

The US Department of Defense (DoD) issued a [final rule](#) that codifies the National Industrial Security Program Operating Manual (NISPOM) in the Code of Federal Regulations (CFR). The rule became effective on February 24, 2021. With the codification, the DoD will no longer publish DoD Manual 5220.22, meaning government contractors that have a facility clearance must refer instead to the CFR for requirements on the protection of classified information.

Additionally, the final rule consolidates and codifies Security Executive Agent Directive (SEAD) 3, "Reporting Requirements for Personnel with Access to Classified Information or Who Hold a Sensitive Position." SEAD 3 implements reporting requirements for all cleared government contractor employees regarding activities such as foreign travel and foreign contacts that could adversely affect clearance eligibility. Cognizant Security Agencies will review the reported activities to determine whether they "pose a potential threat to national security and take appropriate action."

The rule also implements provisions of Section 842 of the 2019 National Defense Authorization Act (NDAA). The rule removes the requirement that a covered National Technology and Industrial Base (NTIB) entity operating under a Special Security Agreement (SSA) obtain a National Interest Determination (NID) as a condition for access to certain information, such as information classified as top secret. It is important to note this provision is limited to the relatively small number of cleared entities with an ultimate parent and any intermediate parents located in a foreign country that is part of the NTIB. The NTIB currently consists of the US, the UK, Canada and Australia. Although this change will affect only a smaller number of cleared entities, it is likely a welcomed amendment, as the removal of the NID requirement reduces costs and performance delays.

The final rule provides cleared entities six months from the effective date (August 24, 2021) to evaluate existing classified contracts and to determine if there is any impact from the changes in the final rule. Based on this review, government contractors are able to discuss with the applicable Government Contracting Activity whether an equitable adjustment should be made to the contract.

If you feel this change could affect your business, please reach out to us at the contacts below.

Contacts

Our government contracts team takes a multidisciplinary approach to doing business globally and has an unparalleled combination of expertise and understanding to help global and domestic businesses enter the US government market and support those organizations currently doing business with the US government. Please contact a team member below with any questions.

Karen R. Harbaugh

Partner, Washington DC

T +1 202 457 6485

M +1 703 861 4808

E karen.harbaugh@squirepb.com

Lauren E. Brown

Associate, Washington DC

T +1 202 457 6093

E lauren.brown@squirepb.com