

## FACILITY SECURITY OFFICER

FOREIGN OWNERSHIP, CONTROL OR INFLUENCE RESPONSIBILITIES &  
FACILITY CLEARANCE REPORTING REQUIREMENTS



### FSO FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI) RESPONSIBILITIES

- When subcontract terms specify that performance of the work on an SNL subcontract require personnel to hold DOE personnel security clearances for access to classified information and/or special nuclear material (SNM) or unescorted area access to SNL security areas at approved DOE facilities, the subcontract will need to be registered with a *Contract Security Classification Specification* (CSCS) form, and the company must have an active [facility clearance](#) (FCL). If the company does not have an active facility clearance, SNL will initiate a request to the [FSO](#) to complete a FOCI packet. The FSO will submit [FOCI](#) packages online through the [e-FOCI submission system](#). In all FOCI activities, the company shall provide complete information to enable DOE to ascertain the attendant risk, including but not limited to accurate and complete submission of the [Standard Form \(SF\) 328](#), *Certificate Pertaining to Foreign Interests*, and information provided during periodic security reviews and review activities. The FSO must ensure that all changes that might affect the FOCI determination are reported to the Sandia National Laboratories (SNL) Contract Security Management (CSM) Program before they occur.
- The FSO must submit a separate FOCI package for each tier parent located in the United States, Puerto Rico, or a U.S. possession or territory. The parent must have a FCL at the same, or higher, level as the subsidiary. However, DOE will determine the necessity for the parent to be cleared or excluded from access to classified information.
- The FSO must maintain all records pertaining to FOCI, including records such as original signatures on the SF 328 and make such records available upon request to SNL and/or DOE.
- The FSO must adhere to periodic security review and certification information when requested.

**Note:** If a facility is under the cognizance of the Defense Counterintelligence Security Agency (DCSA), the DCSA Industrial Security Representative will facilitate the FOCI process. Companies who hold an active U.S. Department of Defense (DoD) facility clearance through the DCSA are not required to complete a separate FOCI package for DOE. If DCSA holds the cognizance of the facility clearance for your organization, you will need to login to the National Industrial Security System at <https://ncaiss.dss.mil/> to update your FOCI information in the future.



## FACILITY CLEARANCE REPORTING REQUIREMENTS

### Reporting Significant Changes

When changes to the extent and nature of FOCI affect the information in a subcontractor's most recent FOCI submission(s), the FSO must immediately provide written notification and supporting documentation relevant to the changes to CSM (or the respective DOE [Cognizant Security Office](#) [CSO]) by completing a significant change package through [e-FOCI](#).

**Significant changes that may warrant processing of the subcontractor/parent for a new FOCI determination include, but are not limited to, the following:**

- All circumstances that would change any answer on the SF 328 from “No” to “Yes,” which must be reported by submitting a changed condition SF 328;
- A previously reported threshold or factor that was favorably adjudicated by the DOE CSO has increased to a level requiring a determination by the Office of Environment, Health, Safety and Security or, for NNSA, the Office of Defense Nuclear Security;
- When a foreign interest owns five percent or more of a U.S. business organization (Questions 1a and 1b, SF 328), a five percent or greater increase in the beneficial ownership of a class of equity securities of the business organization, or a five percent increase in the beneficial ownership of the business itself, as determined by voting or investment rights, by one or more foreign interests and/or any U.S. person effectively controlled by a foreign interest;
- When a U.S. business organization owns ten percent or more of a foreign interest (Question 2, SF 328), any increase equivalent to ten percent or more of the tangible net worth of the business organization;
- When a U.S. business organization has non-U.S. citizen [Key Management Personnel](#) (KMP) (Question 3, SF 328), appointment of any additional non-U.S. citizen to a position required to be cleared in connection with the facility clearance or to any position identified in the articles of incorporation, by-laws, articles of organization, or equivalent governance documentation or charter for the business organization;
- When a [Foreign Person](#) has the power to control selection or tenure of KMPs/other decisions (Question 4, SF 328), any change in such power/authority except amendments or waivers to governance documentation either to correct manifest error or which are of a formal, minor, or technical nature and do not change materially any person's rights or obligations;
- When there are contracts, agreements, understandings, or arrangements with foreign person(s) (Question 5, SF 328), any change expected to result in annual payments to or from an entity where the payments exceed twenty percent of the U.S. business organization's annual gross revenues;



