Enclosure 1

Legislative History and Proposed Amendments

ADAMS Accession No: ML13301A712

Legislative History and Proposed Amendments

In 1954, the U.S. Congress included a prohibition on foreign ownership, control, or domination (FOCD) when it enacted the Atomic Energy Act of 1954, as amended (AEA or the Act). The earlier Atomic Energy Act of 1946 (McMahon Act, P.L. 585) did not bar foreign ownership, but had contained in Section 7c of that Act the precursor to the FOCD prohibition:

> No license may be given to any person for activities which are not under or within the jurisdiction of the United States, to any foreign government, or 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.[1]

Congress added the last phrase of Section 7c in response to comments from the U.S. Navy. The Navy asked Congress to insert the phrase "or to persons within the jurisdiction of the United States (U.S.) where issuance thereof would be inimical to the common defense and security" at the end of Section 7c and Section 5d(1).[2] The Navy stated that the Atomic Energy Commission (AEC or the Commission), under these provisions as originally written, "apparently would be unable to prohibit the distribution of fissionable or other materials and licenses to persons within the boundaries of the United States on the ground that they are deemed to be undesirable from the national security viewpoint."[3] Further, the Navy stated that "[i]t is extremely important that the AEC have the specific authority within its discretion to refuse to distribute fissionable or other material to residents of the United States of questionable loyalty."[4]

The Atomic Energy Act of 1954

As part of its process of developing the AEA, the Joint Committee on Atomic Energy (Joint Committee) held hearings throughout late June and July of 1953 devoted to the topic of "Atomic Power Development and Private Enterprise." These hearings included extensive discussions concerning the need to maintain national defense and security while opening nuclear power reactor development to private industry, but there was no discussion concerning FOCD of reactor licensees or applicants.[5]

H.R. 8862 and S. 3323, early drafts of the bill from the Joint Committee on Atomic Energy that Congress ultimately enacted as the AEA, contained the following proposed amendment to the Act's utilization facility licensing provisions:

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1 Atomic Energy Act of 1946 (AEA of 1946), ch. 724, § 7c., 60 Stat. 755, 764–65 (1946).

2 Section 5 of the AEA of 1946 governed the control of fissionable material. Section 5d.(1) contained the following prohibition on the Commission:

> The Commission shall not...distribute any fissionable material to (A) any person for a use which is not under or within the jurisdiction of the United States, (B) any foreign government, or (C) any person within the United States if, in the opinion of the Commission, the distribution of such fissionable material would be inimical to the common defense and security.

Atomic Energy Act of 1946 (AEA of 1946), ch. 724, § 5d.(1), 60 Stat. 755, 763 (1946).

3 *Hearing before the H. Comm. on Military Affairs*, 79th Cong. 56 (June 12, 1946) (Statement of Hon. W. John Kenney, Assistant Secretary of the Navy).

4 *Id.*

5 *See generally, Atomic Power Development and Private Enterprise: Hearings before the Joint Comm. on Atomic Energy*, 83d Cong. (1953).

> No license may be given to any person for activities which are not under or within the jurisdiction of the United States, or to any foreign government or to any corporation organized under the laws of any foreign country. No corporation or association may be a licensee if it is owned or controlled by a foreign corporation or government or if more than 5 per centum of its voting stock is owned or voted by aliens or their representatives or if more than 5 per centum of its members are aliens, or if any officer, director, or trustee is not a citizen of the United States. No individual may be a licensee unless he is a citizen of the United States. 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.[6]

Thus, the Joint Committee proposed to prohibit the issuance of licenses to foreign corporations, corporations under foreign control or domination, corporations that were more than five percent owned by foreigners, and corporations that had even one foreign officer, director, or trustee.

