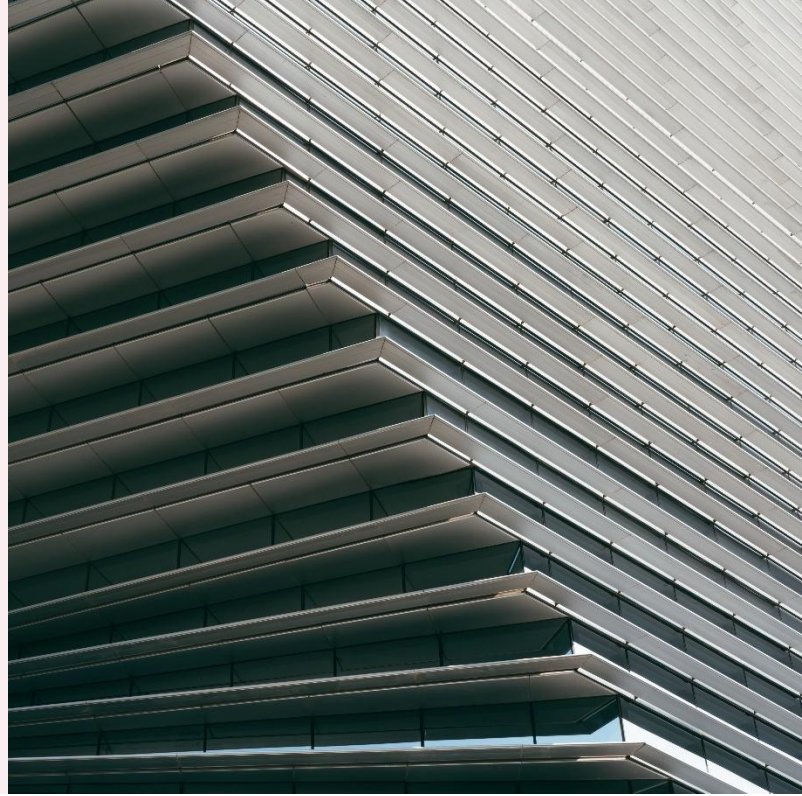


DoD Proposed Rule Brings FOCI Reporting & Mitigation to Unclassified Contracts

June 08, 2026



On May 7, 2026, the US Department of Defense ("DoD," also known as the Department of War) published its long-anticipated [proposed rule](#) to amend the Defense Federal Acquisition Regulation Supplement ("DFARS") to address risks associated with foreign ownership, control or influence ("FOCI") of defense contractors and subcontractors performing on certain unclassified contracts. The proposed rule would generate significant new disclosure obligations for a large number of US government contractors, as well as expand the pool of contractors subject to DoD FOCI mitigation requirements. Historically, FOCI reporting and mitigation has focused on contractors that need to access classified information under the National Industrial Security Program (NISP). The proposed rule would broaden that framework to unclassified DoD contracts and subcontracts over US\$5 million, though it is not yet clear what FOCI mitigation measures in the unclassified context will involve. Contracts for commercial products and services would be exempt absent a DoD determination that the contract involves certain risks. The proposed rule is open for [public comment](#) until July 6, 2026.

Key issues

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KEY TAKEAWAYS

- The proposed rule would impose significant new reporting obligations on a wide range of US government contractors, including ongoing reporting requirements over time. The DoD estimates nearly 40,000 contractors will be impacted by the proposed rule.
- Disclosures will pertain to foreign ownership over 5% and governance, as well as other foreign ties, including contracts with foreign persons, foreign debt, foreign revenue, and certain foreign affiliations of board or management members.
- Contractors determined to present FOCI risk must agree to risk mitigation measures at the time of award (or determination of risk mitigation applicability), but it is not yet clear what FOCI mitigation measures in the unclassified context will involve (e.g., if they might include governance restrictions on foreign-owned entities, as is the case in the classified context).
- Contracts for commercial products and services are generally exempt from this requirement, but can be included if DoD deems there to be a risk to national security or sensitive data, systems, or processes.
- Uncleared contractors that may be impacted by this requirement should familiarize themselves with the [Standard Form 328 \("SF 328"\)](#) and start preparing to comply with reporting obligations once the proposed rule is finalized and takes effect.

