



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

JUN 09 2004

In reply, refer to:
I-04/001409-P3

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Guidance for the Transfer of Night Vision Devices (NVDs) (DSCA 04-25) [SAMM E-Change 14]

REFERENCE: DSCA Policy Memorandum 03-19, "Guidance for the Transfer of Night Vision Devices" dated November 24, 2003

One DoD policy objective is to ensure that U.S. Forces maintain a clear advantage in night fighting capabilities. The U.S. lead, in both the manufacturing and deployment of advanced night vision equipment, is vital to maintaining this advantage. When providing NVDs to our foreign partners, we must use careful, deliberate processes to ensure these devices are protected and used appropriately.

The purpose of this memorandum is to update DoD 5105.38-M, the Security Assistance Management Manual (SAMM), with additional guidance regarding NVDs – specifically the procedures for processing NVD Letters of Requests, a modified LOA note for NVD Physical Security and Accountability, and NVD End-Use Monitoring responsibilities.

The guidance in this memorandum is effective immediately. If you have any questions regarding the guidance for the transfer of NVD, please contact LTC James Gentile, DSCA/P3-Weapons Division, (703) 604-6622. Questions about the SAMM should be referred to Mr. Steve Harris, DSCA/P3-P2, (703) 604-6611.

A handwritten signature in black ink, reading "Tome H. Walters, Jr.", is positioned above the typed name and title.

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachment:
As Stated

DISTRIBUTION LIST

DEPUTY UNDER SECRETARY OF DEFENSE FOR TECHNOLOGY SECURITY POLICY
AND COUNTERPROLIFERATION / DEFENSE TECHNOLOGY SECURITY
ADMINISTRATION

DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR DEFENSE EXPORTS AND
COOPERATION, DEPARTMENT OF THE ARMY

DIRECTOR, NAVY INTERNATIONAL PROGRAMS OFFICE, DEPARTMENT OF THE
NAVY

DEPUTY UNDER SECRETARY OF THE AIR FORCE (INTERNATIONAL AFFAIRS),
DEPARTMENT OF THE AIR FORCE

DIRECTOR, DEFENSE LOGISTICS AGENCY

DIRECTOR, NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY

DIRECTOR, DEFENSE THREAT REDUCTION AGENCY

DIRECTOR, DEFENSE REUTILIZATION AND MARKETING SERVICE

DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY

DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY

DIRECTOR, DEFENSE LOGISTICS INFORMATION SERVICE

DEPUTY DIRECTOR FOR INFORMATION ASSURANCE, NATIONAL SECURITY
AGENCY

DEPUTY DIRECTOR FOR SECURITY ASSISTANCE, DEFENSE FINANCE AND
ACCOUNTING SERVICE - DENVER CENTER

cc: STATE/PM-RSAT

USASAC

NAVICP

AFSAC

DISAM

OUSD(AT&L)/IC

D TSA/PD

OASD/SOLIC

JS/J5/INMA-CAC/WMD

USCENTCOM

USEUCOM

USPACOM

USSOCOM/SOOP/SDO

USSOUTHCOM

1. The following paragraph is added to Chapter 4, FMS General Information:

C4.3.14. Night Vision Devices (NVDs). NVDs are man-portable devices, which incorporate image intensification, infrared, thermal, or sensor-fused technologies. NVDs fall under Category XII(c) of the U.S. Munitions List (22 CFR part 121 of reference (n)) and are designated as sensitive, unclassified SME. The Deputy Under Secretary of Defense for Technology Security Policy and Counterproliferation (DUSD(TSP&CP)) is responsible for NVD export policy and requires the case-by-case review of all requests for the international transfer of such items through FMS or direct export licensing. Each review considers input from the MILDEPs, the acquisition community, and the Chairman of the Joint Chiefs of Staff. Image intensifier tubes ordered as spare parts or replacements for destroyed, lost, stolen, or missing devices also require a case-by-case review except when replacing defective or damaged tubes that are returned to the USG on a direct exchange or repair and return basis. The technical capabilities of replacement tubes will not exceed the export restrictions set forth in the original authorization. NVDs taken from DoD stock may not be sold or transferred without an accompanying data sheet verifying that the technical capabilities of the image intensifier tubes do not exceed export restrictions. See Chapter 5 for more information on processing requests for NVDs and Chapter 8 for End-Use Monitoring (EUM) responsibilities.