In hearings on the bill before the Joint Committee, all five individuals who commented on the proposed five-percent rule objected to the rule. Generally, commenters objected on the grounds that (1) tracking such a small percentage of ownership would be difficult, (2) foreign governments could easily render a licensee out of compliance with the AEA by simply purchasing a small amount of voting stock, and (3) the provision should be limited to a prohibition on licensing an entity that could exert control or domination that could affect national security. Four of these commenters were industry representatives.

E. Blythe Stason, Dean of the University of Michigan Law School, warned that the five-percent rule "may cause difficulty."[7] He referenced the Federal Communication Act's 20-percent foreign stock ownership rule for radio stations—or 25 percent in the case of parent corporations—and suggested increasing the five-percent limit and "giving to the Commission discretionary authority to refuse the license if there were any danger of loss of control to aliens."[8] He also noted that such discretionary authority already appears to be incorporated in the last part of Section 103, which instructs the Commission to deny a license if it finds that issuance of a license would be "inimical to the common defense and security."[9]

Alfred Iddles, president of Babcock and Wilcox Company, argued that the five-percent rule was "an impracticable method of handling the problem of alien control."[10] E.H. Dixon, Chairman of the Committee on Atomic Power of the Edison Electric Institute and President of Middle South Utilities, Incorporated, also argued that the five-percent rule was impractical. He asserted that

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6 H.R. 8862, 83d Cong. § 103d (1954); S. 3323, 83d Cong. § 103d (1954) (emphasis added). The Joint Committee, in its outline of H.R. 8862 and S. 3323, stated that the purpose of this provision was to "assure the domestic ownership of licensees." Joint Comm. on Atomic Energy, Preliminary Section by Section Outline of the Bill to Amend the AEA (Apr. 15, 1954).

7 *Hearings before the Joint Comm. on Atomic Energy*, 83d Cong. 64 (May 10, 1954) (Supplementary Statement for Public Hearings of the Joint Committee on Atomic Energy, E. Blythe Stason, Dean, University of Michigan Law School).

8 *Id.*

9 *Id.*

10 *Hearings before the Joint Comm. on Atomic Energy*, 83d Cong. 92 (May 10, 1954) (Statement of Alfred Iddles, President, the Babcock & Wilcox Co.).

> [T]he requirement...would be virtually impossible to administer. Many licensees will be corporations having thousands of stockholders whose securities are traded in on national securities exchanges. Many security holders for convenience leave their securities in the names of brokers or nominees or in street names. The real ownership is often not known to the corporation. A corporation managed by the most able and devoted American citizens might well fall into this alien and outcast category, destroying enormous property values, through transactions on a national securities exchange over which it had no control or influence. And this might happen without in any way changing the management and activities of the corporation.[11]

Therefore, Dixon proposed, the foreign ownership provision should be "amended to provide for a test based upon a finding of domination or control by aliens."[12]

Francis K. McCune, General Manager of the Atomic Products Division of General Electric Company, objected to the five-percent rule on grounds that it was impractical to administer and had little or no substantive value.[13] McCune argued that the provision was administratively impractical because "stock records of General Electric Co., and probably those of most other corporations, do not disclose the nationality of share owners. It would be extremely difficult and very expensive for General Electric to determine what percentage of its share owners are aliens."[14] Further, McCune argued, even if General Electric were able to identify the nationality of its share owners, "there is no feasible means by which we could prevent five percent of our stock from being purchased by aliens" and since the five-percent rule is inflexible, "a foreign government could, at relatively small cost, knock our company out of the atomic energy business through open-market purchases of its stock."[15] McCune emphasized the national security basis of the five-percent rule, arguing that the AEA already provided "ample authority to prevent any possible abuse which could arise from foreign stock ownership, or from foreign officers or directors," and that the Commission need only "refuse licenses where national security is affected."[16]

William A. Steiger, Chairman of the Committee on Patents of the National Association of Manufacturers, also opposed the five-percent rule, arguing that

> [S]uch a provision may well render many patriotic companies...ineligible for acquiring licenses...as many companies have largely diversified stock holdings. It might be difficult or impossible for such companies to show that not more than

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11 *Hearings before the Joint Comm. on Atomic Energy*, 83d Cong. 227-28 (May 12, 1954) (Statement of E. H. Dixon, Chairman of the Committee on Atomic Power of the Edison Electric Institute, President, Middle South Utilities, Inc.).