BACKGROUND AND SCOPE

The proposed rule would implement measures to address potential vulnerabilities related to FOCI in the defense industrial base. The proposed rule primarily implements two provisions of the National Defense Authorization Acts ("**NDAA**") for FY 2020 and 2021. Section 847 of the NDAA for FY 2020 ("**Section 847**") requires covered DoD contractors and subcontractors to disclose to the DoD's Defense Counterintelligence and Security Agency ("**DCSA**") their beneficial ownership and whether they are subject to FOCI, to update that information upon any changes, and to provide identifying and contact information for foreign beneficial owners. It further mandates contract clauses requiring ongoing disclosure during performance and the mitigation of FOCI-related risks. Section 819 of the NDAA for FY 2021, in turn, directs DoD to implement these Section 847 requirements through revisions to its regulations and guidance, including amendments to the DFARS. The proposed rule also incorporates elements of [DoD Instruction 5205.87](#), a May 13, 2024 DoD directive establishing policy and procedures to assess national security risk and apply mitigation measures under Section 847.

The proposed rule applies to "covered contractors and subcontractors," which are defined to include any "company that is an existing or prospective contractor or subcontractor, at any tier, of DoD for a contract valued in excess

of US\$5 million." However, the proposed rule will **not** apply to such contracts for commercial products and commercial services, including commercially available off-the-shelf items, unless the designated senior DoD official determines that the contract poses a risk or potential risk to national security or could compromise sensitive data, systems, or processes.

NEW CONTRACT-RELATED REQUIREMENTS

The proposed rule would implement key changes to the DFARS by creating a new Part 240, *Information Security and Supply Chain Security*, with various provisions operationalizing the framework. Namely, two proposed DFARS provisions will establish (1) a restriction on the DoD issuing certain contract awards, and (2) requirements on US government contractors and subcontractors.

Restriction on DoD Contract Awards

Under the proposed rule, DoD will not be permitted to award, modify, or exercise an option on a relevant contract unless the offeror or contractor has an "eligible" status in DCSA's National Industrial Security System ("**NISS**"). Eligibility requires that the contractor/offeror (1) has submitted complete and current FOCI disclosures to DCSA via an SF 328, and (2) has either been determined not to present risk related to FOCI or beneficial ownership or agreed to implement identified risk mitigation strategies within 90 days.

Requirements on US Government Contractors

The proposed rule also introduces a new obligations on contractors for relevant contracts. Specifically, a new proposed DFARS clause would require the contractor to agree to risk mitigation measures at the time of contract award, option exercise, modification, or a change in relevant information and to implement the mitigation measures within 90 days of such event. The contractor would also be required to complete, verify, or update (as applicable) the information in its SF 328 prior to contract renewal or modification or if a change to the previously submitted information occurs.

A contractor would also be required to ensure "eligible" status in NISS for all of its subcontractors with subcontracts over US\$5 million at the time of awarding the subcontract and throughout contract performance. If there are any changes during the performance of a contract that place the contractor (or any relevant subcontractor or supplier) under FOCI, there would be an obligation to report that to DCSA within three business days. Within ten business days of "being notified by DCSA that FOCI or beneficial ownership poses a risk or potential risk of compromise to national security," the contractor must begin a plan to implement DCSA recommendations, describe any existing mitigation efforts, and confirm in NISS its agreement to comply with mitigation recommendations.

PRACTICAL IMPACTS AND COMPLIANCE CONSIDERATIONS

The proposed rule will impose disclosure requirements on a large number of US defense contractors. DoD estimates that nearly 40,000 entities will be subject to the new disclosure requirements under the proposed rule, more than half of which are small businesses. DoD further projects that approximately 9,400 contractors will need to update their current FOCI and beneficial ownership disclosures. These figures underscore both the breadth of the proposed rule's reach and the scale of new compliance obligations for affected companies. FOCI mitigation requirements will apply if the DoD contracting program office or activity—in consultation with DCSA—determines that "FOCI or beneficial ownership poses a risk or potential risk of compromise to national security."

The proposed rule creates practical considerations for companies navigating defense contracts and solicitations. Impacted contractors should start preparing and coordinating to ensure that they and their relevant subcontractors have all necessary information to complete the SF 328. They will also need to establish NISS accounts to submit SF 328s and supporting documentation to DCSA. Further, contractors and subcontractors with foreign ownership should anticipate the potential for having to implement FOCI mitigation measures within the mandated 90-day timeframe. Notably, it is not clear what the extent of such mitigation may look like, how it may relate to established FOCI mitigation instruments used in the classified context, and how the DoD will gauge the level of FOCI risk and needed mitigation based on the nature and level of FOCI involved (e.g., whether mitigation will be required, as it is in the classified context, for contractors owned by US-based asset managers with foreign limited partners holding a 5%+ interest).

Interested parties that wish to submit comments on the proposed rule must do so by July 6, 2026.



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