



DEFENSE SECURITY COOPERATION AGENCY

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WASHINGTON, D.C. 20301-2800

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MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE AIR FORCE FOR
INTERNATIONAL AFFAIRS
DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR
DEFENSE EXPORTS AND COOPERATION
DEPUTY ASSISTANT SECRETARY OF THE NAVY FOR
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DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY
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DIRECTOR OF CYBERSECURITY DIRECTORATE AND DEPUTY
NATIONAL MANAGER FOR NATIONAL SECURITY
SYSTEMS, NATIONAL SECURITY AGENCY

SUBJECT: Defense Security Cooperation Agency Policy Memorandum 26-101, Incorporation of Policy Changes for Foreign Military Sales Approval Requirements Relating to Certain Operational Testing [SAMM E-Change 868]

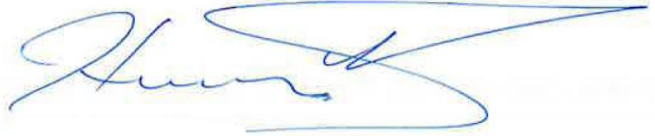
References: a. USW(A&S) Memorandum - Updates to Foreign Military Sales Approval Requirements Relating to Certain Operational Testing

This policy memorandum codifies amended policy (Ref (a)) and provides updated guidance related to case processing for Foreign Military Sales (FMS) cases containing Major Defense Equipment that has not sufficiently completed Operational Testing and Evaluation (OT&E), in accordance with [Department of Defense Instruction \(DoDI\) 5000.85](#). This update eliminates the Yockey Waiver approval requirement for these cases and instead directs Implementing Agencies to communicate the risk with partners and include an updated case note for Letters of Offer and Acceptance (LOAs). This SAMM update also adds guidance on the level and timeline of this communication to the partner.

A follow-on update to DSAMS will include the ability for the Implementing Agencies to add a comment to notify DSCA and provide a record that this communication was conducted.

If you have questions on this memorandum, please contact DSCA (Office of International Operations, Weapons Directorate (IOPS/WPN)) at dscan.cr/iops.list.wpns-all-

members@mail.mil. Please reference the DSCA Policy Number and Memo Subject. For general questions about the SAMM, please contact DSCA (Office of Strategy, Plans, and Policy, Execution Policy and Analysis Directorate (SPP/EPA)) at dscan.cr.spp.mbx.epa@mail.mil.



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Attachment: SAMM E-Change 868 - Updates to Foreign Military Sales Approval Requirements Relating to Certain Operational Testing

Attachment 1: Security Assistance Management Manual E-Change 868
FOREIGN MILITARY SALES APPROVAL REQUIREMENTS RELATING TO
CERTAIN OPERATIONAL TESTING
(FORMALLY “YOCKEY WAIVER” POLICY)

1. Update Appendix 6 LOA Note Operational Test and Evaluation (OT&E) Incomplete (Yockey Waiver) as follows:

Operational Test and Evaluation (OT&E) Incomplete ~~(Yockey Waiver)~~

Building Partner Capacity:	No
Foreign Military Sales:	Yes
Note Input Responsibility:	IA
Date Range of Use:	All
References:	See Section C5.3.31-8 .
Note Usage Instructions for Documents:	
Mandatory for Foreign Military Sales (FMS) case pricing information correspondence (e.g., Rough Order of Magnitude (ROM) pricing or Pricing and Availability (P&A) data), Letters of Offer and Acceptance (LOAs), and Amendments that add Major Defense Equipment (MDE) that has not completed U.S. Government testing and is not yet in full production Modifications, and Price and Availability (P&A) Data that add/include developmental systems that have not yet been approved for U.S. production (i.e., Defense Acquisition Board full rate production has not been approved) as defined in Department of Defense Instruction (DoDI) 5000.85 , unless the latest version of the note is on the Implemented Version of the case .	
Note Text:	
“Line [Insert item name and program description] has not completed U.S. Government testing and is not yet in full production. There is a risk that if problems arise in testing, this system may never achieve its desired operational effects. Further, even if testing is successful, the U.S. Government may decide not to acquire this system. Should this occur, If there is no U.S. Government acquisition , the procurement cost of the item will likely increase, there may be delays to the scheduled delivery of this system, and there could be future interoperability problems with U.S. forces.”	
Add other text as required to explain the specific case.”	

2. Remove the following row from Table C5.T6. Defense Articles or Services that Require Item-specific Letter of Request Advisories or Review:

Item	Requirement	Notes
MDE that has not yet completed	Standard Advisory Letter (See	Unique review (See

Item	Requirement	Notes
Operational Testing & Evaluation (OT&E)	Figure C5.F5.)	Section C5.2.6.3.)