2. The following revision is made to Table C5.T1. Add number 14 as follows:

County Team Assessment – Required Information	
14	<p>If the request is for Night Vision Devices (NVDs), the following information must be provided:</p> <ul style="list-style-type: none"> • Justification for the type and quantity of NVDs requested (LOR development may require coordination with MILDEP for recommended model/quantity). • The operational plan for use and specific end-users to include: <ul style="list-style-type: none"> - Description of the primary mission for the units to receive the NVDs - Extent of military interoperability missions/training with U.S. Forces - Extent of anti-terrorist missions for the units to receive the NVDs • Assessment of the purchaser’s capacity to afford substantially the same degree of security and accountability protection as given by the United States and willingness to accept the NVD physical security and accountability note contained in Table C5.T5. • The SAO plan for EUM and compliance verification. • Additional information in support of the transfer request (e.g., status of previous NVD transfers and results of past U.S. security inspections/inventories).

3. The following paragraph is added to Chapter 5, “FMS Case Development”:

C5.1.4.3.3. LORs for Night Vision Devices (NVDs). Every request for NVDs (paragraph C4.3.14.) requires either an LOR Advisory or a request for exception to DoD NVD policy. After validating the LOR in accordance with subparagraphs C5.1.4.1. and C5.1.4.2., the Implementing Agency forwards the NVD LOR to DSCA (Regional Directorate) along with the Country Team Assessment, the Military Department’s concurrence, the list of specific NVDs to be transferred (including model-type/ nomenclature and quantity). DSCA (Policy, Plans and

Programs Directorate – Weapons Division) determines whether an LOR Advisory (subparagraph C5.1.4.5.) or an Exception to DoD NVD Policy request (subparagraph C5.1.4.6.) is required.

4. Delete C5.1.4.5. through C5.1.4.7. in their entirety and replace with the following:

C5.1.4.5. LOR Advisories

C5.1.4.5.1. LOR Advisory Criteria. An LOR Advisory notifies USD(AT&L) and the Chairman of the Joint Chiefs of Staff that DSCA has received an LOR for items or services that meet one of the following criteria:

C5.1.4.5.1.1. First introduction of Major Defense Equipment (MDE);

C5.1.4.5.1.2. MDE that is expected to result in a Congressional Notification under Arms Export Control Act (AECA), section 36(b) (reference (c)).

C5.1.4.5.1.3. Coproduction or licensing agreements for MDE.

C5.1.4.5.1.4. Items and/or services of a sensitive nature. For example, NVDs are considered items of a sensitive nature.

C5.1.4.5.1.5. MDE that has not yet completed OT&E. DSCA may not be aware that the requested item(s) has not satisfactorily completed OT&E until the Implementing Agency refers the LOR to DSCA.

C5.1.4.5.2. Preparing LOR Advisories. DSCA (Regional Directorate) prepares and sends an LOR Advisory to the Chairman of the Joint Chiefs of Staff and USD(AT&L) using the format in Figure C5.F1.a. The LOR Advisory should include a copy of the purchaser's request as well as the Country Team Assessment (when required). The Implementing Agency's concurrence is included along with the proposed list of items to be transferred (including model-type/nomenclature and quantity). The Defense Technology Security Administration (DTSA) is added as an addressee for all NVD LOR Advisories.

C5.1.4.5.3. Coordinating LOR Advisories. To ensure consistency with existing Theater Security Cooperation objectives and technology security policy, DSCA sends the LOR Advisory as soon as possible after receiving the LOR with all required attachments. The recipients identified in C5.1.4.5.2. have 10 working days from the date of the LOR Advisory to provide comments to DSCA for consideration. In the event of non-concurrence, disagreements are adjudicated. The LOR Advisory does not take the place of any Exception to National Disclosure Policy (ENDP) processes or releasability requirements that are worked by the Military Departments (MILDEPs).

C5.1.4.6. Requests for Exception to DoD NVD Policy. If an exception to DoD NVD Policy is required, DSCA (Regional Directorate) prepares and sends a memorandum requesting the exception to the Deputy Under Secretary of Defense for Technology Security Policy and Counterproliferation (DUSD(TSP&CP)) through the same addressees in place of an LOR Advisory using the format in Figure C5.F1.b. DTSA coordinates the proposed conditions and

restrictions of the transfer with the Chairman of the Joint Chiefs of Staff. After coordination, the DUSD(TSP&CP) sends a memorandum to DSCA authorizing or denying the transfer.

C5.1.4.6.1. When the DUSD(TSP&CP) authorizes the transfer, DSCA (Regional Directorate) sends a memorandum to the Implementing Agency, Combatant Command, and SAO (as appropriate), which communicates the decision and includes all required notes, technical provisos, and DoD EUM requirements. The organizations specifically tasked with EUM responsibilities shall acknowledge their assigned EUM duties by return memorandum.

