

DOE Order 142.3B Unclassified Foreign National Access Program (UFNA) Implementation Plan

Foreign Visits and Assignments (FVA) Office

This plan requires twenty-six (26) * months (from the date of Prime Contract modification) for full implementation and assumes that during that time outstanding issues that remain unresolved following the IPT will be resolved, including concerns about Title VII of the Civil Rights Act and application of the Fundamental Research Exemption under existing export control laws.

** Timeline has been adjusted since initial implementation plan submission due to additional and/or adjusted FVA deliverables and resource allocation limitations.*

Updates to implementation plan timeline and deliverables based on DOE O 142.3B Change 1 revision (dated 03/02/2022) will follow in red.

Overview

As manager and operator of the Department of Energy's Fermi National Accelerator Laboratory (Fermilab), Fermi Research Alliance, LLC (FRA) is required to comply with DOE Order 142.3B Unclassified Foreign National Access Program (UFNA). The Fermilab Foreign Visits and Assignments (FVA) Office is responsible for ensuring compliance with the order. This includes reviewing, approving, documenting, and tracking all foreign national onsite and/or logical access requests for FRA employees, users, subcontractors, and authorized guests, and reviewing and approving all short-term foreign national visitors.

Current DOE O 142.3A FVA Process

FVA review and approval is one step in the Site Access and Badging (SAB) process. SAB provides a consistent, single point of data entry for all subcontractors, users, and authorized guests (referred to as the "requester") to request site access, resources, and accounts with intuitive request forms, and automated processes to reduce the amount of manual data entry and to quickly distribute the collected requestor information to other systems.

There are several approval steps in the SAB process, including:

- Point of Contact
- Affiliation Approver
- Foreign Visits and Assignments (when applicable)
- Host (when applicable)
- Export Control (when applicable)
- Office of Partnerships and Technology Transfer

Note: FRA employees are not currently routed through the FVA Office, however they are entered into FACTS within 24 hours of the first day of their employment. Applicants with CVs which include country of risk and/or state sponsor of terrorism affiliations are sent to the FVA Office for initial review.

In the event the requester is a foreign national, both FVA and Export Control review and approvals must be completed. The FVA process includes requirements as detailed in O 142.3B, such as:

- CV review for all users conducting research at the laboratories
 - o FVA Office reviews for completeness and ensures no lapses in time
 - o CVs are uploaded into the Foreign Access Central Tracking System (FACTS) database
- Foreign National Security Plan (FNSP) completion and host assignment and acknowledgement

- As of March 2021, FNSPs are completed for all foreign national user and subcontractor requests for onsite and/or logical access. The FNSP is intended to assist those hosting foreign nationals with protecting non-public information and facilities not intended for access. The FVA Office assigns each foreign national a host, and the host must review and acknowledge the information provided in the FNSP. FNSPs for individuals from sensitive countries, or with access to sensitive information, are submitted to Counterintelligence for review.
- FRA policy states hosts must be FRA employees and U.S. citizens
- Access request review
 - FVA Office reviews access request and CV for primary and secondary affiliations; requirements for additional reviews are based on country of affiliation presenting the greatest risk
 - FVA Office reviews access requests to determine whether the information or technologies to be accessed are considered sensitive or restricted under the S&T Risk Matrix
 - FVA Office coordinates with affiliation representative, point of contact, and host to determine physical areas to be accessed and justification for requested access
- Confirmation of Lawful Immigration Status, Citizenship, and Identity
 - FVA Office coordinates with Global Services to confirm sufficient documentation has been received and verified before final access approval is granted
- Coordination with Counterintelligence (when applicable)
- Coordination with the Office of High Energy Physics (when applicable)
- Foreign Access Central Tracking System (FACTS) entry
 - As of January 2021, all foreign national user, subcontractor, and employee requests for onsite and/or logical access are entered into FACTS within 24 hours of start date

Implementation Requirements

In order to implement DOE O 142.3B, FRA has formed a cross functional UFNA working group to coordinate business process changes and communicate these changes across the lab. The group includes subject matter experts (SMEs) from:

- FVA Office
- Global Services
- Export Control
- General Counsel
- Partnerships and Technology Transfer
- Cybersecurity
- Workforce Development and Resources Section (WDRS)
- Office of the Chief Research Officer
- Facility Security Officer

Changes from DOE O 142.3A to 142.3B that must be addressed through detailed assessment and modification of business processes include the following, and will need to be built based on FRA's understanding of the internal DOE review and exemption processes as described in 142.3B 3.g.(1).

