

**U.S. Department of Energy**  
**Washington, D.C.**

**ORDER**

DOE 5634.3

6-14-93

**SUBJECT:** FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE PROGRAM

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1. PURPOSE. To establish the policies, responsibilities, and authorities for implementing the Department of Energy (DOE) Foreign Ownership, Control, or Influence (FOCI) program which is designed to obtain information that indicates whether DOE offerors/bidders or contractors/subcontractors are owned, controlled, or influenced by foreign individuals, governments, or organizations, and whether that foreign involvement may pose an undue risk to the common defense and security.
2. APPLICATION TO CONTRACTS OR OTHER AGREEMENTS. The provisions of this Order are to be applied to offerors/bidders and covered contractors/subcontractors and they will apply to the extent implemented under a contract or other agreement requiring access authorization. A covered contractor is a seller of supplies or services that is awarded a procurement contract or subcontract.
3. REFERENCES. See Attachment 1.
4. DEFINITIONS. See Attachment 2.
5. POLICY. It is Departmental policy to:
  - a. Prior to the award of a DOE contract or agreement requiring access authorization(s), require offerors/bidders and all tier parents, i.e., ultimate parent and any intervening levels of ownership, if the offeror/bidder is controlled by another organization, to submit complete, current, and accurate information, certification, and explanatory documentation which define the extent and nature of any relevant FOCI over the offeror/bidder and tier parents for use by DOE in determining the risk presented by that FOCI.
  - b. To the extent permitted by law, treat information submitted by an offeror/bidder, contractor/subcontractor, and, if applicable, all tier parents as business/financial information submitted in confidence.
  - c. Grant contractors DOE access authorizations after DOE has determined that award of a contract or agreement to an offeror/bidder or continued performance of a contract or agreement by a contractor will not pose an undue risk to the common defense and security,

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**INITIATED BY:**  
Office of Safeguards  
and Security

- d. For an existing DOE contract or agreement involving access authorization(s), require the contractor and, if applicable, the contractor's tier parents to submit the following to the DOE office where the previously provided FOCI representations and certification(s) were submitted:
  - (1) Written notification of anticipated changes which include, but are not necessarily limited to, the following:
    - (a) Action to terminate the contractor organization or any of its parents for any reason.
    - (b) Imminent adjudication of or reorganization in bankruptcy of the contractor organization or any of its tier parents.
    - (c) Discussions or consultations with foreign interests which may reasonably be expected to lead to the introduction or increase of FOCI.
    - (d) Negotiations for the sale of securities to a foreign interest which may lead to the introduction or increase of FOCI,
  - (2) Written notification of a change in the extent and nature of FOCI which affects the information in the FOCI representations and certification(s) previously provided.
  - (3) Complete, current, and accurate information, certification(s), and explanatory documentation which define the extent and nature of any relevant FOCI whenever:
    - (a) There is any change in ownership or control.
    - (b) Five years have elapsed" since the previously provided FOCI representations and certification(s) were executed.
    - (c) A DOE Headquarters or field safeguards and security office advises that it considers that a relevant change in the nature of the FOCI has occurred.
- e. Not require the submission of the information and certification required in the DEAR solicitation provision entitled "Foreign Ownership, Control, or Influence (FOCI) over Contractor (Representation)" for a modification and/or extension of an existing DOE contract/agreement unless a contract/agreement is modified into a contract/agreement requiring access authorization(s).
- f. Not require the submission of the information and certification required in the DEAR solicitation provision entitled "Foreign Ownership, Control, or Influence (FOCI) over Contractor (Representation)" when the offeror/bidder requiring access authorization(s) is a local, state, or Federal

governmental agency. However, the effected contract/agreement must contain a security clause stating that if the governmental agency subcontracts any work to a commercial entity, the provisions of the DEAR and this Order apply.

- g. Notwithstanding anything to the contrary contained in this Order, DOE reserves the right and has the obligation to impose any security method or requirement it believes necessary to ensure that unauthorized access by foreign interests to classified information and/or SNM is effectively precluded.

6. RESPONSIBILITIES AND AUTHORITIES.

a. RESERVED

b. RESERVED

c. Secretarial Officers shall:

- (1) Assure implementation, for their Secretarial Offices, of those portions of this Order applicable to Heads of Field Elements.
- (2) Ensure that Contracting Officers are notified when a procurement request is subject to this Order.

d. Director of Safeguards and Security (SA-10) shall:

- (1) Appoint a DOE employee, who is trained in the FOCI process, to serve as the DOE FOCI Program Manager.
- (2) Develop policies and procedures regarding the security aspects of the FOCI program (except as delegated to the Director of Naval Nuclear Propulsion Program in paragraph 6j.).
- (3) Establish and maintain procedures to provide written notification to the heads of field safeguards and security offices and SA-14 of the FOCI determinations made by SA-10.
- (4) Ensure review of all Representative of Foreign Interest (RFI) Statements. Determine whether an individual who is an RFI is eligible for a security clearance or continuation of a security clearance.
- (5) RESERVED
- (6) Establish thresholds and/or other criteria whereby the heads of field safeguards and security offices and SA-14 can render FOCI determinations when all of the following factors apply:

- (a) An offeror/bidder or contractor has an active Department of Defense (DOD) facility clearance without the limitations contained in paragraph 6m(7)(a).
  - (b) When the responses to the FOCI questions do not exceed the thresholds established by SA-10.
  - (c) If control led by another organization(s), the parent organization(s) is performing, or proposing to perform, work for DOE involving access authorization(s),
- (7) Establish and maintain a listing of contractors and their tier parents for which FOCI determinations were made by SA-10.
- (8) Ensure the Office of Safeguards and Security Central Training Academy establishes and updates DOE's FOCI training program to include procurement and security policy requirements that pertain to FOCI.
- e. Director of Policy, Standards, and Analysis (SA-12) shall:
  - (1) Process requests for Facility National Agency Checks.
  - (2) Review each FOCI case forwarded to Headquarters by a servicing safeguards and security office for a determination as to eligibility for a facility approval or safeguards and security activity.
    - (a) When the offeror/bidder or contractor is control led by another organization(s) which is not performing work for DOE requiring a access authorization(s), obtain appropriate written assurance from the offeror/bidder or contractor and its parent organization(s) to exclude the parent organization(s) from having any unauthorized access,
    - (b) If determined to be under FOCI, advise the offeror/bidder or contractor of the necessary action to negate or reduce that foreign involvement or its effect. Ensure assistance is provided to the offeror/bidder or contractor in formulating effective security measures.
  - (3) In coordination with General Counsel, when appropriate, prepare a memorandum for SA-10's signature which provides a final FOCI determination to the servicing safeguards and security office.
- f. Director of Field Operations (SA-13) shall:
  - (1) Prior to registering a contractor on the Safeguards and Security Information Management System, ensure that the servicing safeguards and security office which submitted the DOE F 5600.2, "Facility Data and Approval Record, " has indicated that a FOCI determination was rendered, including the determination date.