3. Delete Section C5.2.6.2. Pre-Operational Test and Evaluation Sales Policy (Yockey Waiver).

~~**C5.2.6.2. Pre-Operational Test and Evaluation Sales Policy (Yockey Waiver).** Before responding to LORs for Major Defense Equipment (MDE) that has not completed Operational Testing and Evaluation (OT&E) in accordance with Department of Defense Instruction (DoDI) 5000.85, the IA shall submit a Yockey Waiver approval request through DSCA (IOPS/WPNS) for endorsement. DSCA (IOPS/WPNS) is responsible for endorsing and submitting the coordinated Yockey Waiver approval request to OUSW (A&S) for final determination. Yockey Waiver approval determinations are made on a case-by-case basis. A Yockey Waiver for multiple countries or multiple MDE items is prohibited. For multinational FMS cases, each end-user country requires a separate Yockey Waiver. An LOA (or P&A for international competitions and building partner capacity) for such items cannot be released prior to OUSW (A&S) approval. If approved, a note must be included in the LOA or P&A for international competitions and building partner capacity. See Appendix 6 LOA Note: Operational Test and Evaluation (OT&E) Incomplete (Yockey Waiver).~~

4. Add Section C5.3.3. Operational Test and Evaluation Incomplete Sales Policy:

C5.3.3. Operational Test and Evaluation Incomplete Sales Policy. FMS cases with MDE that has not sufficiently completed U.S. Government testing and is not yet in full production (i.e., has not satisfactorily completed Operational Testing and Evaluation (OT&E) in accordance with Department of Defense Instruction (DoDI) 5000.85) have additional requirements. LOAs require a case note (see Appendix 6 LOA Note: Operational Test and Evaluation (OT&E) Incomplete). Additionally, the Implementing Agencies (IAs) will provide early communication to the partner of the risk associated with the procurement with all pricing information correspondence.

5. Add Section C5.3.3.1. Early Risk Communication:

C5.3.3.1. Early Risk Communication. For Foreign Military Sales (FMS) cases containing MDE that has not satisfactorily completed OT&E in accordance with DoDI 5000.85, the IAs will communicate to the partner the risk associated with the procurement. This early communication is in addition to the required case note in the LOA. The IA must communicate the risk associated with the procurement with all pricing correspondence and in responses to all Letters of Request (LOR) when the IA intends to respond with an LOA. This communication must be provided in a timely manner and captured in writing. To maximize flexibility, this requirement may be satisfied via standard email, official meeting minutes, or memorandum (see at Figure C5.F6 for a sample template) directed to the partner at a level

commensurate with LOA case signatory authority. For Rough Order of Magnitude (ROM) pricing, this communication may be sent as an attachment to the standard ROM Pricing memorandum (see template in the CAC-SAMM as attachment A to [DSCA 26-45 \(CUI\)](#). (DoW CAC Holders Only)).

6. Add Section C5.3.3.2. Recordkeeping:

C5.3.3.2. Recordkeeping. The signed LOA containing the mandatory case note (see [Appendix 6 LOA Note: Operational Test and Evaluation \(OT&E\) Incomplete](#)) serves as the official, legally binding record of risk notification and partner acceptance. To document that early notification of the risk occurred, the IA will enter a comment in DSAMS prior to submitting the case to DSCA.

7. Add Figure C5.F6. Partner Early Risk Communication for Operational Test and Evaluation Incomplete Sample Letter after Section C5.3.3.1. and renumber subsequent figures accordingly.

Figure C5.F6 Partner Early Risk Communication on Operational Test and Evaluation Incomplete Sample Letter

MEMORANDUM FOR: [Enter Title of Foreign Counterpart] FROM: [Enter Title of U.S. Official] DATE: [Date] SUBJECT: Important Procurement Information Regarding the Potential Foreign Military Sale of the [Insert Item Name] System This memorandum is to ensure full transparency regarding your nation's interest in acquiring the [Insert Item Name and Program Description] system in your request [insert LOR Reference Number], through the U.S. Foreign Military Sales (FMS) program. The U.S. Government is committed to ensuring our partners have all necessary information to make fully informed procurement decisions. In accordance with the U.S. Department of War policy for Major Defense Equipment (MDE) that has not yet satisfactorily completed Operational Test and Evaluation (OT&E), we are obligated to provide the following information: The [Insert Item Name] system has not completed U.S. Government testing and is not yet in full-rate production. There is a risk that if problems arise in testing, this system may never achieve its desired operational effects. Further, even if testing is successful, the U.S. Government may decide not to acquire this system. If there is no U.S. Government acquisition, the procurement cost of the item will likely increase, there may be delays to the scheduled delivery of this system, and there could be future interoperability problems with U.S. forces.

Our goal is to ensure you are aware of the potential risks associated with schedule, cost, and performance before a final commitment is made. We highly value our security partnership with [Country Name] and believe that open communication is the cornerstone of our collaboration. Any subsequent Letter of Offer and Acceptance of this system shall include a case note to this effect.

We are prepared to discuss these risks in greater detail and answer any questions you may have. Please do not hesitate to contact [Name and Title of U.S. Point of Contact] to arrange a follow-up discussion.

