

September 23, 2026

DoD's Proposed Section 847 Rule Would Expand FOCI Reviews to Unclassified Defense Contracts

By Antonia Tzinova, John
O'Loughlin, Billy Phalen, and Sisi
Liu

At a Glance

- The U.S. Department of War (formally, Department of Defense) (“**DoD**”) is in the final stretch of adopting a rule implementing Section 847 of the National Defense Authorization Act for Fiscal Year 2020. On May 7, 2026, DoD proposed a Defense Federal Acquisition Regulation Supplement (“**DFARS**”) rule (the “**Proposed Rule**”) that would extend foreign ownership, control, or influence (“**FOCI**”) review and mitigation requirements to unclassified DoD contracts and subcontracts valued above \$5 million, subject to exceptions (e.g., commercial products and commercial services).
- The comment period on the Proposed Rule closed July 6, 2026. DoD has not yet issued a final rule or established an effective date.
- Under the proposal, covered contractors and subcontractors would need to submit ownership and FOCI information on a contract-by-contract basis.
- The Defense Counterintelligence and Security Agency (“**DCSA**”) will assess the risk, but the contracting officer for the specific contract award will determine whether and what type of FOCI mitigation is warranted.
- The Proposed Rule would not apply to unclassified contracts issued by agencies not governed by DoD procurement, including most of the intelligence community, the Department of Energy, and most other federal agencies.
- Effective Date — TBD. The final rule will establish when the new Section 847 requirements become operative.
- DoD contractors should identify potentially covered contracts and subcontracts, review ownership and foreign-interest disclosures, and prepare internal processes to meet the proposed reporting and mitigation deadlines.

DoD's Proposed Rule would implement Section 847 of the National Defense Authorization Act for Fiscal Year 2020 (“**Section 847**”) by extending FOCI review and mitigation requirements beyond the traditional classified-contracting environment to certain unclassified DoD contracts and subcontracts. The Proposed Rule was published on May 7, 2026, and the comment period closed on July 6, 2026. DoD has not yet issued a final rule or announced an effective date, but contractors should begin assessing potential reporting requirements and mitigation strategies.

Background

FOCI mitigation traditionally has been associated with contractors requiring access to classified information. Under the National Industrial Security Program, DCSA evaluates whether a foreign interest has the power to control or influence a contractor in a manner that could affect the safeguarding of classified information or contract performance and impose FOCI mitigation requirements to allow a cleared contractor to be under FOCI. Mitigation is implemented either when the contractor is first granted a clearance or immediately following an investment or acquisition by a foreign interest in a contractor that has classified contracts. In that scenario, once in place, FOCI mitigation serves as an umbrella for the awarding of any future classified work. Under the proposed rule, each covered contract or subcontract potentially would be subject to a FOCI review.

Section 847 extends that concept to unclassified DoD contracting. Congress directed DoD to assess beneficial ownership and FOCI risks among covered DoD contractors and subcontractors, which resulted in DoD issuing DoD Instruction 5205.87 in May 2024 to address Congress' concerns. While DoD Instruction 5205.87 established the general framework, it has not imposed any requirements on DoD contractors. The Proposed Rule would implement the FOCI assessment and mitigation requirements in the DoD acquisition process. Notably, the proposed rule would not apply to unclassified contracts issued by agencies not governed by DoD procurement, including most of the intelligence community, the Department of Energy, and most other federal agencies.

What the Proposed Rule Would Require

The Proposed Rule generally would apply to DoD prime contracts and subcontracts for contracts exceeding \$5 million in value, subject to exceptions. For example, the rule generally would not apply to contracts and subcontracts for commercial products and commercial services unless DoD determines that it should apply to a specific contract or subcontract for commercial products or services. In general, commercial products are products of a type customarily offered to and used by the general public or nongovernmental entities for purposes other than governmental purposes, while commercial services are installation, maintenance, repair, training, and other services in support of a commercial product and the source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the federal government.

Covered contractors would be required to submit a Certificate Pertaining to Foreign Interests ("SF 328"), along with beneficial ownership and supporting information to DCSA through the National Industrial Security System ("NISS"). For contractors that already operate within the classified industrial base, the process will be familiar. For contractors performing only unclassified DoD work, Section 847 will introduce new FOCI reporting and mitigation requirements.