- (2) Review nuclear materials and security survey reports to ensure that surveys examine the contractors' FOCI status.

g. General Counsel (GC-1) shall:

- (1) Appoint a DOE employee, who is trained in the FOCI process, to serve as the GC-1 FOCI point-of-contact.
- (2) Upon request by SA-10, ensure review of all complex FOCI cases: e.g., FOCI cases involving Proxy Agreements and Voting Trusts.
- (3) RESERVED

h. Heads of Headquarters and Field Elements Contracting Activities shall:

- ( 1 ) Ensure that the contract clauses set forth in DEAR 952.204-2, 952.204-70, 952.204-74, and other relevant sections of 48 CFR Chapter 9 are included in contracts, subcontracts, agreements, and use of consultants requiring DOE access authorizations.
- (2) Appoint a DOE employee, who is trained in the FOCI process, as the FOCI point-of-contact.
- (3) Ensure, in the case of competitive solicitations, that a FOCI determination will only be requested of the successful offeror/bidder unless there is expected to be insufficient lead time between selection and contract award to allow deferral of the review.
- (4) Ensure that the contracting officer provides the following information to his/her servicing safeguards and security office when a FOCI determination is requested:
  - (a) Identification of the legal party(ies) to the contract or agreement; i.e., the signatories to the contract or agreement.
  - (b) A brief unclassified description of the work, and justification for its applicability to this Order.
  - (c) Highest classification level and category of information and/or material to be accessed.
  - (d) Facility(ies) and/or DOE designated place(s) where the work will be performed.
  - (e) Length of contract or agreement; i.e., number of months/years.
- (5) On contracts or agreements requiring access authorization(s) for which they are responsible, ensure that the contracting officer provides written notification to his/her servicing safeguards and security office in each of the following instances:

- (a) When there is no longer a need for a requested FOCI review.
  - (b) When a FOCI determination was rendered on an offeror/bidder who was not the successful bidder.
  - (c) Within 30 days of the termination or completion of a contract or agreement involving FOCI.
- (6) When the offeror/bidder and, if applicable, the contractor's tier parents has provided the FOCI representations and certification(s) and not the Alternate Certification(s) of Nonapplicability, ensure that the contracting officer, upon written notification from his/her servicing safeguards and security office, provides the successful offeror/bidder with written notification that:
- (a) Notifies the contractor that DOE has reviewed the FOCI submission and determined the organization is not under FOCI.
  - (b) Informs the contractor of its contractual obligation and, if applicable, its tier parents' obligation to keep current the information required in the DEAR contract clause entitled "Foreign Ownership, Control, or Influence (FOCI) over Contractor."
  - (c) Identifies the office providing such notification as the responsible DOE office; i.e., the only office to which the contractor and, if applicable, all tier parents will provide new FOCI representations and certification(s) or written notification of anticipated or significant changes to their previously provided FOCI information, and the office which should be identified by the contractor and, if applicable, all tier Parents on any Alternate Certification(s) of Nonapplicability.
- i. Deputy Assistant Secretary for Security Evaluations (EH-4) shall provide independent oversight of the Safeguards and Security Program, including FOCI.
  - j. Director of Naval Nuclear Propulsion Program (NE-60) shall, in accordance with the responsibilities and authorities assigned by Executive Order 12344 (statutorily prescribed by Public Law 98-525 (42 U.S. C. 7158, note)), and to ensure consistency throughout the joint Navy/DOE organization of the Naval Nuclear Propulsion Program, implement and oversee all policy and practices pertaining to this Order for activities under the Director's cognizance.
  - k. Procurement Request Originator or such other individuals as designated by the cognizant Secretarial Officers or Heads of Field Elements shall bring to the attention of the responsible contracting officer:

- (1) Each procurement requiring the application of this Order and the justification for its applicability.
  - (2) Requirements for flow-down of provisions of this Order to any subcontract or subaward.
  - (3) Identification of the paragraphs or other portions of this Order with which the awardee or, if different, a subawardee is to comply.
- l. Contracting Officers, based on advice received from the procurement request originators or other designated individuals, shall apply applicable provisions of this Order to awards falling within its scope.
- m. Heads of Field Elements and Director of Headquarters Operations (SA-14) shall:
- (1) Ensure appointment of a DOE employee as the FOCI point-of-contact in each contracting/procurement organization, and a FOCI Operations Manager in each safeguards and security organization.
  - (2) Ensure the FOCI points-of-contact and FOCI Operations Managers are trained in the FOCI process.
  - (3) Ensure that the contract clauses set forth in DEAR 952.204-2, 952.204-70, 952.204-74, and other relevant sections of 48 CFR Chapter 9 are included in contracts, subcontracts, agreements, and use of consultants requiring access authorization(s) .
  - (4) Ensure all required information and certification(s) are obtained from the offeror/bidder/contractor and, if applicable, all tier parents.
  - (5) If required, request from the offeror/bidder/contractor or tier parents missing or explanatory information/data as needed.
  - (6) Ensure that all FOCI answers and data are evaluated according to existing DEAR requirements, DOE Acquisition Letters, and applicable DOE Orders, and that a FOCI determination is rendered prior to the award of a contract or agreement under their cognizance which requires access authorization(s).
  - (7) For each initial FOCI evaluation of an offeror/bidder, not to include an offeror/bidder who is an individual, contact the DOD Defense Investigative Service (DIS)/Central Verification Activity (CVA) to obtain written confirmation from DIS/CVA of those offerors/bidders which have active DOD facility clearances.
    - (a) When the written confirmation received from DIS/CVA shows that the offeror's/bidder's cleared facility has a Limited Facility Clearance (formerly "Reciprocal" clearance), or DIS/CVA cannot verify the offeror's/bidder's clearance and provides a telephone

number to call for verification, ensure that these submissions are immediately forwarded to SA-12 for review.

- (b) When the offeror/bidder does not have an active DOD facility clearance as determined by DIS/CVA, ensure that a copy of these submissions are forwarded to SA-12 for a Facility National Agency Check. However, the servicing safeguards and security office can render the FOCI determination prior to forwarding the FOCI representations and certification(s) and supporting information to SA-12 when both of the following factors apply:
  - 1 The responses to the FOCI questions do not exceed the thresholds established by SA-10.
  - 2 If controlled by another organization(s), the parent organization(s) is performing, or proposing to perform, work for DOE requiring access authorization(s).
- (8) Ensure the servicing safeguards and security offices provide FOCI determinations on offerors/bidders/contractors if delegated such authority as defined in paragraphs 6m(7) (a) and 6m(7) (b).
- (9) Refer FOCI cases to SA-12 when the servicing safeguards and security offices are unable to resolve the FOCI factors present or have not been delegated authority to grant a facility approval or safeguards and security activity or continue a contractor's facility approvals and safeguards and security activities. Ensure each case file referred to SA-12 contains all required information and certification(s) from the offeror/bidder/contractor and, if applicable, all tier parents, and document the reason(s) the case has been forwarded.
- (10) Ensure that during required nuclear materials and security surveys required by DOE 5634.1B, DOE personnel verify that a FOCI determination was rendered by the appropriate security office (i.e., servicing safeguards and security office or SA-10) on the contractor and, if applicable, all tier parents, and that there has been no significant change in the extent and nature of FOCI which would affect the information in the FOCI submission(s) most recently filed with DOE, including any change(s) in ownership or control,
- (11) Establish and maintain a listing of contractors for which FOCI determinations were made by the servicing safeguards and security offices and provide an updated list of such contractors to SA-10 quarterly on a fiscal year basis.
- (12) On an existing DOE contract or agreement requiring access authorization(s), ensure that the contractor and, if applicable, the contractor's tier parents possess a favorable FOCI determination.