8. Move and update Section C5.2.6.2.1. to Section C5.3.3.3. Applicability for Non-Programs of Record:

C5.3.3.3.2.6.2.1. Applicability of Yoekey Waivers for Non-Programs of Record. ~~Yoekey Waivers only pertain to items designated as MDE where OT&E is not yet completed, in accordance with DoDI 5000.85. Therefore,~~ NPOR solutions or components that are not designated as MDE do not require an OT&E Incomplete case note or early risk communication ~~Yoekey Waiver~~. When an MDE article ~~which would~~ that otherwise meets the requirements of Section C5.3.3., in accordance with DoDI 5000.85, ~~require a Yoekey Waiver~~ is incorporated as a component into an NPOR solution, ~~then the case note and early risk communication requirements apply. a Yoekey Waiver request must be approved for the component.~~ IAs may contact DSCA (IOPS/WPN) at dsca.ncr.iops.list.wpns-all-members@mail.mil for clarification. ~~prior to the submission of a Yoekey Waiver request.~~

9. Update C9.T2A. Foreign Military Sales Case-Related Manpower Functions and Funding Source Matrix Case Development row CD14 as follows:

Row	Activity	Admin*	Case	Non-Standard	Frequency
...					
CD14	Preparation of LOA document package to include:				
	...				
	e. Review/process case related waivers (e.g., Nonrecurring Cost (NC), Yoekey , etc.).	X			
	...				

10. Update Table C5.T4B. Mandatory Criteria Before Letter of Request Complete to remove requirement to determine if request requires a Yockey Waiver prior to assessing whether the LOR is complete, as follows:

#	Criteria
7	Ensure the LOR contains the following (as appropriate): • All hardware requirements are specified, including identifying designation • Determine whether non-standard or non-program of record (NPOR) equipment is required • Determine whether requested capability/equipment has not yet undergone Initial Operational Testing and Evaluation (IOT&E) and requires a Yockey Waiver • Determine whether a site survey is required • Support and training requirements are identified ...

11. Update Section C5.6.10.2. Pre-Case Review Objective to remove reference to Yockey Waivers as follows:

C5.6.10.2. Pre-Case Review Objective. The objective of a PCR is to complete a review of the LOA and all appropriate documentation to ensure it meets the purchaser's requirements and to reduce the amount of rework needed during case development. A PCR may include additional objectives unique to each case and other relevant topics of discussion. The PCR Lead should identify all objectives in the meeting invite so that attendees are prepared to address them. Specific focus areas may include:

...
g. Check that any necessary supporting documents required for a particular case are completed and included in the package to DSCA (IOPS/GEX/CWD). This includes, but is not limited to, MTCR approvals, Yockey Waivers , COMSEC Approval to Sell letters, Night Vision Device (NVD) approvals, etc.
...

12. Change Section C5.6.10.5 Required Documents to remove reference to Yockey Waivers as follows:

C5.6.10.5. Required Documents. The IA will provide a complete LOA package to the PCR Lead seven work days prior to the meeting. The LOA package will include the following documents, as applicable: LOR, LOA document, FMS Cover Memorandum (Memo) (see [Figure C5.F12.](#)), MTCR approval by State, 36(b) CNs, EDA approval message, MTDS,

related waivers (e.g., NC, ~~Yockey Waiver~~), COMSEC Approval to Sell letters, Multifunctional Information Distribution System (MIDS) Consortium approval memo, Global Positioning System (GPS) approval memo, Line Item Pricing (RP069) report, Case Remarks (RP084) report, unique notes and any other applicable offline information related to the LOA. Depending on the focus of the PCR, the PCR Lead may identify additional required documents. If an LOA is only waiting for long lead waivers and/or CN and all other case development processes have been complete, the IA should notify the PCR Lead and a PCR can be conducted while waiting for those waivers and/or CN to be completed.

13. Change C5.T12. General Rough Order of Magnitude, Price and Availability, and Letter of offer and Acceptance Preparation Responsibilities to remove reference to Yockey Waivers as follows:

Table C5.T12. General Rough Order of Magnitude, Price and Availability, and Letter of Offer and Acceptance Preparation Responsibilities

Implementing Agency	DSCA Case Writing and Development Division
• ... • Waiver Requests (to include NC and Yockey) • ...	• ...

14. Change Section C5.6.11.3.5. Other Documents to remove reference to Yockey Waivers as follows:

C5.6.11.3.5. Other Documents. If there are any waivers of applicable laws, policies, or other unique circumstances related to the case, applicable documentation must be included as part of the package submitted to DSCA in CTS. Such information includes, but is not limited to, EDA approval; Nonrecurring Cost (NC) waivers; NVD approval; ~~Yockey Waiver~~; National Security Agency (NSA) approval; Grant Agreements; and FMS purchaser notifications as described in [Section C5.3.2.1.](#)