12 *Id.* at 229.

13 *Hearings before the Joint Comm. on Atomic Energy*, 83d Cong. 328 (May 17, 1954) Statement of Francis K. McCune, General Manager, Atomic Products Division, General Electric Co., Accompanied by Stuart MacMackin, Counsel).

14 *Id.*

15 *Id.*

16 *Id.*

> five percent of its stock outstanding is owned or voted by aliens or their representatives.[17]

Like Dean Stason, Steiger recommended an increase in the five-percent limit, specifically to 25 percent, the same limit as in the Communications Act.[18] Further, Steiger recommended the AEC be authorized to grant a license where it found the applicant to be of "good character" and only consider foreign ownership and directors in this decision but not set mandatory limits.[19]

The Joint Committee amended the licensing provisions of the bills to eliminate the five-percent rule and replace it with an FOCD provision substantially the same as the current FOCD provision:

> No license may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities, under terms of an agreement for cooperation arranged pursuant to section 123. 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.[20]

The Joint Committee did not provide any explanation for this change in its bill. The legislative history of the AEA does, however, contain some brief comments on the revised FOCD provision. Then Chairman Lewis L. Strauss provided the AEC's statement on the Joint Committee's revised proposed bill, which included the short comment that the revised FOCD provision was "desirable" and "should prove to be an adequate safeguard."[21]

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17 *Hearings before the Joint Comm. on Atomic Energy*, 83d Cong. 464 (May 19, 1954) Statement of William A. Steiger, Chairman, Committee on Patents of the National Association of Manufacturers).

18 *Id.*

19 *Id.*

20 STAFF OF JOINT COMM. ON ATOMIC ENERGY, 83D CONG., DRAFT IN BILL FORM INCORPORATING CHANGES TO BE MADE IN H.R. 8862 AND COMPANION BILL S. 3323 § 103d (Comm. Print 1954). The current FOCD provision appears as amended by Pub. L. 91-560, § 4, 84 Stat. 1472 (1970).

21 *Hearings before the Joint Comm. on Atomic Energy*, 83d Cong. 601 (June 2, 1954) (Statement of the AEC, Represented by Lewis L. Strauss, Chairman; Commissioners Henry D. Smyth, Thomas E. Murray, Eugene M. Zuckert, and Joseph Campbell; K.D. Nichols, General Manager; William Mitchell, General Counsel; H.L. Price, Deputy General Counsel; and Edward R. Trapnell).

Legislative Proposals and Bills to Amend the FOCD Provision

NRC's 1999 Legislative Proposal

The U.S. Nuclear Regulatory Commission (NRC) submitted several legislative proposals to Congress in 1999, including a proposal to amend the FOCD provisions in Sections 103d. and 104d.[22] Congress did not enact the NRC's FOCD legislative proposal. Under that proposal, the prohibition of foreign ownership of power and research reactors (utilization facilities) would have been repealed, but the prohibition on foreign ownership of production facilities would have remained, as would the inimicality provision. The Commission explained that if the legislation were enacted, it would not authorize issuance of any license to a new owner if it found that issuance of the license would be inimical to the common defense and security or to the health and safety of the public.