- (13) Ensure that contractors who possess an existing FOCI determination and, if applicable, the contractors' tier parents submit the following to the responsible DOE office; i.e., the office where the previously provided FOCI representations and certifications were submitted:
  - (a) Written notification of anticipated changes which include, but are not necessarily limited to the following:
    - 1 Action to terminate the contractor organization or any of its parents for any reason.
    - 2 Imminent adjudication of or reorganization in bankruptcy of the contractor organization or any of its tier parents.
    - 3 Discussions or consultations with foreign interests which may reasonably be expected to lead to the introduction or increase of FOCI.
    - 4 Negotiations for i.e sale of securities to a foreign interest which may lead to the introduction or increase of FOCI.
  - (b) Written notification of a change in the extent and nature of FOCI which affects the information in the FOCI representations and certifications previously provided,
  - (c) Complete, current, and accurate information, certifications, and explanatory documentation which define the extent and nature of any relevant FOCI whenever:
    - 1 There is any change in ownership or control.
    - 2 Five years have elapsed since the previously provided FOCI representations and certifications were executed.
    - 3 A DOE Headquarters or field safeguards and security office advises that it considers that a relevant change in the nature of the FOCI has occurred.
- (14) Ensure that the following is accomplished upon notification by the contracting officer of the termination or completion of a contract or agreement when the contractor has no other active contracts or agreements with that DOE office that require access authorization(s):
  - (a) If not the responsible DOE office, provide written notification to the responsible DOE office that the reporting office has no active contracts or agreements with the contractor which require access authorization(s).

(b) When the DOE office is the responsible DOE office:

- 1 Determine if the contractor is performing work on any contracts or agreements requiring access authorization(s) under the cognizance of another DOE office(s) by check the contractor's FOCI file for an Alternate Certification(s) of Nonapplicability.
- 2 Transfer the contractor's FOCI file to the first office which requested verification of the contractor's Alternate Certification of Nonapplicability, if any, if the contractor is performing work on a contract(s)/agreement(s) requiring access authorization(s).
- 3 Provide written notification to the contractor that its FOCI file has been transferred to a new responsible DOE office to which the contractor and, if applicable, all tier parents should provide all future FOCI representations and certification(s) or written notifications of anticipated or significant changes, and which should be identified by the contractor and, if applicable, all tier parents on any Alternate Certification(s) of Nonapplicability.
- 4 If the contractor is not performing work on any contracts or agreements requiring access authorization(s) at another DOE office, retain the contractor's file.
- 5 Advise SA-12 in writing of the action taken regarding the transfer or retention of the contractor's FOCI file.

7. BACKGROUND.

- a. The FOCI program was initiated in response to the concern that if a DOE contractor is owned, controlled, or significantly influenced by a foreign interest(s), there is a risk that such a contractor could be financially or politically coerced or induced into providing DOE classified information and/or SNM to the foreign interest, or impact adversely the performance of a contract(s) or agreement(s) involving access to classified information and/or SNM.
- b. When DOE solicits bids or proposals for a contract(s) or agreement(s) requiring access authorization(s), a FOCI submission is required of the offerors/bidders and all tier parents; i.e., ultimate parent and any intervening levels of ownership, if the offeror/bidder is controlled by another organization. A FOCI submission consists of answers to an eleven-part questionnaire (i.e., the FOCI representations), a certification of its accuracy, and back-up or explanatory information.

8. CONCEPT OF OPERATIONS. This paragraph lists requirements for eligibility for a facility approval or safeguards and security activity, identifies factors that shall be considered in determining whether an offeror/bidder or a contractor is or may be under FOCI, prescribes procedures for accepting a FOCI determination rendered by another Federal agency, and outlines procedures for processing and rendering determinations.

a. Eligibility Requirements.

- (1) A U.S. organization effectively owned or controlled by a foreign government is ineligible for a facility approval or a safeguards and security activity unless the Secretary of Energy determines that a waiver is essential to the national security interest of the U.S.
- (2) An offeror/bidder that is owned, controlled, or influenced by a foreign interest from a sensitive country identified in DOE 1500.3, FOREIGN TRAVEL AUTHORIZATION, and DOE 1240.2B, UNCLASSIFIED VISITS AND ASSIGNMENTS BY FOREIGN NATIONALS, shall not be eligible, in some cases, for a facility approval or safeguards and security activity. SA-10 will make the determination.
- (3) An offeror/bidder that is owned, controlled, or influenced by a foreign interest from a nonsensitive country shall be eligible for a facility approval or safeguards and security activity provided action can be taken to effectively negate or reduce associated FOCI risk to an acceptable level.
- (4) The chairman of the board and all principal officers of the U.S. organization(s) to be cleared for a facility approval or safeguards and security activity must be U.S. citizens residing within the limits of the U.S.

- b. Factors. An offeror/bidder/contractor will be considered under FOCI when a reasonable basis exists to conclude that the nature and extent of FOCI over the management or operations of the offeror/bidder/contractor may result in the compromise of classified information or unauthorized access to SNM. The following factors will be considered in determining whether an organization is under FOCI or has FOCI involvement:

- (1) Foreign interest ownership or beneficial ownership of 5 percent or more of the organization's securities.
- (2) Ownership by the organization of any foreign interest in whole or in part.
- (3) Foreign interest representation in one or more management positions such as directors, officers, or executive personnel ,

- (4) Foreign interest in a position to control or influence the election, appointment, or tenure of one or more of the directors, officers, or executive personnel of the organization.
- (5) Contract(s), agreement(s), understanding(s), or other arrangement(s) with a foreign interest.
- (6) Indebtedness, actual or potential (unused lines of credit), to a foreign interest.
- (7) Any revenue derived from a sensitive country.
- (8) Revenue in excess of 10 percent of total revenue from foreign interest(s).
- (9) Five percent or more of any class of the organization's securities held in "nominee shares," "street names," or some other method which does not disclose the beneficial owner of equitable title.
- (10) Interlocking directors with foreign interests.
- (11) Any citizen(s) of a foreign country(ies), whether an employee or visitor, who may have access to classified information and/or SNM.
- (12) Any other factor that indicates or demonstrates a capability on the part of a foreign interest to control or influence the operations, management, or business of the organization.

c. Procedures for Accepting a FOCI Determination Rendered by Another Federal Agency. DOE will accept a DOD FOCI determination when Work For Others, as outlined in DOE 4300.2B, NON-DEPARTMENT OF ENERGY FUNDED WORK (WORK FOR OTHERS), is DOD-funded and is subcontracted to a DOD contractor, and for DOE-funded work being conducted by a DOD contractor at an existing DOD-cleared facility, when the following requirements are met:

- (1) The offeror/bidder has not been granted a Limited Facility Clearance (formerly "Reciprocal" clearance) by DOD or the offeror/bidder is not operating under a DOD Special Security Agreement.
- (2) Only access to National Security Information will be required,
- (3) The requirements for accepting an existing DOD facility approval in DOE 5634.1B, FACILITY APPROVAL, SECURITY SURVEYS, AND NUCLEAR MATERIALS SURVEYS, are met.
- (4) The offeror/bidder certifies that the FOCI information submitted to the DOD Defense Investigative Service is complete, current, and accurate.

