consideration" that is required. The SRP includes new proposed language providing that "further consideration" will be given to: (1) the extent of the proposed partial ownership of the reactor; (2) whether the applicant is seeking authority to operate the reactor; (3) whether the applicant has interlocking directors or officers and details concerning the relevant companies; (4) whether the applicant would have any access to restricted data; and (5) details concerning ownership of the foreign parent company. The new language should provide applicants with a clear understanding of what facts will be considered and what type of information may need to be submitted.

Regarding AmerGen's interest in the SRP expressly confirming that a previously approved applicant will survive foreign ownership scrutiny where there have been no material changes since the last application and the same conditions are imposed, the agency intends to apply the law uniformly and consistently and not act in an arbitrary manner. Thus, there appears to be no necessity in essentially restating this principle specifically in the context of the SRP.

PECO

PECO commented that, at least in the context of making a non-inimicality finding with respect to the common defense and security, "some degree of deference should be applied" when the relevant foreign applicant is from a country with close ties to the United States. In addition, PECO stated its opinion that the focus of a foreign control review as set forth in the SRP should be on "who exerts control over the 'safety and security' aspects of the licensee's operations." With specific reference to section 3.2 of the SRP, PECO recommended that where a license condition is necessary to limit those responsible for special nuclear material, the limitation should apply to officers and *senior management* of the applicant, rather than officers and *employees*, which latter term is used in the present SRP.

Response

As pointed out in SECY-98-252, "Preliminary Staff Views Concerning Its Review of the Foreign Ownership Aspects of AmerGen, Inc.'s Proposed Purchase of Three Mile Island, Unit 1" (Oct. 30, 1998), previous Commission decisions regarding foreign ownership or control did not appear to turn on which particular nation the applicant was associated with. Although the broader required finding of non-inimicality to the common defense and security may be based, in part, on the nation involved, the SRP concerns the specific foreign ownership prohibition and

is not intended to cover all common defense and security issues, as stated in Section 1.1 of the SRP. Thus, no changes in consideration of PECO's first comment appear warranted.

Regarding PECO's second comment, it is true that the exertion of control over the "safety and security aspects" of reactor operations (interpreting that phrase broadly for the purpose of this discussion) can be an important factor in the foreign ownership or control analysis. However, it may not be the only important factor, given that the statute does not limit the foreign control prohibition to only those applicants who intend to be actively engaged in operation of the plant, or intend to "exert control" over operations. A statement of the "focus" of the analysis would appear to be somewhat premature at this time, given the limited experience the Commission has had in this area.

With respect to PECO's last comment concerning personnel responsible for special nuclear material, the term "employees" was used by the Commission in a previous condition of approval that required those responsible for special nuclear material to be U.S. citizens.[3] It appears reasonable to seek to ensure that all those employees responsible for special nuclear material have at least U.S. citizenship, not just senior management, when there is some issue of foreign control, and PECO has not provided a compelling reason why there should be any departure from a prior Commission decision.

Approval by the Commission

In approving the final SRP, the Commission approved new additional guidance (incorporated in the last paragraph of section 3.2 of the SRP) reflected in the foregoing response to AmerGen's comments concerning applicants seeking to acquire less than 100% of

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[3] *See* letter from L. Manning Muntzing, Atomic Energy Commission, to General Atomic Company (Dec. 14, 1973), incorporating by reference letter from General Atomic Company to L. Manning Muntzing, Atomic Energy Commission (Dec. 14, 1973) with attachment (General Atomic Company Resolution of the Standing Committee of the Partnership Committee Adopted at a Meeting Thereof Held on December 14, 1973).

a reactor who have ultimate foreign parents. Also, the Commission directed that one additional change be made from the previous interim SRP, namely, the addition of a new footnote in Section 3.2 of the SRP.

Dated at Rockville, Maryland, this 21st day of September, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

Final Standard Review Plan on
Foreign Ownership, Control and Domination

1. AREAS OF REVIEW

1.1 General

The NRC is issuing this Standard Review Plan (SRP) to describe the process it uses to review the issue of whether an applicant for a nuclear facility license 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. This SRP will be used as the basis for such reviews in connection with license applications for new facilities, 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, each applicant must be reviewed to determine whether it is owned, controlled, or dominated by an alien, foreign corporation or foreign government. If a co-licensee of an existing facility owns a partial interest in the facility and is transferring that interest, the acquirer must be reviewed to determine whether it is owned, controlled, or dominated by an alien, foreign corporation or foreign government.

