
Changes to Waiver Procedures for Nonrecurring Cost (NC) Recoupment Charges Caused by Recent Legislation

[The following is a reprint of SECDEF WASHINGTON DC//USDP: DSAA message, 041655Z October 19, subject as above.]

1. The FY 1996 Defense Authorization Act provided broader authority to waive Non-Recurring Cost (NC) recoupment charges by adding Subsection (B), to Section 21 (E)(2) of the Arms Export Control Act (AECA) (22 U.S.C. 2761 [E][2]). The broader waiver authority became effective with the enactment of the budgetary offset contained in Public Law 104-201, signed by the president on September 23, 1996.
2. The waiver authority contained in the FY 1996 Defense Authorization Act permits waiver of NC charges when:
 - (A) Imposition of the charge or charges likely would result in the loss of the sale; or
 - (B) In the case of a sale of major defense equipment that is also being procured for the use of the U.S. Armed Forces, the waiver of the charge(s) likely would result in a U.S. savings (due to economies of scale) that substantially offsets the revenue foregone by reason of the waiver.
3. The authority also permits waiver of an increase in NC charges if the increase results from the correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge.
4. The broader waiver authority does not affect, in any way, the current waiver authority for sales to NATO or NATO member countries, Australia, Japan, or New Zealand sales in connection with coproduction arrangements; or the exemption of sales wholly financed with Foreign Military Financed (FMF) Grants. The broader waiver authority applies to all countries authorized to make purchases through Foreign Military Sales (FMS).
5. In order for waivers to be approved in accordance with Para. 2. above, waiver requests must be made by the purchasing country on a case-by-case basis and must be submitted prior to acceptance of the FMS Letter of Offer and Acceptance (LOA), or LOA amendment for increased quantities. Waiver requests should be submitted to the responsible military department, with a copy to DSAA Operations Management. Blanket waiver requests will not be entertained.
6. Waiver requests which are based on the potential loss of a sale should indicate that denial of the waiver request would be likely to result in the loss of the sale. The competing item is to be included and its cost if known. The request should be signed out by a country representative authorized to accept (sign) LOA's. Acceptance by the purchaser of the LOA or amendment will negate this basis for a waiver request. In order to expedite processing, we recommend the waiver request be submitted with the Letter of Request. The Military Department will forward the request to DSAA Operations Management immediately upon receipt.
7. Waiver requests based upon U.S. savings which offset revenue foregone by the waiver must be validated by the applicable Military Department to determine if U.S. cost savings would be realized in the unit price of the equipment also being procured for use by U.S. forces. The savings must substantially offset the revenue foregone by the potential waiver. The determination will be coordinated with the Military Department's Comptroller Organization.

Such validation should normally be provided to DSAA prior to the LOA or amendment being submitted for countersignature. This part of the waiver authority does not apply to a sale from stock, unless the equipment is being replaced by procurement of additional equipment which DoD is currently procuring for use by U.S. Armed Forces.

8. Waiver requests for increased amounts due to revised NC recoupment charges are not necessary. DoD policy in DoD Directive 2140.2 provides that, "Approved revised NC recoupment charges shall not be applied retroactively to accepted foreign military sales agreements."

9. This message was coordinated with the USD Comptroller. Points of Contact for additional information are Ms. Gail Crook, DSN 664-6635, Commercial (703) 604-6635, or Ms. Kay O'Brien, DSN 664-6562. Commercial (703) 604-6562.