If all of the above requirements are not met, the servicing safeguards and security office shall ensure that the offeror/bidder is required to submit to DOE comprehensive FOCI representations and certification for evaluation in accordance with this Order.

d. Processing Offerors/Bidders for Initial FOCI Determinations.

- (1) After verifying that all required information is contained within the submission(s), the DOE contracting officer shall forward the FOCI package to his/her servicing safeguards and security office.
- (2) The servicing safeguards and security office shall render the FOCI determination when all of the following factors apply:
  - (a) The offeror/bidder has an active DOD facility clearance without the limitations contained in paragraph 6m(7) (a).
  - (b) The responses to the FOCI questions do not exceed the thresholds established by SA-10.
  - (c) If controlled by another organization(s), the parent organization(s) is performing, or proposing to perform, work for DOE requiring access authorization(s).
- (3) Whenever the servicing safeguards and security office is unable to resolve the FOCI factors present or has not been delegated authority to grant a facility approval or safeguards and security activity, the case file shall be forwarded to SA-12 with a recommended determination. SA-12 shall review the package to determine if it concurs with the servicing safeguards and security office's recommended favorable or unfavorable determination.
- (4) SA-12, in coordination with General Counsel, when appropriate, will prepare a memorandum for SA-10's signature which provides a final FOCI determination to the servicing safeguards and security office.

e. Processing Contractors Who Complete Alternate Certifications of Nonapplicability.

- (1) The Alternate Certification(s) of Nonapplicability, provided by a contractor and, if applicable, its tier parents shall identify the DOE office which has been identified as the responsible office, provide the date of the previously provided FOCI representations and certification(s), and include a copy of the written notification the contractor received from DOE.
- (2) The contracting officer shall verify Alternate Certification(s) of Nonapplicability through his/her servicing safeguards and security office.

- (3) The servicing safeguards and security office shall accomplish the following upon receipt of such a request from the contracting officer:
- (a) Submit the Alternate Certification(s) of Nonapplicability to the relevant servicing safeguards and security office and request written verification of the contractor's and, if applicable, its tier parents' Alternate Certification(s) of Nonapplicability, to include a copy of the FOCI determination. However, if 5 years have elapsed since the last FOCI representations and certification(s) were executed, the responsible DOE office will request a new submission from the contractor and/or, if applicable, the contractor's tier parents.
  - (b) At a minimum, written verification will include:
    - 1 Whether the FOCI determination was rendered by the appropriate security office (i.e., servicing safeguards and security office or SA-10), to include the date of the determination,
    - 2 The factors upon which the determination was based and the limitations, if any, imposed for reasons of FOCI.
    - 3 Whether DIS/CVA was contacted and written confirmation of the contractor's active DOD facility clearance was received from DIS/CVA; or, if the contractor did not have an active DOD facility clearance as determined by DIS/CVA, whether the contractor's information was forwarded to SA-12 for a Facility National Agency Check.
    - 4 Whether the file(s) contains any new or unresolved FOCI issues.
    - 5 Whether the individual who executed the Alternate Certification of Nonapplicability is an authorized official, or is any other employee who an authorized official designated in writing with the authority to execute the FOCI representations and certification on behalf of the organization.
  - (c) Upon receipt of a favorable written verification, the servicing safeguards and security office shall provide written notification to the submitting contracting officer that verification of the contractor's and, if applicable, its tier parents' previous certification(s) has been completed.
- (4) When a contractor and, if applicable, its tier parents have provided the Alternate Certification(s) of Nonapplicability and the previous certification(s) is verified, written confirmation of a FOCI determination shall not be provided to the contractor.

f. Schedule for Processing FOCI Determinations.

(1) The following schedules (in working days) shall be observed by the servicing safeguards and security office in processing FOCI determinations:

(a) Initial review and verification procedures shall be accomplished by the servicing safeguards and security office within 15 days of the receipt of a FOCI submission from the contracting officer.

(b) Within an additional 20 days, one of the following actions will be taken by the servicing safeguards and security office:

1 A FOCI determination will be rendered.

2 If required, additional information will be requested either verbally or in writing from the offeror/bidder/contractor,

3 Forward the FOCI case to SA-12 when any of the following factors apply:

a When the written confirmation received from DIS/CVA shows that the offeror's/bidder's cleared facility has a Limited Facility Clearance (formerly "Reciprocal" clearance), or DIS/CVA cannot verify the offeror's/bidder's clearance and provides a telephone number to call for verification.

b The responses to the FOCI questions exceed the thresholds established by SA-10.

c If controlled by another organization(s), the parent organization(s) is not performing, or proposing to perform, work for DOE requiring access authorization(s).

(c) If additional information is requested, the following procedures will be followed:

1 The offeror/bidder/contractor should provide the requested information within 15 days from the date of notification. Upon receipt of the requested information, the servicing safeguards and security office will review the information within 10 days and, if complete, either render a FOCI determination or, when appropriate, forward the submission to SA-12 for review.

2 If the offeror/bidder/contractor does not provide the additional information within 15 days, the servicing safeguards and security office shall provide written

notification to the submitting contracting officer that processing of the request will stop and the FOCI submission will be returned to his/her office if the requested information is not received from the offeror/bidder/contractor within an additional 15 days.

- 3 When a FOCI determination is still required on any such returned cases, the contracting officer must then resubmit the request to his/her servicing safeguards and security office after the offeror/bidder/contractor has provided the additional information. Such requests will be considered new submissions and will be processed according to the schedules provided above.
- (2) The following schedules (in working days) shall be observed by SA-12 in processing FOCI cases submitted by the servicing safeguards and security offices:
- (a) Upon receipt of a FOCI case from a servicing safeguards and security office, SA-12 will review the submission within 15 days. If the submission is incomplete or does not address all the FOCI issues, SA-12 will either verbally or in writing notify the servicing safeguards and security office of the additional information required. If the required information is not received within 30 days from the date of notification, the FOCI case will be returned without further action. When a FOCI determination is still required on any such returned case, the servicing safeguards and security office must then resubmit the request to SA-12 for a FOCI determination after obtaining the missing information from the offeror/bidder/contractor. Upon resubmission, the request will be considered a new submission and will be processed according to the schedule indicated above.
  - (b) Within an additional 20 days, one of the following actions will be taken by SA-12 on complete FOCI submissions:
    - 1 In coordination with General Counsel, when appropriate, prepare a memorandum for SA-10's signature which provides a final FOCI determination to the servicing safeguards and security office.
    - 2 If required, advise the offeror/bidder/contractor in writing of any security measures (e.g., board resolutions or other method to negate or reduce FOCI) required to be placed into effect in order for the offeror/bidder to be eligible for access authorization(s) or for continuation of a contractor's facility approvals and safeguards and security



activities. Within 15 days from the date of SA-12's notification, the offeror/bidder/contractor must provide evidence that the necessary security measures have or will be implemented.