In July 1999, Congressmen Joe Barton and Ralph M. Hall introduced, by request of the NRC and the President, the NRC legislative proposals as H.R. 2531.[23] In hearings before the House Subcommittee on Energy Power, Chairman Greta Joy Dicus explained that the FOCD "restrictions were originally enacted at a time when commercial development of nuclear power was in its very early stages, but the situation has changed significantly since then" since many countries make commercial use of nuclear power and the technology is widely known.[24] Further, Chairman Dicus explained that the NRC would continue to conduct inimicality reviews.[25]

Congressman Barton expressed "serious reservations" about the FOCD proposal.[26] Congressman Thomas Sawyer asked Chairman Dicus whether "there are sufficient security standards" to permit limiting the FOCD prohibition to production facilities. Chairman Dicus assured Congressman Sawyer that the NRC would not license a facility if it found that doing so would "endanger the security of the United States" and that, if after licensing, the Commission learned that circumstances had changed such that continuation of the license was not in the national interest, the Commission could revoke the license.[27] Commissioner Edward McGaffigan then explained that the "motivating force" behind the FOCD legislative proposal was the restructuring of the electric power industry. He further explained that, from his perspective, there are "very sensitive facilities" that from a non-proliferation perspective are more sensitive than nuclear reactors, specifically fuel cycle facilities, and that nearly all of these facilities are owned by foreign entities. He testified the inimicality provision, which would remain untouched by the legislative proposal, would prevent the issuance of a nuclear power plant operating

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22 Letter from Chairman Shirley Ann Jackson to the Honorable Albert Gore, Jr. (May 13, 1999) (ADAMS Accession No. ML13312A018) (transmitting the NRC's legislative proposals to the Senate). An identical letter was sent to the Speaker of the House of Representatives. The NRC bill was subsequently introduced as H.R. 2531, 106th Cong. § 205 (July 15, 1999). The other legislative proposals fell under the broad categories of (1) improvements to NRC safeguards provisions, (2) increased efficiency and flexibility, (3) elimination of duplicative regulatory roles, and (4) relaxation of unnecessary or outdated provisions.

23 *H.R. 2531, Hearings before the H. Subcommittee on Energy and Power of the Comm. on Commerce*, 106th Cong. 1 (July 21, 1999).

24 *Id.* at 23 (Prepared Statement of Greta Joy Dicus, Chairman, NRC).

25 *Id.*

26 *Id.*

27 *Id.* at 31-32.

license to any entity or country that posed a threat to the United States.[28] Therefore, according to Commissioner McGaffigan, if the FOCD prohibition on power and research reactors were lifted, the inimicality clause would prevent the NRC from issuing licenses to "bad guys."[29] Commissioner Jeffrey Merrifield pointed out that he viewed the FOCD prohibition as a "free market issue" since "[n]uclear power plants are the only energy-producing plants in the United States that cannot be bought by a foreign company."[30]

Nuclear Energy Institute (NEI) testified at the hearing on H.R. 2531. NEI expressed its support for the FOCD legislative proposal, stating that the "provision seems somewhat of [an] anachronism" because of the geopolitical changes that have occurred since the passage of the AEA. Moreover, according to NEI, the FOCD prohibition excludes sources of investment capital and operating expertise.[31]

Chairman Dicus's responded to several post-hearing questions. She discussed the factors that the NRC would consider in making an inimicality determination if the FOCD prohibition were lifted.[32] She stated that the AEA and NRC regulations do not permit direct foreign ownership of nuclear power plant facilities and that the NRC can revoke a license at any time if it finds that possession of the license is inimical to the common defense and security.[33] The post-hearing questions and answers on FOCD are reproduced in full in Table 1 at the end of this enclosure.

After the hearings, a revised version of H.R. 2531 was introduced but did not include the NRC's FOCD proposal. The subcommittee did not take further action on the bill.

2000 Senate Bill

In January 2000, Senator Pete Domenici introduced a bill, S. 2016, which contained the same FOCD proposal that the NRC proposed in 1999.[34] Like the proponents of the NRC's 1999 proposal, Senator Domenici argued that eliminating the FOCD provision for power and research reactors was necessary because the provision was "outdated" and a "significant obstacle to foreign investment or participation in the U.S. nuclear power industry and its restructuring."[35] Beyond Senator Domenici's introduction, Congress did not take any action on this bill.

