



INTELLIGENCE

UNDER SECRETARY OF DEFENSE
5000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-5000

February 11, 2015

Incorporating Change 7, Effective November 6, 2020

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
DIRECTOR, COST ASSESSMENT AND PROGRAM
EVALUATION
DIRECTOR, OPERATIONAL TEST AND EVALUATION
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Directive-type Memorandum (DTM) 15-002, "Policy Guidance for the Processing of National Interest Determinations (NIDs) in Connection with Foreign Ownership, Control, or Influence (FOCI)"

References: Attachment 1

Purpose. In accordance with the authority in DoD Directive 5143.01 (Reference (a)), this DTM:

- Establishes policy, assigns responsibilities, and provides additional direction and clarifies existing policy on NIDs contained in Volume 3 of DoD Manual 5220.22 (Reference (b)) and DoD Instruction (DoDI) 5220.22 (Reference (c)).
- This DTM is effective February 11, 2015; it will be cancelled and incorporated into Reference (b). This DTM will expire effective February 11, 2021.

Applicability. This DTM applies to:

- OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the

Department of Defense (referred to collectively in this DTM as the “DoD Components”).

- This DTM does not levy requirements on companies. Contractors and companies in process for facility security clearance are subject to the requirements of DoD 5220.22-M (Reference (d)) and other security requirements of their contracts.
- When the term “Government Contracting Activity (GCA)” is used in this DTM, it will refer to contracting activities of the DoD Components, in accordance with Reference (d).
- Nothing contained in this DTM will affect the authority of a GCA to limit, deny, or revoke access to classified information under its statutory, regulatory, or contractual jurisdiction.

Policy. It is DoD policy that DoD FOCI procedures will be used to protect against foreign interests:

- Gaining unauthorized access to classified, export-controlled, or all communications security (COMSEC) (classified or unclassified) information in accordance with Executive Order 12829 (Reference (e)) and DoDI 8523.01 (Reference (f)). DoD FOCI procedures for access to unclassified COMSEC are located in National Security Agency/Central Security Service Policy Manual 3-16 (Reference (g)).
- Adversely affecting the performance of classified contracts, in accordance with Reference (e).
- Undermining U.S. security and export controls, in accordance with Reference (e).

Responsibilities

- Under Secretary of Defense for Intelligence and Security (USD(I&S)). The USD(I&S) oversees policy and management of the National Industrial Security Program, to include FOCI matters and the issuance of NIDs.
- Director, Defense Security Service (DSS). Under the authority, direction, and control of the USD(I&S), the Director, DSS, proposes NIDs on behalf of the GCA if the U.S. contractor will require access to proscribed information under a special security agreement (SSA).
- DoD Component Heads. The DoD Component heads comply with References (b), (c), and the provisions of this DTM with regard to actions related to NIDS and FOCI.

Procedures. See Attachment 2.

Summary of Change 7. This administrative change:

- Updates the title of the Under Secretary of Defense for Intelligence to the Under Secretary of Defense for Intelligence and Security in accordance with Public Law 116-92 (Reference (h)).
- Makes administrative changes in accordance with current standards of the Office of the Chief Management Officer of the Department of Defense and updates references.

Releasability. **Cleared for public release.** This DTM is available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

A handwritten signature in black ink, appearing to read "Michael G. Vickers". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michael G. Vickers
Under Secretary of Defense for Intelligence

Attachments:
As stated

ATTACHMENT 1

REFERENCES

- (a) DoD Directive 5143.01, “Under Secretary of Defense for Intelligence and Security (USD(I&S)),” October 24, 2014, as amended
- (b) DoD Manual 5220.22, Volume 3, “National Industrial Security Program: Procedures for Government Activities Relating to Foreign Ownership, Control, or Influence (FOCI),” April 17, 2014, as amended
- (c) DoD Instruction 5220.22, “National Industrial Security Program (NISP),” March 18, 2011, as amended
- (d) DoD 5220.22-M, “National Industrial Security Program Operating Manual,” February 28, 2006, as amended
- (e) Executive Order 12829, “National Industrial Security Program,” January 6, 1993, as amended
- (f) DoD Instruction 8523.01, “Communications Security (COMSEC),” April 22, 2008
- (g) National Security Agency/Central Security Service Policy Manual 3-16, “Control of Communications Security (COMSEC) Material,” August 5, 2005
- (h) Public Law 116-92, “National Defense Authorization Act for Fiscal Year 2020,” December 20, 2019
- (i) DoD Instruction 5205.11, “Management, Administration, and Oversight of DoD Special Access Programs (SAPs),” February 6, 2013, as amended
- (j) Part 2004 of Title 32, Code of Federal Regulations
- (k) Parts 120-130 of Title 22, Code of Federal Regulations
- (l) Parts 730-774 of Title 15, Code of Federal Regulations
- (m) Section 2536 of Title 10, United States Code