- 3 If the offeror/bidder has not provided SA-12 evidence that the necessary security measures have or will be implemented within the time frame mentioned in paragraph 8f(2)(b) 2, SA-12 will provide written notification to the servicing safeguards and security office of the offeror's/bidder's noncompliance. In turn, the servicing safeguards and security office will provide written notification to the submitting contracting officer of the offeror's/bidder's noncompliance and that if the required action/information is not taken/provided within an additional 15 days, processing of the request will stop and the FOCI submission will be returned to his/her office.
  - 4 If the necessary security measures cannot be placed into effect, SA-12 will notify the servicing safeguards and security office in writing as mentioned in 8f(2)(b) 1 that the offeror/bidder shall be ineligible for access authorization(s).
  - 5 If a contractor has not provided SA-12 evidence that the necessary security measures have or will be implemented within the time frame mentioned in paragraph 8f(2)(b) 2, SA-12 will provide written notification to the responsible DOE office's servicing safeguards and security office of the contractor's noncompliance. In turn, the responsible DOE office will provide written notification to the contractor that its facility approvals and safeguards and security activities may be suspended if the required action/information is not taken/provided within an additional 15 days.
  - 6 If the contractor is determined to be under FOCI and the contractor will not implement the necessary security measures, SA-12 will notify the responsible DOE office's servicing safeguards and security office in writing as mentioned in 8f(2)(b)(1) of an adverse determination which may result in the contractor's facility and activities being shut down/suspended pending resolution of the FOCI.
- (3) The following actions will be taken if the identified time frames are not achieved by the servicing safeguards and security office and/or SA-12:
- (a) The servicing safeguards and security office shall provide written notification to the submitting contracting officer, with

a copy to SA-12, regarding the reason for the delay in processing/completing the submission and the expected completion date.

- (b) SA-12 shall provide written notification to the servicing safeguards and security office regarding the reason for the delay in processing/completing the submission and the expected completion date.

g. Significant FOCI Changes.

- (1) When a change(s) in the extent and nature of FOCI which would affect the information in a contractor's and/or, if applicable, its tier parents' most recent DOE FOCI submission(s) has occurred, the contractor/parent shall immediately provide written notification and explanatory/supporting documentation relevant to the change(s) to the responsible DOE office. A significant FOCI increase(s)/change(s) which warrants processing of the contractor/parent for a new FOCI determination includes, but is not necessarily limited to, the following:
  - (a) A new threshold or factor that did not exist when the previous determination was made (e.g., a "no" answer changes to a "yes" answer), and any additional factors associated with the questions on the FOCI representations and certification.
  - (b) A previously reported threshold or factor that was favorably evaluated by the servicing safeguards and security office has increased to a level requiring a determination by SA-10.
  - (c) A previously reported financial threshold or factor that was favorably evaluated has increased by 5 percent or more.
  - (d) A previously reported foreign ownership threshold or factor that was favorably evaluated by SA-10 has increased to the extent that a method of negation or reduction (see paragraphs 10 and 11) is necessary.
  - (e) Any change(s) in the ownership or control of the contractor and/or, if applicable, the contractor's tier parents.
  - (f) An employee who becomes an RFI, as defined in Attachment 2, or the status of an existing RFI changes in a manner that would make the employee ineligible for a security clearance.
- (2) The responsible DOE office's servicing safeguards and security office will provide new FOCI determinations to those DOE safeguards and security offices who have requested written verification of an Alternate Certification of Nonapplicability provided by a contractor,

9. ADVERSE DETERMINATION. When an offeror/bidder or contractor determined to be under FOCI will not take the necessary security measures, as determined by DOE, to negate or reduce FOCI to an acceptable level, an adverse determination will be rendered by SA-10.
10. METHODS TO NEGATE OR REDUCE UNACCEPTABLE FOCI. DOE, the effected U.S. organization(s), or its legal representatives may propose a plan to negate or reduce unacceptable FOCI, but the primary responsibility for approving such a plan rests with DOE. A plan may consist of one of the insulating measures prescribed in paragraph 11 or any combination of those measures, as appropriate. It may also consist of other measures employed in conjunction with, or apart from, these methods, such as:
  - a. Physical or organizational separation of the component performing the work requiring access authorization(s) .
  - b. Modification or termination of agreements with foreign interests.
  - c. Diversification or reduction of agreements with foreign interests
  - d. Diversification or reduction of income from foreign interests.
  - e. Assignment of specific security duties and responsibilities to selected officials of the organization.
  - f. Creation of special executive-level committees to consider and oversee classified information and/or SNM.
11. METHODS TO NEGATE OR REDUCE RISK IN FOREIGN OWNERSHIP CASES. Under normal circumstances, foreign ownership of a U.S. organization under consideration for a facility approval or safeguards and security activity becomes a concern to DOE when the amount of foreign-owned stock is at least sufficient to elect representation to the U.S. organization's board of directors or a foreign interest(s) is in a position to select such representatives. Foreign ownership which cannot be so manifested is not, in of itself, considered significant. Instances involving insignificant foreign stockholdings are, nonetheless, analyzed to assess the ownership source and to determine the possible significance when considered in conjunction with other aspects of foreign involvement which may be present in a particular case.
  - a. Board Resolution for Noncontrolling Foreign Minority Cases. When a foreign interest(s) owns voting stock, directly or indirectly, that is sufficient to elect representation to the U.S. organization's board of directors, a resolution(s) by the U.S. organization's board of directors and other actions as described below may be considered as a method to negate or reduce the FOCI.