Timeline for execution depends on resource availability and additional funds

New CRD Requirement	Deliverable	Responsible Party	Resources	Completion Date
EXEMPTIONS				
Dual citizens, only if one citizenship is U.S.	Fermilab FVA procedures currently exempt dual citizens with U.S. citizenship	N/A	N/A	N/A
Requests for access to information that is not a sensitive subject as defined by this Order and in accordance with applicable procedures (i) is already available to the public or (ii) has been documented to be published and shared broadly within the scientific community.	Develop procedure to exempt requests for access to information, such as virtual events, that is not a sensitive subject and either already available to the public or documented to be broadly shared. Add exemption flags to the Affiliations Database in order to bypass FVA and Export Control reviews if exempt.	FVA Office	FVA Office; S&T Working Group; Information Subgroup; SAB Computing Team	08/31/2022
Requests for access to information (e.g., technical specifications, project data, research results) by foreign nationals from countries that are formally part of a specific DOE program-sponsored international collaboration project under a DOE or U.S. Government-level bilateral or multilateral international agreement (e.g., Deep Underground Neutrino Experiment at Long-Baseline Neutrino Facility, Proton Improvement Plan-II, Vera Rubin (Large Synoptic Survey Telescope) Dark Energy Search Collaboration). This applies only to information generated under these projects and agreed to be shared among the participants.	Develop mechanism to track appropriate agreements to apply exemption. Possible flags can be added to the Events Portal or Affiliations Database.	FVA Office	FVA Office; Special Assistant for International Engagements; Office of Partnerships and Technology; SAB Computing Team	06/30/2023
	Implement enhancements to the Fermilab Events Approval Portal to include enhanced screening questions to better determine whether exemption can be used for event and whether event will require a specific security plan.	FVA Office	FVA Office; Security; SAB Computing Team; Conference Office NOTE: Additional funds are required to complete enhancements to the Events Approval Portal	06/30/2023
Information exchanges conducted remotely by HQ program offices and supporting laboratory and contractor personnel, in direct support of DOE/NNSA nonproliferation, counterproliferation, and counterterrorism activities.	Information shared with requested HQ program office.	N/A	N/A	N/A
Certain activities within General Access Areas (GAA): (1) Personal visits. (2) Third-party events (i.e., not related to the DOE mission) hosted at the site. (3) Access by foreign national delivery, service, and vendor personnel (Note: Also exempt in other areas outside of GAA if fully escorted and compliant with other relevant security requirements.). (4) Foreign nationals performing construction activities.	Adjust current Site Access and Badging (SAB) approval process to exempt these activities in GAAs by bypassing FVA approvals. This requires identification of GAAs at the lab be coded into the SAB process.	FVA Office	FVA Office; Security; SAB Computing Team	03/31/2022

REQUIREMENTS				
Foreign national access requests to DOE sites, information, or technologies will be reviewed based on all the information provided and any potential impacts on site or program operations. A determination of access approval is required before each access request is granted and must ensure that any identified risk to the Government associated with the access granted has been appropriately evaluated and mitigated, including a review against the Science and Technology (S&T) Risk Matrix (see paragraph 3.g.).	All foreign nationals require a valid business purpose in order to access the site, information or technology protected by the Order. Approval of foreign national access is provided through Fermilab's UFVA program. The FVA Office currently reviews all foreign national access requests against the S&T Risk Matrix.	N/A	N/A	N/A
a. <u>The Curriculum Vitae (CV)</u> . A CV must be provided for each foreign national conducting research at laboratories and entered into the FACTS database. CVs must include all employment activities, since the age of 18 years, and provide all of the foreign national's science and technology specialties. CVs must also include the current/accurate name of all academic institutions attended, and all degree/diplomas earned. There should be no lapses in time over the past 10 years.	FVA Office has required CV submission for all foreign national access requests since February 2019. FVA Office reviews CVs for lapses in time and requests supplemental information. CVs are uploaded to the FACTS database. Possible future enhancement: automatic upload of CVs to FACTS	N/A	N/A	N/A
b. <u>Site Security Plan (SSP)</u> . The SSP must include the requirements and procedures used to process foreign national access requests at the site. The SSP, as approved by the Officially Designated Federal Security Authority (ODFSA), must include requirements to ensure: (1) appropriate documentation describing the process for application of the exemptions listed in this Order	Updated SSP requirements will be submitted to the Official Designated Federal Security Authority (ODFSA). Update will address the process for application of the exemptions listed in this order.	FVA Office	N/A	12/31/2022