At a March 2000 hearing before the Senate Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety on NRC regulatory reforms, Senator Domenici mentioned S. 2016 and emphasized the need to eliminate the "anachronistic" FOCD provision.[36] During this

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28 *Id.* at 32 (Testimony of Edward McGaffigan, Jr., Commissioner, NRC).

29 *Id.*

30 *Id.* (Testimony of Jeffrey S. Merrifield, Commissioner, NRC).

31 *Id.* at 42 (Statements of Ralph Beedle, Senior Vice President and Chief Nuclear Officer, Nuclear Energy Institute; and David E. Adelman, Project Attorney, National Resources Defense Council).

32 *Id.* (Post-Hearing Response of Chairman Dicus). These factors included relations between the United States and the foreign nation, the nonproliferation credentials of the applicant's nation, and whether the nation supports international terrorism; further, the NRC would consult with the executive branch, as needed. *Id.* at 72–73.

33 *Id.* at 73.

34 *See* S. 2016, 106th Cong. § 5 (2000).

35 146 Cong. Rec. S152 (daily ed. Jan. 31, 2000) (Statement of Sen. Domenici).

36 *Nuclear Regulatory Commission: Regulatory Reforms, Hearing before the Sen. Subcomm. On Clean Air, Wetlands, Private Property and Nuclear Safety*, 106th Cong. 35 (Mar. 9, 2000).

hearing, NRC Chairman Richard Meserve asked the subcommittee to reconsider, among other proposals, the NRC's 1999 FOCD proposal.[37]

2001 Senate Bills and the NRC's Legislative Proposal

Senator Domenici and Senator George Voinovich introduced three separate bills in the Senate in 2001—S. 472 in March, S. 1591 in October, and S. 1667 in November—which would have eliminated the FOCD prohibition from Sections 103d. and 104d. entirely.[38] Congress did not take any action on these bills.

In June 2001, the Commission sent the NRC's legislative proposals to Congress, which included the same FOCD proposal the NRC submitted to Congress in 1999: eliminate the FOCD prohibition with respect to power and research reactors.[39] Once again Congress did not enact the NRC's FOCD proposal. In a memorandum accompanying the proposals, Chairman Meserve provided the same reasoning for its FOCD proposal as did Chairman Dicus during the 1999 hearings on H. 2531.[40] At a May, 2001, hearing before the Senate Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety, Chairman Meserve explained in support of the proposal that many entities involved in electricity generation have foreign participants, making the FOCD restriction "increasingly problematic."[41] Senator Harry Reid expressed his "concerns about the recent efforts to eliminate restrictions on foreign ownership of nuclear plants."[42] In responses to additional questions from Senator Reid concerning FOCD issues, Chairman Meserve described the state of foreign involvement in ownership of power reactors—Three Mile Island, Clinton, Oyster Creek, Seabrook, and Millstone— and foreign involvement in other nuclear sectors including engineering, maintenance, equipment, and fuel cycle facilities.[43] The post-hearing questions on FOCD and the NRC's answers appear in Table 2 at the end of this enclosure. Exelon also spoke at the hearing and recommended that any lifting of the FOCD prohibition be tied to providing reciprocal rights for U.S. companies overseas.[44]

Subsequently, Congress has not given any further consideration to the foreign ownership issue and the Commission has not submitted a legislative proposal to Congress addressing the issue.

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37 *Id.* at 8, 41 (Statement of Commissioner Richard Meserve, Chairman, NRC; Accompanied by Commissioner Nils Diaz, Commissioner Jeffrey S. Merrifield, Commissioner Edward McGaffigan, Jr., and Commissioner Greta Joy Dicus). NEI once again supported this proposal. *Id.* at 81 (Statement of Ralph Beedle, Senior Vice President and Chief Nuclear Officer, Nuclear Energy Institute).