- (1) Contents of the Resolution(s). The resolution(s) must be to the following effect:
  - (a) Acknowledge and describe all FOCI elements; identify the foreign interest(s) and its representative(s), including those who are U.S. citizens; describe the type and number of foreign-owned shares.
  - (b) Acknowledge the organization's obligations to comply with all security program and export control requirements.
  - (c) Certify that the foreign interest(s) shall not require, shall not have, and can be effectively precluded from access to all classified information and/or SNM entrusted to or held by the U.S. organization; certify that the foreign interest(s) will not be permitted to occupy a position(s) that would enable it/them to influence the organization's policies and practices in the performance of contracts or agreements requiring access authorization(s); and provide for an annual certification to DOE acknowledging the continued effectiveness of the resolution.
- (2) Publication of the Resolution(s). The U.S. organization shall be required to distribute to its directors and its principal officers copies of such resolutions and report in its corporate records the completion of such distribution. In addition, the substance of the foregoing resolution(s) shall be brought to the attention of all personnel possessing or being processed for a DOE security clearance.
- (3) Criteria. The following criteria must also be satisfied in order for a board resolution to be utilized as the sole method accepted to negate or effectively reduce the risk of compromise arising from foreign ownership within the levels prescribed herein:
  - (a) Identified U.S. interests own a majority of the stock;
  - (b) A foreign interest(s) is not the single largest shareholder; and
  - (c) The nature and distribution of the minority stockholdings and the composition and structure of management does not permit a foreign interest(s) to control or dominate the business management of the U.S. organization
- (4) Verification. Compliance with the resolution(s) shall be verified during periodic surveys. There are circumstances when it may become necessary for the U.S. organization's board of directors to adopt further resolutions and take additional administrative actions to assure DOE that the existing facility approvals and safeguards and security activities remain clearly consistent with the national interest.

b. Controlling Foreign Majority Cases.

- (1) Voting Trust Agreement. A Voting Trust Agreement is an acceptable method to negate or reduce risks associated with foreign ownership when a foreign interest(s) owns a majority of the voting securities of the U.S. organization or, if less than 50 percent foreign-owned, it can be reasonably determined that the foreign interest(s) or its/their representative(s) is in a position to effectively control or have the dominant influence over the business management of the U.S. organization. Under this arrangement, the following requirements must be met:
- (a) The foreign stockholder(s) must transfer legal title of foreign-owned stock to the Trustees, and the U.S. organization to be cleared must be organized, structured and financed so as to be capable of operating as a viable business entity independent from the foreign stockholder(s).
  - (b) The Voting Trust Agreement must unequivocally provide for the exercise of all prerogatives of ownership by the Trustees with complete freedom to act "dependently and without consultation with, interference by, r influence from foreign stockholder(s) ,
  - (c) There shall be at least three Trustees, and all must become members of the U.S. organization's board of directors. In addition, the Trustees must:
    - 1 Be U.S. citizens residing within the limits of the U.S. and capable of assuming full responsibility for voting the stock and exercising the management prerogatives relating thereto in such a way as to ensure that the foreign stockholder(s) will be effectively insulated from the cleared U.S. organization.
    - 2 Be completely disinterested individuals with no prior involvement with either the cleared U.S. organization, its foreign-owned tier parent(s), and any of its foreign-owned affiliate(s).
    - 3 Be issued a security clearance to the level of the facility approval or safeguards and security activity.
    - 4 Be approved by SA-10 when a vacancy occurs due to the resignation or removal of a Trustee and a successor Trustee is appointed by the remaining Trustees.
    - 5 Prior to being accepted as Trustees by SA-10, be advised by SA-10 of the duties and responsibilities they are undertaking on behalf of DOE to insulate the cleared U.S.

organization from the foreign interest(s), and indicate, in writing, their willingness to accept this responsibility.

- (d) The Voting Trust Agreement may, however, limit the authority of the Trustees by requiring approval from the foreign stockholder(s) with respect to:
    - 1 The sale or disposal of the cleared U.S. organization's assets or a substantial part thereof;
    - 2 Pledges, mortgages or other encumbrances on the capital stock which they hold in trust;
    - 3 Corporate mergers, consolidations, or reorganizations;
    - 4 The dissolution of the cleared U.S. organization; and
    - 5 The filing of a bankruptcy petition.
  - (e) The Trustees must assume full responsibility for the voting stock and for exercising all management-prerogatives relating thereto in such a way as to ensure that the foreign stockholder(s), except for the approvals enumerated above, will be effectively insulated from the cleared U.S. organization and continue solely in the status of beneficiaries.
  - (f) The Certification and Visitation Approval Procedure Agreement of paragraph 11b(3) is required under this arrangement.
- (2) Proxy Agreement. A Proxy Agreement is an acceptable method to negate or reduce risks associated with foreign ownership when a foreign interest(s) owns a majority of the voting securities of the U.S. organization or, if less than 50 percent foreign-owned, it can be reasonably determined that the foreign interest(s) or its/their representative(s) is in a position to effectively control or have the dominant influence over the business management of the U.S. organization. Under this arrangement, the voting rights of stock owned by a foreign interest(s) are conveyed to Proxy Holders by an irrevocable Proxy Agreement. Legal title to the stock remains with the foreign interest(s). All other provisions of the Voting Trust Agreement as applies to Trustees (see paragraph 11(b)(1)) and the terms of the agreement shall apply to the Proxy Holders. Conditions for consideration of use of a Proxy Agreement are the same as required for a Voting Trust Agreement.
- (3) Visitation Approval Procedure Agreement. In every case where a Voting Trust Agreement or Proxy Agreement is employed to negate or reduce risks associated with foreign ownership, a Visitation Approval Procedure Agreement shall be executed between the cleared U.S. organization, the foreign interest(s), SA-10, and as appropriate,

Trustees, Proxy Holders, or other designated individuals. The Visitation Approval Procedure Agreement must identify who may visit, for what purposes, when advance approval is necessary, and the approval authority. The cleared U.S. organization shall submit individual requests to the approval authority for each visit. The Visitation Approval Procedure Agreement shall provide that, as a general rule, visits between the foreign stockholder(s) and the cleared U.S. organization are not authorized; however, as an exception to the general rule, the approval authority may approve such visits in connection with regular day-to-day business operations pertaining strictly to purely commercial products or services and not pertaining to contracts requiring access authorization(s).

## 12. ANNUAL REVIEW AND COMPLIANCE.

- a. Annual Review. Representatives of SA-10 shall meet at least annually with senior management officials of U.S. organizations operating under a DOE-approved Voting Trust or Proxy Agreement to review the purpose and effectiveness of the pertinent security arrangement, and to establish common understanding of the operating requirements and how they will be implemented within the cleared U.S. organization. These reviews will include at least a discussion of the following:
  - (1) Whether the security arrangement is working in a satisfactory manner.
  - (2) Compliance or acts of noncompliance with the approved security arrangement.
  - (3) Problems or impediments associated with the practical application or utility of the security arrangement.
  - (4) Whether security controls, practices, or procedures warrant adjustment.
- b. Annual Certification. At the end of each year of operation, the Trustees, Proxy Holders, or other principals, as appropriate, shall submit to SA-10 an annual implementation and compliance report. Such reports shall include the following information:
  - (1) A detailed description of the manner in which the cleared U.S. organization is fulfilling its obligations under the applicable security arrangement.
  - (2) Changes to security procedures, implemented or proposed, and the reasons for those changes.
  - (3) A detailed description of any acts of noncompliance, whether inadvertent or intentional, with a discussion of what steps were taken to prevent such acts from recurring.

- (4) Any changes, or impending changes, of senior management officials, or key board members, including the reasons therefor.
- (5) Any other issues that could have a bearing on the effectiveness of the applicable security arrangement.

