

DOE O 142.3B Chg 1 (LtdChg), Unclassified Foreign National Access Program
Frequently Asked Questions (FAQs)

The following FAQs were developed and compiled to clarify the intent of requirements in and help toward the implementation of DOE O 142.3B Chg 1 (LtdChg).

1. Definition of Information

A. Q: Why is there an exemption for access to information that “is already available to the public”?

A: There is no need to limit access to information that has been made publicly available (in accordance with applicable procedures) using the process under this Order. The information is already available to all once it is made public.

B. Q: What do you mean by “documented to be published or shared broadly within the scientific community”?

A: First, the phrase “documented to be...” in the exemption means that a specific laboratory action has been taken and recorded to release the information. The action can be achieved through multiple mechanisms or processes, for example:

- An overall process defined in the Site Security Plan
- In the information security procedures
- In an information release/categorization/marketing process
- A specific requirement or process for publication or other public release in a funding agreement, including an award or the laboratory prime contract

Second, since much of the unclassified work done at DOE laboratories is considered fundamental research as defined by National Security Decision Directive 189, the information covered by this exemption includes information that is “ordinarily...published or shared broadly within the scientific community”. Further, such information is not subject to proprietary (i.e., legally protected), or national security/economic restrictions such as those in the S&T Risk Matrix or the Export Administration Regulations (EAR) as described in 15 CFR [§§ 734.7-734.8](#).

C. Q: The definition of information includes “programmatic.” Can DOE Information be programmatic in nature?

A: Yes, however not everything programmatic may fall under the scope of this Order. Ordinary tasks that do not identify DOE program information or technologies may

not be subject to the requirements for processing foreign nationals under this Order. Examples include:

- Arranging a shipment of training materials from a foreign provider.
- Scheduling calls.
- Logistical planning and calls.
- Employment interviews that will not include program specific information including responses from applicants.

2. Dual Citizens and Lawful Permanent Residents (LPRs)

A. Q: Why are dual citizens exempted from the Order?

A: Dual citizens with U.S. citizenship are afforded the rights of a U.S. citizen and are not considered foreign nationals for the purpose of this Order. Dual citizens without one of the citizenships being a U.S. citizenship are covered by all requirements of the Order.

B. Q: Why are LPRs considered foreign nationals for the purpose of this Order?

A: An LPR is by definition a foreign national as they do not have U.S. citizenship or nationality. In order to balance the goal of open science with the needs of national security, the Order seeks to allow foreign nationals, including LPRs, to participate in our scientific endeavors, but with an extra layer of review before it takes place. Once an LPR becomes a naturalized U.S. citizen, they would no longer fall under the requirements of this Order.

3. Site and Logical Access

A. Q: Does the Order apply to physical site access requests of a short duration (e.g., two-hour on-site interview)?

A: Yes. The Order requirements are not based on the length of time of the access request (e.g., how long an individual will be at the site) but on the foreign national requesting access and the information that is going to be accessed. Please note that the requirements of the Order apply to some of the exemptions listed [see 3.c.(2)(f)-(j)] if the request includes physical site access.

B. Q: Does the Order cover foreign national access to a DOE owned network?

A: Yes. Access to DOE-owned networks will require meeting the applicable requirements of the Order if the access request is not covered by an exemption.

4. Vetting

A. Q: Do the terms “Enhanced Vetting” and “Enhanced Review” refer to the same process?

A: No. The Enhanced Review process includes Enhanced Vetting. Country of Risk foreign nationals’ access to certain restricted technology or information as identified in the Science and Technology (S&T) Risk Matrix must undergo an enhanced review process as described in paragraph 4.f. of the Order. Completion of specialized enhanced vetting conducted by the DOE Office of Intelligence and Counterintelligence (IN) is required prior to final approval of the access request.

B. Q: Why are specific Export Control requirements not listed, such as restricted party screenings?

A: DOE follows Export Control regulations issued by the responsible Federal agency (e.g., Departments of State and Commerce). DOE policy does not restate requirements found in existing law, regulation, or other DOE/NNSA specific policies.

5. Categories of Country

A. Q: What are the current foreign Countries of Risk?

A: The list of foreign Countries of Risk can change over time. As of February 2022, the Countries of Risk are limited to China, Russia, Iran, and North Korea.

B. Q: What is the “country of greatest risk”?

A: The country of greatest risk is applied to affiliations in the highest category of country sensitivity.

1. Example 1: A LPR with dual citizenship where one is a non-sensitive country and the other is a sensitive country. Must be processed and approved as a Sensitive Country Foreign National.
2. Example 2: A Non-Sensitive Country foreign national has dual citizenship with a State Sponsor of Terrorism (SST). Must be processed and approved as an SST.
3. Example 3: A Non-Sensitive Country foreign national is doing work on behalf of a University in a Country of Risk. Must be processed and approved as a Country of Risk Foreign National.

6. Other

A. Q: Will we have to complete the required DOE O 142.3B review of a foreign national before a joint proposal is submitted, after we intend to fund the work, or when procurement gets involved?

A: If the information does not fall within an exemption, or they will be physically coming to the site, then the Order will apply. The DOE O 142.3B review can be required at any stage of the process depending on what the individual has access to. However, it is a best business practice to complete the review of a foreign national and verify their approval to work on the proposal in advance of the proposal submission, to prevent any “last minute” surprises that would impact the ability to perform the work.

B. Q: In relation to the S&T Risk Matrix, the Order uses the terms “restricted”. How is that related to the term “red” in the S&T Risk Matrix?

A: The term “restricted” as used in the Order means the “red” technologies in the S&T Risk Matrix. The same terminology is used in other related Directives (e.g., Foreign Engagement, Official Travel, Strategic Partnership Programs, etc.).

C. Q: The Order does not address nor provide an exemption for DOE Locally Engaged Staff (LES) that support the DOE mission at its overseas locations in U.S. Diplomatic Missions.

A: For the purposes of this Order, the DOE LES cadre are considered foreign national DOE non-Federal employees and should be processed as a DOE employee and not a visitor. These requests can be made for a period of up to four years.

D. Q: At my site, we have foreign engagements which can be considered to be nonproliferation and counterproliferation related. Can I use exemption 3.c.(2)(e) and not process foreign nationals under this Order?

A: The exemption only covers remote/virtual engagements in direct support of a specific DOE/NNSA HQ program office. Engagements in which physical access to a DOE laboratory/site is required must still be processed in accordance with the applicable requirements of this Order.

E. Q: Does this Order apply to overseas engagements with foreign nationals?

A: No, DOE O 550.1, *Official Travel*, current version, captures overseas engagements through the Federal Travel Management System and comparable laboratory/contractor approval processes.

7. Timing

A. Q: Do the Indices Checks for all foreign nationals need to be complete before access is granted?

A: The timing for approving access is based upon (a) the sensitivity of the information being accessed, and (b) the nationality of the individual being granted access. Please see below and the attached flowchart.

Indices Checks must be completed prior to access for:

- Any foreign national accessing a physical area which is more restrictive than a Property Protection Area (PPA).
- Any SST foreign national.
- Any foreign national accessing a sensitive subject at a site with classified work.
- Any sensitive country foreign national accessing a NNSA laboratory, information, or technology.

Indices Checks must be requested prior to access for:

- Any foreign national accessing a sensitive subject at a site without classified work.
- Any sensitive country foreign national accessing non-sensitive subjects.

Indices Checks are not required for non-sensitive country foreign nationals accessing non-sensitive subjects.

Indices Checks Flowchart