38 S. 472, 107th Cong. § 604 (2001); S. 1591, 107th Cong. § 102 (2001); S. 1667, 107th Cong. § 604 (2001).

39 Letter from Chairman Richard A. Meserve to the Hon. Richard B. Cheney (June 22, 2001) (ADAMS Accession No. ML011770414). An identical letter was sent to the Speaker of the House of Representatives.

40 *See id.*, Enclosure 4, Legislative Memorandum in Support of Proposed Bill 6; *Nuclear Regulatory Commission: Fiscal Year 2002 Programs, Hearing before the S. Subcomm. on Clean Air, Wetlands, Private Property, and Nuclear Safety* 61, 150–51 (May 8, 2001) (Statement of Hon. Richard A. Meserve, Chairman, NRC).

41 *Id.* at 55.

42 *Id.* at 16. Senator Reid argued that "nuclear power plants are bought and sold like used cars" and that the Administration should ensure domestic ownership of nuclear power plants.

43 *Id.* at 61. NEI also addressed Senator Reid's additional questions concerning FOCD issues. *Id.* at 159–60 (Responses by Joe F. Colvin to Additional Questions from Senator Reid).

44 *Id.* at 180 (Statement of Oliver D. Kingsley, Jr., President and Chief Nuclear Officer, Exelon Nuclear, Exelon Generation Company, LLC).

Table 1. July 21, 1999, Hearing Before the Subcommittee on Energy and Power of the Committee on Commerce, Post-Hearing Questions and Answers[45]:

Congressional Questions	NRC Responses
In recommending elimination of the foreign ownership restrictions in the AEA, has the NRC obtained the concurrence of agencies responsible for defending the U.S. from national security threats, including the Department of Defense, the Joint Chiefs of Staff, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation? If not, why not? If so, please provide written copies of each agency's concurrence for the record.	The Commission forwarded this legislative proposal, along with others that have now been incorporated into H.R. 2531, to the Office of Management and Budget (OMB), which normally circulates such proposals among Executive Branch Agencies for the purpose of obtaining their views. OMB has informed us that it provided the NRC draft submission to several agencies, including the Department of Energy (DOE), the Department of Defense, the Department of State and the National Security Council. According to OMB, none of these agencies objected to the proposal recommending elimination of the foreign ownership restriction. With respect to components of a Department, such as the Federal Bureau of Investigation (which is a component of the Department of Justice), we understand that OMB generally leaves it to the cognizant Department to determine which of its components should be consulted during the Departmental review of proposed legislation forwarded by OMB. In addition, we understand that OMB does not customarily circulate proposals to the Central Intelligence Agency. Any substantive or editorial comments received by OMB are provided to the agency proposing the legislation. OMB does not provide the proposing agency (in this case, NRC) with copies of written responses of approval or "no comment" that OMB has received.
If the foreign ownership restrictions of the AEA are repealed, on what basis would the NRC determine whether a particular foreign acquisition would be "inimical to the common defense and security," the	If the proposed legislation were enacted, the Commission would consider a number of factors in making its common defense and security finding. Among the considerations would be the overall state of relations between the United States and the foreign nation; the nonproliferation credentials of the applicant's nation and

[45] U.S. House. Subcommittee on Energy and Power of the Committee on Commerce. *The Nuclear Regulatory Commission Authorization Act for Fiscal Year 2000.* (Date: July 21, 1999). Text from: U.S. Government Printing Office. Accessed July 22, 2014.