Most significantly, NISS eligibility could become a gating item for covered contract actions. A contracting officer generally could not make a covered award unless the prospective contractor had an "eligible" status in NISS. This suggests that the initial awarding of new contracts and subcontracts meeting the criteria could be delayed to allow for the submission and evaluation of ownership information and, if needed, execution of acceptable FOCI mitigation. The proposal also would make eligibility relevant to certain contract modifications, options and extensions.

A FOCI determination would not necessarily disqualify a contractor. Where DoD determines that the identified risk can be mitigated, contractors would be required at the time of award to agree to implement FOCI mitigation within 90 days of contract award. This suggests that, in a situation where the contractor declines to implement the required FOCI mitigation, the contractor would be deemed ineligible, and the procurement process would then evaluate other bidders. Faced with this, some companies that have significant foreign ownership may determine that the prospect of FOCI mitigation is unattractive, and they

may decline to pursue opportunities for unclassified federal government contracts and subcontracts that they heretofore would have pursued, thus potentially reducing competition.

The requirements also would extend into the supply chain. Prime contractors would be required to address qualifying subcontractors and flow down the relevant Section 847 requirements to covered subcontracts.

How Section 847 Differs from Traditional FOCI

	Traditional FOCI	Section 847
When It Applies	Access to classified information	Unclassified DoD contracts exceeding \$5 million in value (exceptions apply)
Classified Work Required?	Yes	No
Reviewing Agency	DCSA assesses the risk and decides on appropriate mitigation	DCSA assesses the risk Contracting officer decides whether and what type of mitigation to impose
Core Disclosure	SF 328 and supporting information	SF 328 and supporting information
Potential Consequence	Eligibility for classified access	Eligibility for DoD contracts exceeding \$5 million in value
Type of FOCI mitigation	Established FOCI measures ▪ Board resolutions ▪ Special board resolutions ▪ Security Control Agreement ▪ Special Security Agreement ▪ Proxy Agreement	Established FOCI measures ▪ Board resolutions ▪ Special board resolutions ▪ Security Control Agreement ▪ Special Security Agreement ▪ Proxy Agreement

The key change is, therefore, not the concept of FOCI itself, but the use of FOCI review and mitigation as a broader DoD procurement and supply-chain risk tool for DoD unclassified work.

Timing and What Contractors Should Do Now

The Proposed Rule is not yet effective. DoD has not published a final rule or announced an effective date. The final rule's transition provisions will be particularly important. Contractors should watch whether the new requirements apply to existing contracts when DoD exercises an option, modifies a contract or otherwise extends performance after the rule becomes effective.

In the meantime, contractors that may be covered should consider:

- identifying DoD prime contracts and subcontracts above \$5 million;
- reviewing ownership, governance, financing and other foreign relationships through an SF 328 lens;
- preparing for NISS registration and DCSA review;
- establishing internal processes capable of meeting the proposed three-business-day reporting deadline; and
- assessing whether significant foreign ownership or influence could require mitigation.

Section 847 would bring a much broader segment of the defense industrial base into the FOCI review process. Although important implementation details remain unresolved, contractors with significant DoD work should begin preparing before the final rule becomes effective.

* * *

If you have questions concerning the contents of this alert, or would like more information, please speak to your regular contact at Weil or to the following authors:

Authors

Antonia Tzinova (D.C.)	View Bio	antonia.tzinova@weil.com	+1 202 682 7120
John O'Loughlin (D.C.)	View Bio	john.oloughlin@weil.com	+1 202 682 7050
Billy Phalen (Boston)	View Bio	william.phalen@weil.com	+1 617 772 8357

© 2026 Weil, Gotshal & Manges LLP. All rights reserved. Quotation with attribution is permitted. This publication provides general information and should not be used or taken as legal advice for specific situations that depend on the evaluation of precise factual circumstances. The views expressed in these articles reflect those of the authors and not necessarily the views of Weil, Gotshal & Manges LLP. If you would like to add a colleague to our mailing list, please [click here](#). If you need to change or remove your name from our mailing list, send an email to weil.alerts@weil.com.