

May 26, 2026

**Subject: Breakthrough Institute Comment on Exceptions From Foreign Ownership, Control, or Domination [Docket ID NRC-2024-0218].**

The Breakthrough Institute (BTI) appreciates the opportunity to comment on the Nuclear Regulatory Commission's direct final rule and companion proposed rule, "Exceptions From Foreign Ownership, Control, or Domination" (Docket ID NRC-2024-0218, RIN 3150-AL32), published at 91 Fed. Reg. 21,719 and 91 Fed. Reg. 21,732 (April 23, 2026).<sup>1</sup> BTI is an independent 501(c)(3) research organization that advocates for appropriate regulation and oversight of nuclear reactors to enable the new and continued use of safe and clean nuclear energy. BTI acts in the public interest and does not receive funding from industry.

The rule implements Section 301 of the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy (ADVANCE) Act of 2024 by amending 10 CFR § 50.38 and § 54.17(b) to except a list of 37 countries from the foreign ownership, control, or domination (FOCD) prohibition for utilization facility licenses, while preserving the inimicality determination as a precondition and leaving the FOCD prohibition fully in effect for production facilities.<sup>2</sup>

The FOCD framework has been conservatively applied in NRC practice as a near-categorical bar above minority foreign ownership, independent of actual control or assessment of any possible threat, and that posture has constrained foreign investment in the U.S. nuclear sector beyond what the statute required. Section 301 of the ADVANCE Act corrects this for entities associated with member countries of the Organisation for Economic Co-operation and Development (OECD) or the Republic of India and still requires an inimicality determination by the Commission.

BTI supports the rule not only as a faithful implementation of a Congressional intent, but on its substantive merits.

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<sup>1</sup> *Exceptions From Foreign Ownership, Control, or Domination*, 91 Fed. Reg. 21,719 (Apr. 23, 2026) (direct final rule) (to be codified at 10 C.F.R. pts. 50 and 54); *Exceptions From Foreign Ownership, Control, or Domination*, 91 Fed. Reg. 21,732 (Apr. 23, 2026) (proposed rule), <https://www.federalregister.gov/documents/2026/04/23/2026-07918/exceptions-from-foreign-ownership-control-or-domination>

<sup>2</sup> Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act), Pub. L. No. 118-67, § 301, 138 Stat. 1447 (codified at 42 U.S.C. 2133 note).

## UPDATING CORRESPONDING GUIDANCE AND THE STANDARD REVIEW PLAN

The Section 301 exceptions preserve the NRC's obligation to determine that issuing a license would not be inimical to the common defense and security or public health and safety. Once the exceptions are codified, that determination will carry greater practical significance for applicants from excepted countries, but the NRC's public FOCD guidance and Standard Review Plan do not yet fully explain how the agency conducts that review in this context.<sup>3</sup> The NRC should therefore update or replace its FOCD guidance and Standard Review Plan. The 2016 draft FOCD guidance and draft Standard Review Plan have never been finalized, despite having been issued for public comment.<sup>4</sup> Before finalizing updated guidance, the NRC should reissue the relevant draft materials for public comment. Updated guidance would improve applicant predictability, support consistent staff review, and strengthen the administrative record without delaying implementation of the rule or creating new eligibility criteria.

### CONCLUSION

The rule is appropriately targeted and removes a regulatory constraint that has exceeded the operative text of the statutory FOCD prohibition, and the expansion of permissible foreign participation will support the capacity the United States needs to achieve its nuclear buildout commitments.

As the NRC updates its FOCD guidance, it should also ensure that its treatment of country-of-origin, sanctions, nonproliferation, and civil nuclear cooperation considerations is informed by relevant interagency processes, without importing separate export-control or diplomatic frameworks as independent licensing requirements.

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<sup>3</sup> Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 Fed. Reg. 52,355, 52,358 (Sept. 28, 1999) (the "subjugated will" standard traces to General Electric Co. and Southwest Atomic Energy Associates, Docket No. 50-231, 3 AEC 99, 101 (1966)). The NRC's response to industry comments on the 1999 SRP confirmed that country-specific analysis is handled through the inimicality review rather than the FOCD review, 64 Fed. Reg. at 52,356–57.

<sup>4</sup> Nuclear Regulatory Commission, *Draft Standard Review Plan on Foreign Ownership, Control, or Domination*, Rev. 1, ML16048A025 (Apr. 2016); Nuclear Regulatory Commission, *Regulatory Guide X.XX: Foreign Ownership, Control, or Domination of Nuclear Power, and Non-Power Production or Utilization Facility, Draft*, ML16137A520 (May 2016).

BTI appreciates the opportunity to submit these comments and would welcome further engagement with the staff on the issues raised in this letter.

Sincerely,

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