C5.1.4.6.2. Should the DUSD(TSP&CP) deny the transfer, DSCA will disapprove the customer's LOR in accordance with paragraph C5.2.2.

Figure C5.F1.a. Letter of Request (LOR) Advisory Format

MEMORANDUM FOR DIRECTOR, J-5, JOINT CHIEFS OF STAFF
ATTN: JS/J5/INMA-CAC

OFFICE OF THE UNDER SECRETARY OF DEFENSE
ACQUISITION, TECHNOLOGY, AND LOGISTICS
ATTN: INTERNATIONAL COOPERATION

DEFENSE TECHNOLOGY SECURITY ADMINISTRATION
ATTN: DTSA/PD (POLICY DIVISION)

Add for NVD LOR
Advisories

SUBJECT: Letter of Request (LOR) Advisory - [Insert Country or International Organization Name]

DSCA has received a request from [insert Country or International Organization Name] for [identify articles requested and whether they are Major Defense Equipment (MDE) that is being introduced for the first time; MDE that is expected to result in a notification to Congress under AECA, section 36(b); involve coproduction or licensing agreements for MDE; items/services of a sensitive nature; or MDE that has not yet completed operational testing and evaluation (OT&E)]. (Additional information may be provided specific to this request if desired.)

The purpose of this memorandum is to advise you of this request and provide you with a copy for your use and information. If you have any questions or desire additional information regarding this potential sale, please contact [insert name, office symbol, phone number, and e-mail address of DSCA Country Program Director].

It should be noted that this notification does not take the place of any Exception to National Disclosure Policy (ENDP) processes or releasability requirements that may need to be addressed by the Military Departments.

For NVD LOR Advisories add the following:

The Department of the [insert MILDEP] recommends and is prepared to offer the transfer of the following devices with capabilities that are equal to current DoD standard issue and considered to be of a sensitive nature: [insert type and quantity of specific devices to be offered]. The [insert Purchaser] has indicated its willingness to accept the physical security and accountability requirements as attached, which will become part of any Letter of Offer and Acceptance for these items. [Insert Purchaser's] letter of request and [Implementing Agency] memorandums are also enclosed.

Attachment

[Insert Purchaser Request Information]
[Appropriate MILDEP Recommendation]
[Proposed Physical Security & Accountability Note]

Add for NVD LOR Advisories

cc: [Insert Applicable ASD(ISA or ISP)]

USD(P)-PS

DoS(PM/RSAT)

[Insert Applicable SAO]

[Insert Applicable MILDEP]

[Insert Applicable Combatant Command]

DTSA/PD

USSOCOM/SOOP/SDO

Add for NVD LOR Advisories

NOTE: Memorandum is classified if applicable.

C5.F1.b. Sample Request for Exception to DoD NVD Policy

(CLASSIFICATION)

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE FOR TECHNOLOGY
SECURITY POLICY

THROUGH DEFENSE TECHNOLOGY SECURITY ADMINISTRATION
ATTN: DTSA/PD (TECHNOLOGY SECURITY POLICY)

DIRECTOR, J-5, JOINT CHIEFS OF STAFF
ATTN: JS/J5/INMA-CAC

OFFICE OF THE UNDER SECRETARY OF DEFENSE
ACQUISITION, TECHNOLOGY AND LOGISTICS
ATTN: INTERNATIONAL COOPERATION

SUBJECT: Government of [Insert Purchaser]'s Request for Night Vision Devices [Insert Case Designator]

DSCA has received a request from [insert Purchaser] for Night Vision Devices (NVDs). The Department of the [insert MILDEP] recommends and is prepared to offer the transfer of the following devices with capabilities that are [state-of-the-art; equal to current DoD standard issue; less than DoD standard issue but greater than commercial off-the-shelf], and considered to be of a sensitive nature: [insert type and quantity of specific devices to be offered].

[Briefly describe the reason the purchaser requires the devices as well as the operational plan for use to include justification for quantity requested. Additional information, such as the status of past NVD transfers and previous inspections may be provided if desired.]

The [insert Purchaser] has indicated its willingness to accept the physical security and accountability requirements as attached, which will become part of any letter of offer and acceptance for these items. [Insert Purchaser's] letter of request, the U.S. Country Team Assessment with supporting justification, and the [insert Combatant Command] and [insert Implementing Agency] endorsement memorandums are also enclosed.

Request your authorization to offer the devices to [insert Purchaser] under a government-to-government agreement (Foreign Military Sales case). The DSCA POC for this action is [insert CPD name and contact information]. The DSCA POC for NVD policy is [insert DSCA (Policy, Plans and Programs/Weapons Division) name and contact information].