<p>c. Access Request. Each foreign national access request must include, at a minimum, the following items:</p> <ol style="list-style-type: none"> (1) Country(ies) of affiliation. If multiple affiliations exist, the requirements are applied based on the country presenting the greatest risk. (2) Identification of the information or technology(ies) to be accessed, and whether considered a sensitive subject as defined by this Order. (3) Identification of areas (e.g. GAA, PPA) to be accessed for all physical access requests. (4) Justification for the requested access, including specific activities or involvement. (5) Identification of the DOE/NNSA program or sub-element and its mission advanced by the access. 	<p>Expand required information for access request forms to allow:</p> <ul style="list-style-type: none"> - Multiple countries of affiliation - Multiple Fermilab affiliations (including information/technologies) to be accessed - Ability to screen access request against the DOE definition of sensitive subject (see below deliverable) - Consistent location information table <p>NOTE: FRA will define countries of affiliation as: birth, citizenship, current institution(s), and current residence</p> <p>NOTE: Foreign nationals requesting access are required to have a signed Foreign National Security Plan on file which captures items 2, 3, and 4.</p> <p>NOTE: The access system's current configuration contains a single field entry to document the requester's primary affiliation. The FVA Office has been reviewing CVs for secondary affiliations/institutions.</p>	<p>FVA Office</p>	<p>FVA Office, Global Services; SAB Computing Team</p> <p>Additional funds are required to expand the access request form.</p>	<p>03/31/2023</p>
<p>Sensitive Subjects Unclassified subjects and topics identified (i) as subject to Federal regulations governing export control, (ii) as research areas determined to be restricted in the current S&T Risk Matrix, and/or (iii) as Critical Energy Infrastructure Information (CEII), Unclassified Controlled Nuclear Information (UCNI), or Information Systems Vulnerability Information within the Controlled Unclassified Information (CUI) Registry.</p>	<p>Review all Fermilab science and technology against definition of sensitive subject. Develop list of Fermilab sensitive subjects.</p>	<p>S&T Working Group</p>	<p>FVA Office, S&T Working Group; Information Subgroup; Export Control; Office of the CIO; Cybersecurity</p>	<p>05/31/2022</p>
<p>f. Countries of Risk. 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 below in paragraphs (1)-(3). All proposed access requests in areas not identified as restricted in the S&T Risk Matrix can proceed with the access review and approval process as required by this Order.</p> <p>Requests for access to conduct research under a User Agreement at an Office of Science, Energy Efficiency Renewable Energy, or Nuclear Energy User Facility at a non-NNSA DOE laboratory are exempt from the review requirements related to the S&T Risk Matrix discussed</p>	<p>FVA Office screens all new foreign national access requests against the Science and Technology Risk Matrix. Users/Affiliates requesting to work in one of the two "red" areas at the lab must select the appropriate "RESTRICTED" lab affiliation.</p> <p>Develop and implement an exemption review and request process for a country of risk foreign national to access red/restricted areas in the S&T Risk Matrix.</p> <p>This deliverable requires DOE to provide an S&T risk matrix exemption form. If form is not provided, Fermilab will develop</p>	<p>S&T Working Group</p>	<p>FVA Office; S&T Working Group; Exemptions Subgroup; Office of the Chief Research Officer</p>	<p>06/30/2022</p>