ATTACHMENT 2

NID PROCEDURES

1. GENERAL. This attachment provides guidance for and establishes procedures concerning the processing of NIDs.

2. PROCEDURES

a. Part 2004 of Title 32, Code of Federal Regulations (CFR), also known as the National Industrial Security Program Directive No. 1 (Reference (j)), includes requirements for a NID. A NID does not:

(1) Authorize disclosure of classified information to a foreign government, a non-U.S. citizen, or a non-U.S. entity.

(2) Authorize exports of any type, to include deemed exports, of items controlled under various U.S. export regulations, including parts 120-130 of Title 22, CFR, also known as the “International Traffic in Arms Regulations” (Reference (k)) and parts 730-774 of Title 15, CFR, also known as the “Export Administration Regulations” (Reference (l)).

b. If a GCA requires a contractor cleared under an SSA to have access to proscribed information, DSS will take actions to propose an initial NID to the applicable GCA for response, in accordance with the provisions of this DTM, instead of the actions set forth in paragraphs 3d(3)(c) and 3e of Enclosure 3 of Reference (b).

c. When a GCA requires a company to have access to proscribed information, the GCA must notify DSS. DSS will propose NIDs on behalf of GCAs. Coordination of a proposed NID between DSS and a GCA must confirm that release of the proscribed information to the U.S. contractor is consistent with the national security interests of the United States.

(1) The requirement for NIDs proposed by DSS applies to:

(a) Pre-contract activities if access to proscribed information is required.

(b) New contracts to be issued to a contractor already cleared under an SSA or when a company is in process for an FCL and DSS has determined FOCI can be mitigated by an SSA.

(c) Existing contracts when contractors are acquired by foreign interests and an SSA is the proposed mitigation.

(2) The requirement for NIDS proposed by DSS does not apply if:

(a) DSS is relieved of NISP CSA responsibility as defined in DoDI 5205.11 (Reference (i)).

(b) DSS does not have security oversight responsibility for certain classified information (e.g, Sensitive Compartmented Information (SCI)). DoD Component heads will provide DSS with information on any such approved NIDS in a timely manner to assist oversight of the contractor's overall security program and FOCI mitigation as described in Reference (b).

d. When a GCA requires a contractor to have access to proscribed information based on any of the conditions set forth in paragraph 2c(1) of this attachment, the GCA will immediately notify DSS. DSS will take the following actions to propose a NID to the applicable GCA in accordance with the procedures in this DTM.

(1) Coordinate with the point of contact designated by the GCA and applicable GCA program office to confirm that there is a valid requirement for access to proscribed information. If the GCA does not validate the requirement, DSS will request the GCA to revise the DD Form 254, "Contract Security Classification Specification, Department of Defense," located at <https://www.esd.whs.mil/Directives/forms/>, or associated classification guidance to remove the requirement for access to proscribed information.

(2) Coordinate with the applicable GCA program office regarding details of the validated access requirement. Relevant details of this validated requirement will be included in the DSS evaluation process before a NID is proposed.

(3) Coordinate with the GCA and the responsible U.S. Government (USG) control agency when the validated requirement includes access to COMSEC, SCI, or Restricted Data (RD) to assure that DSS includes any needed information in the proposed NID. Access to proscribed information under the classification or jurisdiction of a USG agency other than the GCA will not be granted without the concurrence of the responsible USG control agency.

(4) Send the formal proposed NID to the GCA designated point of contact. As long as the proposed NID does not require access to COMSEC, SCI, or RD, it will become final 30 days after DSS notifies the GCA, unless the affected GCA does not concur.

(a) The GCA must notify DSS no later than 5 days before the end of the 30-day period if the GCA requires more time to review the proposed NID.