The foreign control determination is to be made with an orientation toward the common defense and security. However, this SRP does not address all matters relating to the determination of whether issuance of a license to a person would be inimical to the common defense and security.

This SRP reflects current NRC regulations and policy.

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:

> 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 103d also states that no license may be issued to an alien.)

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.

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

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.

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.

10 CFR § 50.80 provides, in pertinent part:

(a) No license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner

disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing.

* * *

(c) . . . [T]he Commission will approve an application for the transfer of a license, if the Commission determines:

* * *

(2) That the transfer of the license is otherwise consistent with applicable provisions of the law, regulations, and orders issued by the Commission pursuant thereto.

2. INFORMATION TO BE SUBMITTED BY APPLICANT

2.1 Information Required By Regulation

At the time the applicant submits its application for a license or for approval of the transfer of a license, the applicant must submit information sufficient to comply with 10 CFR § 50.33(d).

2.2 Additional Information

If the reviewer, based on the information required to be submitted by 10 C.F.R. § 50.33(d), has reason to believe that the applicant may be owned, controlled, or dominated by foreign interests, the reviewer should request and obtain the following additional information:

1. If the applicant's equity securities are of a class which is registered pursuant to the Securities Exchange Act of 1934, copies of all current Securities and Exchange Commission Schedules 13D and 13G, which are required to be filed by owners of more than 5% 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.

2. Management positions held by non-U.S. citizens.

3. The ability of foreign entities to control the appointment of management personnel.

2.3 Negation Action Plan

If applicable under Section 4.4 *infra*, the applicant should also submit a Negation Action Plan, which is described in detail in Section 4.4.

3. ACCEPTANCE CRITERIA

3.1 Basic Statutory and Regulatory Limitations

License applications for new facilities or applications for approval of transfers of licenses required in the case of proposed new ownership of existing facilities may involve foreign entities proposing to own all or part of a reactor facility. Sections 103d and 104d of the AEA prohibit the NRC from issuing a license to an applicant if the NRC knows or has reason to believe that the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (or is an alien, in the case of section 103d).

Likewise, under 10 CFR 50.38,

> 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.

3.2 Guidance On Applying Basic Limitations

The Commission has not determined a specific threshold above which it would be conclusive that an applicant is controlled by foreign interests through ownership of a percentage of the applicant's stock. Percentages held of outstanding shares must be interpreted in light of all the information that bears on who in the corporate structure exercises control over what issues and what rights may be associated with certain types of shares.

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. The Commission has stated that the words "owned, controlled, or dominated" mean relationships where the will of one party is subjugated to the will of another. *General Electric Co.*, 3 AEC at 101.

A foreign interest is defined as any foreign government, agency of a foreign government, or representative of a foreign government; any form of business enterprise or legal entity organized, chartered, or incorporated under the laws of any country other that the U.S. or its possessions and trust territories; any person who is not a citizen or national of the U.S.; and any U.S. interest effectively controlled by one of the above foreign entities.

The Commission has stated that in context with the other provisions of Section 104d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security. Thus, an applicant that may pose a risk to national security by reason of even limited foreign ownership would be ineligible for a license.[4]

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[4]In any event, a license would not be issued to any person if the Commission found that issuance would be inimical to the common defense and security or to the health and safety of the public. *See, e.g.*, sections 103d and 104d of the AEA. Pursuant to this provision, the

Even though a foreign entity contributes 50%, or more, of the costs of constructing a reactor, participates in the project review, is consulted on policy and cost issues, and is entitled to designate personnel to design and construct the reactor, subject to the approval and direction of the non-foreign applicant, these facts alone do not require a finding that the applicant is under foreign control.

An applicant that is partially owned by a foreign entity, for example, partial ownership of 50% or greater, may still be eligible for a license if certain conditions are imposed, such as requiring that officers and employees of the applicant responsible for special nuclear material must be U.S. citizens.