Failure on the part of the cleared U.S. organization to assure compliance with the terms of the applicable security arrangement may result in the organization's facility and activities being shut down/suspended pending resolution of the FOCI,

- 13. SUPPLEMENTARY DIRECTIVES AND GUIDANCE. Supplementary directives to this Order pertaining to requirements, standards and procedures shall be published as a DOE Manual which will be issued as part of the Departmental Directives System, subject to appropriate coordination. This Manual shall contain requirements, standards, and procedures that are nondiscretionary, mandatory requirements. Additional guidance will be issued containing information pertaining to matters which are discretionary.
- 14. IMPLEMENTATION. This Order is effective upon the date of issue shown.

BY ORDER OF THE SECRETARY OF ENERGY:



LINDA G. SYE  
Acting Assistant Secretary for  
Human Resources and Administration



#### REFERENCES

1. Title 42 U.S.C. 2011, et seq., "Atomic Energy Act of 1954," as amended, which establishes standards and instructions to govern the possession and use of special nuclear material, nuclear material, and source material, and byproduct material and establishes procedures for control of atomic energy information.
2. Title 10 CFR 1016, "Safeguarding of Restricted Data," of 8-10-83, which establishes criteria and procedures for the protection of Restricted Data.
3. Title 48 CFR Chapter 9 (Department of Energy Acquisition Regulation (DEAR)) sets forth the security provision and contract clauses to be used in DOE solicitations and contracts or agreements involving access to classified information and/or a significant quantity of SNM. They are:
  - a. DEAR Subpart 904.70, "Foreign Ownership, Control, or Influence over Contractors," which sets forth the DOE policies and procedures regarding FOCI over contractors,
  - b. DEAR 952.204-2, "Security," a clause required in contracts under Section 31 (research assistance) or 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended, and in other contracts and subcontracts, the performance of which involves or is likely to involve classified information.
  - c. DEAR 952.204-70, "Classification," a clause required in all contracts that involve classified information.
  - d. DEAR 952.204-73, "Foreign Ownership, Control or Influence (FOCI) Over Contractor (Representation)," a provision required in all solicitations for contracts subject to DEAR 904.70.
  - e. DEAR 952.204.74, "Foreign Ownership, Control, or Influence (FOCI) Over Contractor," a clause required in new contracts subject to DEAR 904.70.
4. Executive Order 10865, "Safeguarding Classified Information within Industry," of 2-20-60, which established criteria and procedures for the protection of classified National Security Information within industry.
5. Executive Order 12356, "National Security Information," of 4-2-82, which provides requirements for protecting National Security Information, and "Information Security Oversight Office Directive No. 1," of 6-25-82, which assists in implementing Executive Order 12356.
6. Executive Order 12829, "National Industrial Security Program," of 1-6-93, which establishes a single, integrated, cohesive industrial security program to protect classified information and to preserve the Nation's economic and technological interests.
7. DOE 1240.2B, UNCLASSIFIED VISITS AND ASSIGNMENTS BY FOREIGN NATIONALS, of

- 8-21-92, which establishes DOE authorities, responsibilities, and policies and prescribes administrative procedures for visits and assignments by foreign nationals to DOE facilities for purposes involving unclassified matter,
8. DOE 1500.3, FOREIGN TRAVEL AUTHORIZATION, of 11-10-86, which establishes DOE policy and procedures for official and unofficial foreign travel.
  9. DOE 43000.2B, NON-DEPARTMENT OF ENERGY FUNDED WORK (WORK FOR OTHERS) , of 7-16-91, which establishes policy, responsibilities, and procedures for authorizing and administering non-DOE funded work performed under DOE contracts.
  10. DOE 5630.11A, SAFEGUARDS AND SECURITY PROGRAM, of 12-7-92, which establishes policy and responsibilities for the DOE Safeguards and Security Program.
  11. DOE 5630.12A, SAFEGUARDS AND SECURITY INSPECTION AND ASSESSMENT PROGRAM, of 6-23-92, which establishes an independent inspection and assessment program to determine the effectiveness of the Department's safeguards and security policies and procedures, including their implementation across the Department.
  12. DOE 5631.2C, PERSONNEL SECURITY PROGRAM, of 9-15-92, which establishes policy, responsibilities, and authorities for implementing the DOE Personnel Security Program.
  13. DOE 5631.4A, CONTROL OF CLASSIFIED VISITS, of 7-8-92, which prescribes DOE standards and procedures for controlling visitors to DOE, DOE contractor, subcontractor, and access permittee facilities.
  14. DOE 5634.1B, FACILITY APPROVAL, SECURITY SURVEYS, AND NUCLEAR MATERIALS SURVEYS, of 9-15-92, which establishes DOE requirements for granting facility approvals prior to permitting safeguards and security interests on the premises and the conduct of on-site security and/or nuclear material surveys.
  15. DOE 5939.1, INFORMATION SECURITY PROGRAM, of 10-19-92, which establishes the program, as a system of elements which serve to deter collection activities.
  16. DOE Acquisition Letter 92-2, of 3-4-92, which transferred responsibility for making FOCI determinations to the DOE safeguards and security office and established procedures for submission of FOCI information.

### DEFINITIONS

1. ACCESS. Refers to the following:
  - a. The knowledge, use, or possession of classified or other sensitive information required by an individual to perform his/her official duties that is provided to the individual on a need-to-know basis.
  - b. Situations that may provide an individual proximity to or control over special nuclear material.
  - c. The ability and opportunity to obtain knowledge of classified information. An individual, in fact, may have access to classified information by being in a place where such information is kept, if the security measures that are in force do not prevent gaining knowledge of the classified information.
2. ACCESS AUTHORIZATION OR SECURITY CLEARANCE. An administrative determination that an individual is eligible for access to classified information or special nuclear material on a "need-to-know" basis. Clearances granted by the Department are designated Q, L, Top Secret, or Secret.
3. ALTERNATE CERTIFICATION OF NONAPPLICABILITY. A method to avoid repeated submissions of comprehensive FOCI representations. If a contractor and, if applicable, its tier parents have previously received a FOCI determination from a DOE Headquarters or field safeguards and security office within the past 5 years, the contractor and its tier parents, if any, need not complete the FOCI representations but instead shall complete the Alternate Certification of Nonapplicability, as defined in DOE Acquisition Letter 92-2, provided there have been no changes to the FOCI submission previously filed with DOE pursuant to DEAR 952.204-73, including any changes in the ownership or control of the contractor or its tier parents, if any.
4. AUTHORIZED OFFICIAL. A person authorized to represent and sign for an offeror/bidder or contractor (e.g., a corporation--a person identified in the Corporation's By-laws as responsible for managing the business and affairs of the Corporation; a partnership--the managing or general partner., etc.)
5. AUTHORIZED PERSON. A person who has a need-to-know for classified information in the performance of official duties and who has been granted the required security clearance.
6. CLASSIFIED INFORMATION. Certain information requiring protection against unauthorized disclosure in the interests of national defense and security or foreign relations of the United States pursuant to Federal statute or

Executive order. The term includes Restricted Data, Formerly Restricted Data, and National Security Information. The potential damage to the national security of each is denoted by the classification levels Top Secret, Secret, or Confidential.