(b) If the GCA non-concurs with the proposed NID, the affected GCA must provide written rationale for the non-concurrence at or before the end of that 30-day period. The written rationale should be from the DoD Component senior official (e.g., Senior Acquisition Executive or Component equivalent) designated the responsibility and authority to make NIDs for the Component.

(5) Request the responsible USG control agency to provide a written decision within 30 days if access to COMSEC, SCI, or RD is involved, after receiving confirmation from

the affected GCA of the requirement for such access. Include any additional information required for the NID (e.g., a list of all required COMSEC equipment) by the USG control agency.

(a) The proposed NID will not be final without concurrence by the responsible USG control agency.

(b) If the responsible USG control agency does not concur, DSS, the affected GCA, and the USG control agency will determine if any alternatives to an SSA are warranted.

e. If DSS or the GCA determines a NID is not warranted, they will coordinate their efforts to address acceptability of the proposed SSA or whether there are alternatives to mitigate FOCI. DSS and the GCA must consider the FOCI factors in Reference (b) when contemplating a NID. When denying a NID, retain documentation explaining the rationale for the decision in accordance with Reference (b).

f. While NIDs are made on a case-by-case, program, or project-specific basis, DSS, the affected GCA, and USG control agency (if applicable) may also consider NIDs that are not program, project, or contract specific. If approved, such a NID will remain in effect until renewal of the applicable SSA, provided there continues to be a legitimate requirement for access to proscribed information. For program and project NIDs, a separate NID is not required for each contract. The GCA will provide DSS with a list of all contracts affected by the NID. DSS, instead of the GCA, will also forward a copy of any such non-program or non-project specific NID to the Office of the Under Secretary of Defense for Intelligence and Security, Security Policy and Oversight Division in accordance with subparagraph 2e(2)(d)3a of Enclosure 3 to Reference (b). The criteria for consideration of a NID that is not program, project, or contract specific are:

(1) Contractor compliance with the provisions of an SSA for a minimum of 10 consecutive years.

(2) Contractor compliance with the provisions of Reference (k) for a minimum of 10 consecutive years and the contractor continues to meet the requirements and mitigation set by the SSA.

(3) Analysis of relevant threat and risk assessments. If threat or risk assessments do not exist, then one must be prepared by DSS. DSS will coordinate with the applicable GCA or USG controlling agency for input, as appropriate.

(4) Results of the annual DSS security reviews for the past 5 years reflecting at least satisfactory security ratings.

(5) A current assessment by DSS of the FOCI factors that apply to the contractor.

g. A NID remains in effect for the period of time determined in writing by DSS, in coordination with the GCA and the responsible USG Control Agency (if applicable). Renewal of an SSA does not require generation of a new NID provided the requirement for access to proscribed information (e.g., contract or agreement) remains in effect. When a NID is not program, project, or contract specific, DSS, the affected GCA and USG control agency (if applicable) will determine how long such a NID will be in effect or will require renewal in the determination to approve such a NID.

h. In accordance with section 2536 of Title 10, United States Code (Reference (m)), DoD cannot award contracts involving access to proscribed information to a company effectively owned or controlled by a foreign government unless a waiver has been issued by the Secretary of Defense or designee as specified in Reference (b).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

COMSEC	communications security
CFR	Code of Federal Regulations
CSA	cognizant security authority
DoDI	DoD instruction
DSS	Defense Security Service
DTM	directive-type memorandum
FOCI	foreign ownership, control, or influence
GCA	Government Contracting Activity
NID	National Interest Determination
RD	Restricted Data
SAPCO	Special Access Program Central Office
SCI	Sensitive Compartmented Information
SSA	special security agreement
USD(I&S)	Under Secretary of Defense for Intelligence and Security
USG	U.S. Government

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this DTM.

company. Defined in Reference (d).

contractor. Defined in Reference (d).

NID. Defined in Reference (j).

proscribed information. Top Secret information, COMSEC information excluding controlled cryptographic items when unkeyed and utilized with unclassified keys, RD, Special Access Program information, or SCI.

USG control agency. An agency that approves access to certain proscribed information for contractors who require a national interest determination because they are cleared through an SSA. For COMSEC, this is the National Security Agency/Central Security Service; for SCI, the Office of the Director of National Intelligence; and for RD, the Department of Energy.