Where an applicant that is seeking to acquire a 100% interest in the facility is wholly owned by a U.S. company that is wholly owned by a foreign corporation, the applicant will not be eligible for a license, unless the Commission knows that the foreign parent's stock is "largely" owned by U.S. citizens. If the foreign parent's stock is owned by U.S. citizens, and certain conditions are imposed, such as requiring that only U.S. citizens within the applicant organization be responsible for special nuclear material, the applicant may still be eligible for a license, notwithstanding the foreign control limitation. If the applicant is seeking to acquire less than a 100% interest, further consideration is required. Further consideration will be given to: (1) the extent of the proposed partial ownership of the reactor; (2) whether the applicant is seeking authority to operate the reactor; (3) whether the applicant has interlocking directors or officers and details concerning the relevant companies; (4) whether the applicant would have any access to restricted data; and (5) details concerning ownership of the foreign parent company.

4. REVIEW PROCEDURES

4.1 Threshold Review and Determination

The reviewer should first analyze all of the information submitted by the applicant sufficient to comply with 10 C.F.R. § 50.33(d), as well as 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. If there is no such reason to believe based on the foregoing information, no further review is required and the reviewer should proceed to make a recommendation regarding whether there is any foreign control obstacle to granting the application. On the other hand, if there is any reason to believe that the applicant may be owned, controlled, or dominated by foreign interests, the reviewer should request and obtain the additional information specified in Section 2.2.

4.2 Supplementary Review

If it is necessary to obtain the additional information specified in Section 2.2, the reviewer should consider the acceptance criteria above, and consult with the Office of the General

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Commission has the authority to reject a license application that raises a clear proliferation threat, terrorist threat, or other threat to the common defense and security of the United States.

Counsel on Commission precedent. Information related to the items listed below may be sought and may be taken into consideration in determining whether the applicant is foreign owned, controlled, or dominated. The fact that some of the below listed conditions may apply does not necessarily render the applicant ineligible for a license.

1. Whether any foreign interests have management positions such as directors, officers, or executive personnel in the applicant's organization.

2. Whether any foreign interest 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 or individuals own relatively small numbers 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 to foreign interests 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.

4.3 Supplementary Determination

After reviewing the additional information specified in Section 2.2, if the reviewer continues to conclude that the applicant may be an alien or 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 foreign ownership, control, or domination, to include whether a foreign interest has a controlling or dominant minority position.

2. The source of foreign ownership, control, or domination, to include identification of immediate, intermediate, and ultimate parent organizations.

3. The type of actions, if any, that would be necessary to negate the effects of foreign ownership, control, or domination to a level consistent with the Atomic Energy Act and NRC regulations.

On the other hand, if the reviewer determines after reviewing the additional information specified in Section 2.2 that there is no further reason to believe that the applicant is an alien or owned, controlled, or dominated by a foreign person or entity, no additional review is necessary.

4.4 Negation Action Plan

If the reviewer continues to conclude following the Supplementary Determination that an applicant may be considered to be foreign owned, controlled, or dominated, or that additional action would be necessary to negate the foreign ownership, control, or domination, the applicant shall be promptly advised and requested to submit a negation action plan. When factors not related to ownership are present, the plan shall provide positive measures that assure that the foreign interest can be effectively denied control or domination. Examples of such measures that may be sufficient to negate foreign control or domination include:

1. Modification or termination of loan agreements, contracts, and other understandings with foreign interests.

2. Diversification or reduction of foreign source income.

3. Demonstration of financial viability independent of foreign interests.

4. Elimination or resolution of problem debt.

5. Assignment of specific oversight duties and responsibilities to board members.

6. Adoption of special board resolutions.

5. EVALUATION FINDINGS

The reviewer should verify that sufficient information has been provided to satisfy the regulations and this Standard Review Plan. In consideration of the guidance of this Standard Review Plan, the reviewer should then draft an analysis and recommendation, based on the applicable information specified in Sections 2 and 4 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 before granting the application so as to effectively deny foreign control of the applicant.

6. 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).

3. *General Electric Co. and Southwest Atomic Energy Associates*, Docket No. 50-231, 3 AEC 99 (1966).

4. Letter from W. Dircks to J. MacMillan (Dec. 17, 1982) (Re: Babcock & Wilcox/McDermott) (attached).

5. Letter from N. Palladino to A. Simpson (Sept. 22, 1983) w/attachment (Re: Union Carbide/Cintichem) (attached).