- When there is indebtedness, liabilities, or obligations to foreign persons (Question 6, SF 328), there is a changed condition reportable on the SF 328 whenever there is:
  1. any new indebtedness to foreign persons which results in a liability exceeding ten percent of the tangible net worth of the business organization or includes an instrument creating a mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance against (A) any of its property, assets or leasehold interests exceeding ten percent of the business organizations tangible net worth or (B) pledges five percent or more of the voting securities of the business organization as collateral, or
  2. any other new foreign indebtedness where the business organization permits to exist a leverage ratio exceeding two to one (2:1) based on the business organization's indebtedness to its tangible net worth and calculated on the basis of information set forth in its financial statement;
- When the business organization derives five percent or more of total revenues/net income from a single foreign person (Question 7a, SF 318), with respect to the business organization and that single foreign person, any change expected to result in annual payments to or from the business organization where the payments exceed an additional ten percent of the business organization's gross revenues;
- When the business organization derives thirty percent or more of total revenues/net income from foreign persons (Question 7b, SF 328), with respect to the business organization and any foreign persons, any change expected to result in annual payments to or from the business organization where the payments exceed an additional twenty percent of the business organization's annual gross revenue;
- When there are ten percent or more voting securities held in a method which does not identify the beneficial owner (Question 8, SF 328), any change of five percent or more in the total number of shares held in "nominee" shares, in "street names" or in some other method which does not identify the beneficial owner or any amendment to the bylaws of the business organization or its parent related specifically to voting rights of such nominee holders and any requirement regarding notice of any matter to be presented by a nominee stockholder at a shareholders meeting including any amendment affecting the voting and notice rights and obligations of nominee holders and associated persons who fail to make timely disclosures required by the U.S. Securities and Exchange Commission such as Schedule 13D;
- When there are KMP(s) holding positions, or serving as consultants for foreign person(s) (Question 9, SF 328), any new position held by persons required to be cleared in connection with the facility clearance (excludes positions where the KMP is appointed by the U.S. parent business organization to a seat on the board or similar governing body of a foreign subsidiary, provided that the business organization promptly gives the DOE cognizant security office notice of such appointment);
- When there are any other factors of foreign person control or influence (Question 10, SF 328), each change qualifying as an affirmative answer to this question on the SF 328 and each change having a material effect on the ownership, control or influence of the business, operations, prospects, condition (financial or otherwise), or property of the business organization such that the security measures contemplated by an agreement with DOE to mitigate FOCI would not reasonably be expected to remove the possibility of unauthorized access to or adverse effect on the performance of classified contracts;

- A previously reported foreign ownership threshold or factor that was favorably adjudicated has increased to the extent that a FOCI mitigation method (if none previously existed) or a different FOCI mitigation method is required;
- Any changes in ownership or control, including stock transfers that affect control of the company. Notice of changes includes ownership or control events that are required to be reported to the Securities and Exchange Commission (SEC), the Federal Trade Commission, or the Department of Justice (DOJ).

## Reporting Anticipated Changes

Anticipated changes are events that arise when the subcontractor or any of its tier parents enter into formal negotiations toward agreement, and in any event when the parties enter into a written memorandum of understanding, or, in the case of financing agreements, when written application for financing is made. The FSO must immediately provide written notification of anticipated actions to CSM via email to [farateam@sandia.gov](mailto:farateam@sandia.gov). Failure to do so may result in suspension or termination of the FCL.

### Anticipated actions include, but are not limited to, the following:

- An action to terminate business or operations of the subcontractor or any of its parents for any reason, including but not limited to entering into any transaction of merger, consolidation, or amalgamation with another company; conveying, selling, leasing, transferring, or otherwise disposing of all or a substantial part of its business or assets; and/or making any material change that could have an adverse effect on the subcontractor organization's ability to perform its contractual obligations for SNL or other subcontractors of SNL.

**Note:** The FSO is required to notify CSM when their company enters into negotiations for a proposed merger, acquisition, takeover, or restructure within the company's chain of ownership. Failure to notify CSM PRIOR to a merger, acquisition, takeover, or restructure WILL result in the suspension or termination of the FCL.

- Legal actions are taken to initiate bankruptcy proceedings involving the subcontractor company or any of its tier parents.
- Imminent adjudication of, or reorganization resulting from, bankruptcy actions involving the subcontractor company or any of its tier parents.
- The subcontractor or its tier parents enter negotiations with non-U.S. citizens that may reasonably be expected to require amendment of the [SF-328](#), *Certificate Pertaining to Foreign Interest*, including but not limited to negotiations for the sale of securities to a non-U.S. citizen(s).



## Reporting Other Changes

The FSO must immediately provide written notification to CSM via email to [farateam@sandia.gov](mailto:farateam@sandia.gov) and [e-FOCI](#) of the changes listed below. Failure to do so may result in suspension or termination of the FCL.

### Other reportable changes include, but are not limited to, the following:

- Any change of operating name or address of the company or any of its cleared locations.
- Any changes to information previously submitted for KMP, including, if appropriate, the names of the individuals the incoming KMP are replacing.
- A new complete listing of KMP must be submitted any time a KMP change is made by the company and/or when requested in writing by SNL or DOE/NNSA.
- Any pre-subcontract negotiation or award not placed through a government contracting authority that involves or may involve: (1) the release or disclosure of U.S. classified information to a foreign interest or (2) access to classified information furnished by a foreign interest.
- When requested by SNL or DOE/NNSA, the subcontractor shall provide a current list of all classified subcontracts as well as classified lower-tier subcontracts issued to other subcontractors.
- When requested by the DOE/NNSA, selected subcontractors shall provide security costs charged to the government for a specified period of time. The data points will be used by the DOE in developing the annual Report to Congress on overall National Industrial Security Program Costs.

### Questions? Contact Us:

Sandia National Laboratories  
Contract Security Management  
Help Line: 505-844-5759  
e-mail: [farateam@sandia.gov](mailto:farateam@sandia.gov)