standard under which you testified that such acquisitions would be reviewed?	whether that nation supports international terrorism. If the Commission has any common defense and security concerns, the Commission would presumably consult with the Executive Branch before making its statutory findings on the application.
If U.S. relations with the home country of a foreign owner of a U.S. nuclear plant deteriorated following the acquisition, so that such ownership now threatened the common defense and security, would the NRC be able to revoke a license or order a divestiture?	The AEA and the Commission's regulations do not permit foreign entities to directly own nuclear power plant facilities. To the extent that a foreign interest owns or controls to some degree a licensee, a negation action plan would have been in place to insulate any matters that might affect common defense and security from the foreign interest, even if the foreign interest was associated with a friendly nation. Thus, if U.S. relations with the respective nation of the foreign interest deteriorated, the foreign ownership or control should not be able to have any impact on the common defense and security by reason of the negation action plan. In general, the NRC could revoke a license or take other regulatory action if at any time after the issuance of the license it determined that possession of the license would be inimical to the common defense and security.
If there was an accident at a nuclear plant and the U.S. subsidiary or affiliate of a foreign owner lacked substantial assets other than the plant itself, or failed to obtain sufficient insurance coverage, could we be sure that the victims would be able to obtain damages from the assets of a foreign parent?	The Price-Anderson Act does not contemplate victims needing to seek damages from the assets of any licensee that has suffered a serious nuclear accident. The long-standing provisions and practices dealing with the damages that could be associated with an accident at a nuclear power plant are intended to assure that potential victims are adequately compensated irrespective of plant ownership. Under the AEA, all commercial nuclear power plants require a license to operate; under the Price-Anderson Act a condition of that license requires that the plant be covered by the maximum commercial insurance available. The NRC receives endorsements of the policies, and, therefore, has assurance that the maximum commercial insurance coverage is in effect. The Price-Anderson Act further provides that every operating nuclear power plant participate in a pool with retrospective premium obligations. That is, the requirement to pay damages is not initiated until there is an accident sufficiently large that it appears that the damages will exceed the amount of commercial insurance coverage. The industry pool covers all damages up to the limit of liability

	for the nuclear incident. The value of the industry pool is now of the order of $9 billion. Only if damages were to exceed the value of the industry pool would Congress be called upon to consider whether to compensate for additional damages and, if so, the amount and the means.

Table 2. May 8, 2001, Hearing Before the Senate Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety of the Committee on Environment and Public Works[46]

Question	Response
How many currently licensed nuclear power plants have foreign ownership?	Three power reactors, Three Mile Island, Unit 1, Clinton, and Oyster Creek, are owned by AmerGen. British Energy, Inc., a foreign company, indirectly owns 50 percent of AmerGen, and thus is an indirect owner of these plants. In addition, New England Power owns about 10 percent of the Seabrook plant and about 12 percent of Millstone, Unit 3. New England Power is an indirect wholly-owned subsidiary of the National Grid Group, a British company. However, Millstone 3, including New England Power's share, is being sold to a U.S. company and Seabrook is also beginning the sale process. In a few instances, a small percentage of stock in U.S. companies that own nuclear power plants may be held by foreign individuals or entities. In order to ensure, in part, that power reactor licensees inform the NRC of such situations, the NRC issued Regulatory Issue Summary (RIS) 2000-01 on February 1, 2000. This RIS reminded power reactor licensees of their obligation to inform the NRC when changes occur with respect to FOCD in ways that include, but are not limited to the following: (1) a license holder becomes aware of changes in foreign ownership or control of its company or of its parent company, for example, by receiving Securities and Exchange Commission Schedules 13D or 13G indicating such changes; (2) a license holder, or its parent company, plans to merge with or be acquired by an entity that is owned, controlled, or dominated by foreign interests; or (3) a license holder's Board of Directors becomes controlled or dominated by board members who are not U.S. citizens.
How many of the principal nuclear power engineering, maintenance, and equipment supply companies have significant foreign investment?	This question goes to the heart of why we believe that the foreign ownership prohibitions on utilization facilities (i.e., commercial and research reactors) in Sections 103d and 104d of the AEA should be eliminated. The current prohibitions

[46] U.S. Senate. Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety of the Committee on Environment and Public Works. *The Nuclear Regulatory Commission: Fiscal Year 2002 Programs.* (Date: May 8, 2001). Text from: U.S. Government Printing Office. Accessed September 5, 2013.