<p>below. All other requirements of this Order apply to these access requests.</p>	<p>and implement its own exemption form.</p>			
<p><u>*Footnote:</u> A new review, based on the additional S&T Risk Matrix requirements, for individuals with existing access approvals at the time of publication of this Order is not required. These individuals will be assessed against the new S&T Risk Matrix requirements at the time of their next access authorization renewal.</p>	<p>Develop and implement process to require FRA employees currently working in the two red/restricted areas be routed through the FVA Office at the time of their next access renewal.</p>	<p>FVA Office</p>	<p>FVA Office; WDRS; Office of the Chief Research Officer</p>	<p>12/31/2021</p>
<p><u>Indices Checks.</u> Indices checks are coordinated by the Office of Intelligence and Counterintelligence and must be requested through the process of documenting access requests in FACTS. Indices checks are valid for a period of two years from the completion date, as documented in FACTS by the Office of Intelligence and Counterintelligence. If the approved access request exceeds this two-year period, updated indices checks are automatically requested through FACTS prior to the current expiration date. The following access requests require completed indices checks prior to the start of the foreign national access:</p> <ul style="list-style-type: none"> (a) All access requests by nationals of SSTs. (b) All access requests to a physical security area more restrictive than a Property Protection Area (PPA). (c) All access requests by all sensitive country nationals to the NNSA national laboratories sites, information, or technologies. (d) All access requests for sensitive subjects. [NOTE: The indices check for access requests by non-sensitive nationals for sensitive subjects at sites with no classified work can be completed after access is granted.] <p>(2) Access requests for sensitive country nationals to non-sensitive subjects require indices checks, but they do not have to be completed prior to the start of the foreign national's access.</p> <p>(3) Indices checks are not required for non-sensitive country national's access to non-sensitive subjects in a PPA or less restrictive areas.</p>	<p>Update process to review all sensitive subject national access requests against the DOE Sensitive Subject List (dependent on IPT phase 2 order update)</p> <p>For those sensitive country nationals working on a sensitive subject, FVA Office will update business processes to collect appropriate personal information as a part of the FVA review and approval step in SAB in order to enter information into FACTS at least 45 days before access is needed.</p>	<p>FVA Office</p>	<p>FVA Office; Cybersecurity; SAB Computing Team</p>	<p>12/31/2022</p>
<p><u>Removal of the 142.3A Graded Approach.</u></p> <p>Previous order (142.3A) allowed the contractor to follow a graded approach</p>	<p>SAB Phase 3 will address this new requirement and is scheduled to be completed by the end of March 2023. High level requirements gathering has been</p>	<p>FVA Office</p>	<p>FVA Office; Global Services; Export Control; SAB Computing Team; Security</p>	<p>03/20/2023</p>

<p>for reviewing and approving access by foreign nationals based on subject, location, and length of time of the requested access, as well as the country affiliation(s) of the individual to be granted access.</p>	<p>completed. This phase will expand the site-access request process to include other types of visitors, including conference and event participants, business visitors, Education and Public Engagement (EPE), and Office of Communication tours, and the general public. IT infrastructure will need to be created to support site security through reporting and tracking requirements needed for the various types of visitors and expand screening capabilities to unbadged workers and visitors.</p>		<p>Additional funds (approx. 1M) are required to complete this phase of SAB.</p>	
--	--	--	--	--

Additional Requirements

Requirement	Deliverable	Responsible Party	Completion Date
<p>Communications Plan</p>	<p>Develop a Communications Plan for business process changes due to O 142.3B changes. Communications plan will be drafted, and necessary Fermilab leadership and Department of Energy approvals obtained prior to executing. Additional communications include:</p> <ul style="list-style-type: none"> - Develop a Foreign National Access Policy - Update all policies and procedures with new terms and definitions - Develop FAQs to provide guidance and direction to the laboratory - External communications plan addressing interactions with outside entities 	<p>FVA Office</p> <p>Resources: FVA Office; Office of Communication</p>	<p>10/31/2021</p>
<p>General S&T Risk Matrix Labwide Training</p>	<p>Develop new S&T risk matrix training module for all employees, users, and subcontractors NOT working in red/restricted areas</p>	<p>S&T Working Group: Training Subgroup</p>	<p>12/31/2021</p>
<p>Additional Resources</p>	<p>Office of the Director will request two new FTEs as part of FY22 budget request. Implementing this order is priority for the Directors Office and the request for resources is being prioritized in the indirect budget prioritization. Directors Office will make a request for two positions. Will develop job description and roles and responsibilities documentation to onboard first resource. Second resource job description will be developed after the first resource is onboarded and we reassess FVA implementation needs.</p>	<p>Office of the Director</p>	<p>09/30/2021</p>
<p>FACTS</p>	<p>Update FACTS process to stop pushing current onsite and offsite FACTS records for the same foreign national</p>	<p>FVA Office</p> <p>Resources: FVA Office; Global Services; SAB Computing Team</p>	<p>06/30/2023</p> <p>New - Not part of original estimates</p>

Resources

Office	Resource Leads
<p>FVA Office</p>	<p>Melissa Ormond</p>
<p>Global Services</p>	<p>Griselda Lopez</p>

Security	Mark Kaletka Joe Rogers
Export Control	Paul Ellison
SAB Computing	Jo Fazio Craig Mohler
International Agreements	Hema Ramamoorthi

Outstanding Issues

Sensitive Subjects List

FRA will require DOE to publish the Sensitive Subjects List in order to assess all foreign national access requests to determine whether information or technologies being accessed are considered a sensitive subject.