7. CLASSIFIED MATERIAL. Chemical compounds, metals, fabricated or processed items, machinery, electronic equipment, and equipment or any combination thereof that has been assigned a classification level and classification category.
8. COMPROMISE. Disclosure of classified information to unauthorized persons.
9. CONTRACTING OFFICER. A Government official who, in accordance with Departmental procedures, currently is designated as a contracting officer with the authority to enter into and administer contracts, and make determinations and findings with respect thereto, or any part of such authority. The term also includes the designated representative of the contracting officer acting within the limits of his/her authority.
10. CONTRACTOR. An entity or person who contracts directly or indirectly to supply goods or services to the DOE.
11. CONTROL. The power, of any nature and by any means, direct or indirect, whether exercised or exercisable, to prevail over matters affecting the management or operations of the U.S. organization.
12. FACILITY. An educational institution, manufacturing plant, laboratory, office building, or complex of buildings located on the same site that is operated and protected as one unit by DOE or its contractor(s).
13. FACILITY APPROVAL. A determination that a facility (and/or activities conducted within a facility) is eligible to receive, produce, use, or store classified matter, nuclear materials, or DOE property of significant monetary value.
14. FACILITY NATIONAL AGENCY CHECK. A national agency check of a facility that includes a check of the Federal Bureau of Investigation, the DOD Defense Central Index of Investigations, the DOD Personnel Investigations Center, and other agencies as appropriate.
15. FIELD ELEMENT. A Departmental component located outside the Washington Metropolitan area.
16. FOREIGN INTEREST. A foreign interest is defined as any of the following:
  - a. Any foreign government, agency of a foreign government, or representative of a foreign government;

- b. Any form of business enterprise or legal entity organized under the laws of any country other than the U.S. or its possessions;
  - c. Any person who is not a U.S. citizen or national of the U.S. (An "intending citizen" and a foreign-owned U.S. company are excluded from the definitions of a foreign interest).
17. FOREIGN NATIONAL. Any person who is not a U.S. citizen or a U.S. national.
18. FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI). FOCI exists when an offeror/bidder or contractor proposing to performing work for DOE involving access to classified information and/or a significant quantity of SNM has an institutional or personal relationship with a foreign interest(s). An offeror/bidder or contractor is considered to be under FOCI when the degree of interest as defined above is such that a reasonable basis exists for concluding that compromise of classified information and/or a significant quantity of SNM may result.
19. LIMITED FACILITY CLEARANCE (FORMERLY "RECIPROCAL" CLEARANCE). A mechanism used by DOD, but not DOE, through which foreign interests can own U.S. defense companies. Limited Facility Clearances severely restrict a company's access to classified information (e.g., not valid for access to Top Secret information, Restricted Data, Formerly Restricted! Data. Communications Security information, Arms Control and Disarmament Agency classified information, information that has not been determined releasable by designated U.S. Government disclosure authorities to the country from which the ownership is derived, etc.)
20. NOMINEE SHARE. A share of stock or registered bond certificate which has been registered in a name other than the actual owner.
21. OPERATIONS OFFICE. The primary management and staff field element with delegated responsibility for oversight and program management of major facilities, programs, and operations. The following elements are defined as DOE Operations Offices: Albuquerque, Chicago, Idaho, Nevada, Oak Ridge, Richland, San Francisco, and Savannah River.
22. PARENT. A corporation or other entity that controls another corporation or other entity by the power to elect its management.
23. PRINCIPAL OFFICERS. The term principal officer when used with reference to this Order means those officials responsible for managing the business and affairs of the organization (e.g., President, Chief Executive Officer, Secretary, and Treasurer, and those occupying similar positions).
24. PROCUREMENT REQUEST ORIGINATOR. The individual responsible for initiating a requirement on DOE F 4200.33, "Procurement Request Authorization.

25. PROXY. One who acts for another. Also, the document by which such a representative is authorized to act. In reference to voting at a meeting of corporation's stockholders, an authorization by a stockholder giving to the corporate management (or to an opposition group) the right to vote the shares held by the individual stockholder. In most states the members of the board of directors cannot vote by proxy.
26. REPRESENTATIVE OF FOREIGN INTEREST (RFI). A citizen or national of the U.S., or an intending citizen to the U.S., who is acting as a representative of a foreign interest.
27. REPRESENTATIVE OF FOREIGN INTEREST STATEMENT. (See "Representative of Foreign Interest (RFI)") . A statement required to be submitted by the contractor of an employee who possesses or is being processed for a DOE security clearance who becomes an RFI or whose status as an RFI changes in a manner that would make him/her ineligible for a security clearance.
28. SAFEGUARDS AND SECURITY ACTIVITY. Any work performed under contract, subcontract, or other agreement which involves access to classified information, nuclear material, or DOE property of significant monetary value by DOE, a DOE contractor, or any other activity under DOE jurisdiction. Also included is the verification of the capabilities of approved Federal locations.
29. SAFEGUARDS AND SECURITY INFORMATION MANAGEMENT SYSTEM (FORMERLY SAFEGUARDS AND SECURITY ISSUES INFORMATION SYSTEM AND THE MASTER FACILITY REGISTER). An automated system used to record facility approvals, facility administrative information, inspection findings, and corrective actions.
30. SERVICING SAFEGUARDS AND SECURITY OFFICE. The DOE Headquarters or field safeguards and security office which is responsible for providing support/assistance and implementation/oversight pertaining to security requirements at a DOE organization.
31. SPECIAL NUCLEAR MATERIAL (SNM). Plutonium, uranium-233, or uranium enriched in the isotope 235, and any other material which, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but which does not include source material; or it also includes any material artificially enriched by any of the foregoing, not including source material.
32. SPECIAL SECURITY AGREEMENT. A mechanism used by DOD, but not DOE, through which foreign interests can own U.S. defense companies. A Special Security Agreement restricts a company's access to the following types of information unless DOD obtains approval from the cognizant U.S. agency with jurisdiction over the information involved: Top Secret information, Restricted Data, Formerly Restricted Data, Communications Security information, Sensitive Compartmented Information, and Special Access Program information.

33. TIER PARENT. A corporation or other entity that controls another corporation or other entity by the power to elect its management. The control may exist by direct ownership of the corporation or other entity or by indirect ownership through one or more levels of ownership of corporation(s) or other entity(ies).
34. UNAUTHORIZED DISCLOSURE. A communication or physical transfer of classified information to an unauthorized recipient.
35. U.S. ORGANIZATION. Any individual, corporation, or organization located in the U.S. or its territorial areas which is organized, chartered, or incorporated under the laws of the U.S.
36. VOTING TRUST AGREEMENT. A legal device whereby the true owners of a block of stock transfer nominal ownership to one or more disinterested individuals which they are to keep, use, or administer for the financial benefit of the owners. The true owners surrender all of the normal prerogatives of management to the trustees.