Director
[Regional Directorate]

Attachments:

[Purchaser Letter of Request Information]
[Country Team Assessment and Supporting Justification]
[Appropriate Combatant Command Recommendation (when applicable)]
[Appropriate MILDEP Recommendation]
[Proposed Physical Security & Accountability Note]

cc:

[Applicable ASD (ISA or ISP)]
USD(P)-PS
DTSA/PD
DoS (PM/RSAT)
[Applicable SAO]
[Applicable MILDEP]
[Applicable Combatant Command]
USSOCOM/SOOP/SDO

(CLASSIFICATION)

4. The existing NVD note in Table C5.T5. is deleted and replaced as follows:

Note Name	Note Usage*	Note Text
Night Vision Devices (NVDs) Physical Security and Accountability	Mandatory for LOAs for sales of NVDs, image intensifier tubes, or other NVD spare parts. Mandatory for Amendments and Modifications that add NVDs, image intensifier tubes, or other NVD spare parts to a case.	<p>“The purchaser agrees to secure the Night Vision Devices (NVDs) listed in this offer against loss, theft, or unauthorized access, and to perform routine inventory checks. The purchaser agrees to provide the SAO and/or other appropriate U.S. Government (USG) representatives a written physical security and accountability control plan within 30 days of acceptance of this offer. Inventory and accountability records maintained by the purchaser shall be retained for at least one year and made available for review upon USG request. Upon request, the USG shall be permitted to conduct an inspection and inventory of the devices listed in this offer by serial number every [insert timeframe as specified in the DTSA memorandum (e.g., six months). If the DTSA memorandum does not require an inventory, omit this sentence].* In case of the destruction, loss, theft, or unauthorized access of any NVDs listed in this offer, the purchaser agrees to report the incident immediately to the USG. The purchaser agrees to provide a written report with details of the incident within 30 calendar days to the USG. This report will include the steps being taken both to recover the equipment (if applicable) and to prevent recurrence.</p> <p>To assist in the development of purchaser's physical security and accountability control plan, the following minimum measures, are included as recommendations:</p> <p>a. Physical Security:</p> <p>1) When not issued for use, the unit commander will provide NVD controlled-access, double barrier protection. Examples of double barrier protection include:</p> <p>a) A locked, built-in or free-standing steel container, which is secured to a locked or guarded building, enclosed van, trailer or armored vehicle;</p> <p>b) A locked steel cage or vault secured in a locked or guarded structure.</p> <p>2) When in use, individuals issued NVDs will secure the devices and be responsible for maintaining control of the devices at all times. NVDs may be secured inside a locked, enclosed van, trailer, or armored vehicle if these vehicles remain under constant surveillance.</p> <p>b. Accountability:</p> <p>1) While not issued for use, the unit commander or designated representatives will conduct monthly 100% physical count inventories and quarterly 100% inventories by serial number of the NVD. Records of these inventories will be kept for one year.</p> <p>2) While issued for use, the unit commander or designated representatives will perform a daily visual inventory of the NVD.</p> <p>The Deputy Under Secretary of Defense for Technology Security Protection and Counterproliferation authorized this transfer on [insert date].”</p> <p>*The Deputy Under Secretary of Defense for Technology Security Policy and Counterproliferation will provide specific conditions, which may require changes to the standard note for each NVD transfer. These changes will be incorporated into the LOA note as written in the signed authorization granting the exception to policy.</p>

* The “Note Usage” column of this table is intended to show when the note should be included on an LOA, Amendment, and Modification. This table is NOT intended to show when an Amendment or a Modification should be used. See Chapter 6, section C6.7. for information on determining which document is appropriate.

5. The following paragraphs are added to Chapter 8, “End-Use Monitoring”:

C8.3.7. Night Vision Devices (NVDs). For each FMS offer of NVDs, the MILDEP adds a note to the LOA that identifies physical security and accountability requirements. See Chapter 5, Table C5.T5. for exact note wording. Prior to conducting an inventory, the USG representative must ensure that the following requirements are communicated to the host nation normally through the SAO. The SAO is responsible for ensuring that the host nation understands the EUM requirements and is prepared to comply with the following standards upon the arrival of the EUM team:

C8.3.7.1. The host nation must be prepared to show the NVD storage facility to the EUM team and all NVDs must be removed from their containers and ready for inspection.

C8.3.7.2. The host nation must have a copy of its physical security and accountability control plan and inventory documents available for review. If necessary, the host nation should be prepared to brief its physical security and accountability control plan and procedures.