

Defense contractors must disclose thy owner

DoD issues proposed DFARS rule on landmark FOCI expansion under Section 847 of the NDAA

June 2026

On May 7, 2026, the Department of Defense (DoD) published a Proposed Rule that would impose significant new obligations on defense contractors and subcontractors doing business with the DoD (the "Proposed Rule").

The Proposed Rule would extend review for foreign ownership, control, or influence (FOCI) beyond classified contracting and make it a broader defense supply chain screening requirement, reflecting the DoD's broader shift toward treating ownership transparency, foreign control and lower-tier supply-chain integrity as core national-security concerns across the defense industrial base. Under the Proposed Rule, the DoD would need to understand who owns controls or can influence even uncleared contractors and lower-tier subcontractors. In practice, beneficial ownership and foreign influence would become procurement gatekeeping issues, potential conditions of award, modification, option exercise and continued performance, improving the DoD's visibility into hidden foreign influence and sensitive supply-chain dependencies. But it may also create meaningful acquisition friction for small businesses, commercial suppliers, nontraditional contractors and lower-tier vendors that have not previously been subject to Defense Counterintelligence and Security Agency (DCSA)-style FOCI review.

Historically, FOCI oversight has been concentrated on contractors performing classified work subject to the National Industrial Security Program Operating Manual Rule (NISPOM Rule), 32 C.F.R. Part 117. Under that framework, contractors holding facility clearances (FCLs) are required to mitigate FOCI before obtaining or retaining a clearance.

The Proposed Rule would extend FOCI disclosure and mitigation obligations to uncleared contractors for the first time. Any existing or prospective contractor or subcontractor, at any tier, holding a DoD contract or subcontract valued above US\$5 million would be required to disclose beneficial ownership and FOCI status to the DCSA, and maintain that disclosure current for the life of the contract. Contracting officers are directed to not award, modify a contract or exercise an option unless the contractor has a status of eligible in the National Industrial Security System (NISS), Where DCSA identifies risk, contractors must implement a mitigation strategy within 90 calendar days.

Who is covered?

- The Proposed Rule applies to any existing or prospective contractor, or subcontractor, at any tier, with a DoD contract or subcontract valued above US\$5 million. 48 C.F.R. 240.27X-2 (proposed).
- DoD estimates up to 37,740 entities may be affected within one year, of which approximately 57% are small businesses.
- Commercial products and services are presumptively excluded unless a designated senior DoD official determines that the contract implicates "a risk or potential risk to national security or potential compromise due to sensitive data, systems or processes."

What are the proposed obligations?

The Proposed Rule would amend the Defense Federal Acquisition Regulation Supplement (DFARS) by creating new Part 240, Information Security and Supply Chain Security, and adding two new contract terms applicable to solicitations and contracts valued above US\$5 million as follows:

- **Pre-award (Solicitation Provision 252.240-70XX).** The provision would require offerors to:
 - Submit Standard Form (SF) 328, Certificate Pertaining to Foreign Interests and supporting documents to DCSA via NISS.
 - Provide contact information for each beneficial owner.
 - Represent that all submitted information is current, accurate and complete.
 - If DCSA determines that FOCI or beneficial ownership poses a risk to national security that can be mitigated, agree at the time of award to implement a risk mitigation strategy within 90 calendar days. (Contracting officers may not award a covered contract unless the offeror holds "eligible" status in NISS).

- **During performance (Contract Clause 252.240-70YY).**

The clause would require contractors to:

- Maintain and update NISS disclosures whenever beneficial ownership or FOCI status changes during contract performance.
- Implement any required mitigation strategy within 90 calendar days of award, modification, option exercise or identification of new risk during performance.

What are the early public comments?

While few comments have been submitted to docket DARS-2026-0133 as of the date of this alert, some recurring concerns include:

- The 90-day mitigation window is operationally unrealistic considering that DCSA's current FOCI review process often takes 40 weeks or more.
- The mandatory NISS eligibility gate at proposed section 240.27X-4 is incompatible with other transaction agreement authorities, which depend on speed of engagement with nontraditional contractors.
- Centralized DCSA-led vetting is where specialized DoD component offices already conduct mission-specific FOCI due diligence, and commenters propose a "Technical Reciprocity" model allowing component offices to lead vetting and upload findings to NISS.
- The Proposed Rule provides no mechanism for prime contractors to verify the FOCI status of uncleared subcontractors not yet enrolled in NISS, since the existing Facility Clearance Verification capability applies only to cleared entities.

While not covered by the current public comments, the Proposed Rule does not specify what types of mitigation are available or adequate when an uncleared contractor is determined to be under FOCI – the comment period may be used, for example, to address this gap.

What are the next steps?

Defense contractors and subcontractors should promptly assess whether they hold, or are likely to bid on DoD contracts or subcontracts covered by the Proposed Rule. Those that do should immediately evaluate FOCI exposure, beneficial ownership structures and NISS registration status in advance of any final rule, which is anticipated later this year. If a company does not already hold an FCL, then as part of such FOCI evaluation, the company should complete the [SF 328](#) to understand the risk areas and begin mitigating any FOCI.

For questions regarding this alert or assistance assessing compliance obligations or preparing public comments, please contact the Squire Patton Boggs International Trade & Foreign Investment Team.

Contacts



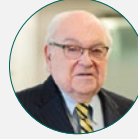
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