	apply only to utilization and production facilities, not to the enterprises listed in the question. (A separate foreign ownership prohibition in Section 193(f) applies to the United States Enrichment Corporation. The Commission is not proposing to eliminate that prohibition or the prohibition on production facilities in Sections 103d and 104d.) Many enterprises—arguably more sensitive than nuclear reactors from a common defense and security prospective—have long had significant foreign ownership, primarily from Europe and Japan. The vendors of three of the four reactor designs currently deployed in our 104 licensed reactors—Westinghouse, Combustion Engineering, and Babcock and Wilcox—are foreign-owned. Only General Electric is American-owned. The vendor of two of the three currently NRC certified advanced reactor designs is foreign. The Pebble Bed Modular Reactor design team is South African-based, with a U.S. firm—Exelon—having a minority interest. Other advanced reactor designs are likely to be international as well. Similarly, six of the seven major fuel cycle facilities currently licensed by NRC have significant or total foreign ownership. Only Nuclear Fuel Services, Inc., one of the two category 1 fuel cycle facilities which handles highly enriched uranium (HEU), is entirely U.S. owned by a U.S. corporation. The other category 1 fuel cycle facility—BWX Technologies, Inc.—is owned by McDermott International, Inc., a Panama corporation which is a publicly traded company on the New York Stock Exchange. In that case, consistent with the statutory requirement to ensure common defense and security, the Commission in consultation with the DOE required a variety of mitigating measures, such as an oversight board comprised wholly of U.S. members. The only new fuel cycle facility currently planned, the mixed oxide fuel facility to be built at the DOE Savannah River, South Carolina site to carry out the DOE weapons plutonium disposition mission, will also have significant foreign involvement. The Commission believes that the common defense and security provisions in Sections 103d and 104d of the AEA are sufficient to ensure that any foreign ownership of a U.S. utilization facility will not be inimical to U.S. security, just as similar provisions elsewhere in the AEA have ensured that other arguably more

	sensitive facilities and enterprises do not have unacceptable foreign owners. The foreign ownership restrictions on nuclear power plants are out of date because the nuclear industry, like most high technology industries, has for some time been an international enterprise. The categories of reactor vendors, construction firms, fuel cycle facilities, spent fuel cask manufacturers, and reactor component manufacturers all have significant foreign ownership. Commercial nuclear power plants should, in our view, be treated similarly.
The Administration has indicated a concern with our dependence on foreign energy supplies. Do you think we should allow significant control over our nuclear power supply?	We understand that the Administration's concerns with dependence on foreign energy supply relates primarily to fuels, such as petroleum, that are imported from foreign nations, and that might present an economic or national-security threat if interrupted. As noted in response to the previous question, the Commission is not proposing to eliminate either the foreign ownership restriction for production facilities (enrichment or reprocessing facilities) or the separate foreign ownership prohibition in Section 193(f) that applies to the United States Enrichment Corporation. The Commission believes that these foreign ownership restrictions on more sensitive facilities still serve the purpose that motivated their adoption. The Commission submitted proposed legislation to Congress that would amend Sections 103d and 104d of the AEA, by removing the prohibition against FOCD of utilization facilities (which include both power and research and test reactors). It is the Commission's understanding that Congress has not restricted foreign ownership of other sources of domestic energy supply. A per se prohibition against foreign ownership of utilization facilities, which originated in the 1954 enactment of the AEA at a time when commercial development of nuclear power was in its incipient stages, is outdated and unnecessary. The Commission believes that significant foreign ownership within the U.S. nuclear power industry could be allowed without adversely affecting common defense and security. The general non-inimicality restriction contained in Sections 103d and 104d provides ample authority for the Commission to refuse to issue a license or take other actions in cases where foreign ownership would be inconsistent with the national defense and security or other policies of the United States.