Science and Technology (S&T) Risk Matrix

The Science and Technology Risk Matrix has already been incorporated into Fermilab foreign national access requests. Fermilab has two red/restricted lab affiliations; each affiliation has a selection in the Fermilab Affiliation Database which has been flagged as red. In the event a foreign national user or subcontractor selects this affiliation, the FVA Office is able to coordinate with Principal Investigators handling red technologies and the Office of the Chief Research Officer to determine whether an exemption must be requested.

Training for those working in “red” technologies was launched in 2020. FRA will develop a general S&T lab wide training that will also address the new UFNA order requirements.

FVA review and approval must address the O 142.3B S&T footnote which states “a new review based on S&T requirements is not required for those with existing access approvals at the time of publication, however the individuals must be assessed against new S&T requirements at the time of their next access authorization renewal.” The FVA process will be updated to require FRA employees currently working in the two red/restricted areas be routed through the FVA Office.

Inconsistency between Order and Export Control Requirements

U.S. permanent residents, who are treated as “foreign nationals” under this Order, could be prevented from accessing fundamental science laboratories. However, the same research personnel in other regulatory contexts could obtain access to U.S. munitions list information regulated by the International Traffic and Arms Regulation (ITAR) at a DOD or NASA facility.

These issues are particularly concerning to universities, non-profit institutions, and international collaborators that partner with national laboratories, as they may also need to follow these access requirements, which can conflict with institutional norms and policies. This is expected to make it difficult for collaborators and partners to work with the laboratory and to have a chilling effect on collaborations.

FRA Employees

Currently, FRA does not plan to include citizenship questions in the application process as this could create legal liability for the organization under Title VII. The FVA Office is required to

complete a FNSP for all foreign national FRA employees and enter sensitive country foreign national employees working on sensitive subjects into FACTS at least 45 days before first date of employment. This will require the laboratory to adjust the current employment process to allow for the extra time. The FVA Office will continue to work with WDRS and the Office of the General Counsel to develop this process. FRA's expectation is that litigation costs arising from its compliance with this Order, particularly from claims of discrimination on the basis of national origin, will be considered allowable costs and not subject to the "Tecom" standard.

Implementation Support

FRA has identified implementation impacts associated with the adoption of DOE O 142.3B. Initial assessment is that implementation of the order will require:

- 2 additional FTE (approximately 315k annually)
- \$3M in one-time funding for Site Access and Badging process modifications and enhancements of IT solutions

Until the implementation plan is fully executed, the UFNA Working Group will continue to meet on a regular basis to discuss implementation issues. Other SMEs will be included as needed.

Definitions

Affiliation – Fermilab organization, experiment, collaboration, or project that accepts contingent workers.

Affiliation Approver – FRA-approved individual who is accountable for verifying the identity and information of an individual requesting access (physical and/or remote) prior to approving Fermilab access. Approvers are required to develop and follow their experiment, project, or division/section approver verification process.

Affiliation Database – Centralized location containing key information about the Lab Affiliations.

Affiliations Representative – Person identified by their Division Head who is responsible for ensuring that Affiliation Database records are updated and accurate.

FACTS – DOE's official national database of information on unclassified foreign visits and assignments.

Host – FRA employee approved by the appropriate Division/Section/Project to be responsible for the activities associated with foreign national access to the Fermilab site and/or resources.

Indices Checks – Request to appropriate U.S. Government agencies to determine whether information exists on a particular foreign national. Indices checks are valid for a period of two years from the indices completion date, as documented in FACTS by the Office of Intelligence and Counterintelligence.

Point of Contact – FRA employee, user, or subcontractor responsible for confirming an individual's affiliation with Fermilab and home institution.

Site Access and Badging: Phase 1 – Provided the Affiliation Database, a centralized location for information on Fermilab experiments, collaborations, projects, Sections/Divisions, replacing

various disconnected sources of information. Developed and implemented ServiceNow workflow approvals for Foreign Visits and Assignments (FVA) and Export Control reviews.

Site Access and Badging: Phase 2 – Provided a streamlined onboarding process for Fermilab contractors, users and authorized guests to request site access, resources, and accounts through an intuitive request form. Automated processes to distribute information collected from the access request process to other systems such as WorkDay and DOE FACTS, reducing the amount of manual data entry and time to create accounts. Provided consistency across organizations, projects, and experiments by centralizing and standardizing how individuals are invited to Fermilab.