DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

NOV 2 4 2003

In reply refer to:
I-03/005191

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Guidance for the Transfer of Night Vision Devices (DSCA Policy 03-19)

REFERENCE: The Under Secretary of Defense (Policy) memorandum dated 23 January 1990 and revised on 23 July 1990, "DoD Policy Regarding International Transfer and Export Control of Image Intensifier Night Vision Systems and Technology"

The referenced memorandum is designed to facilitate the transfer of Night Vision Devices (NVD) and systems to allied and friendly countries through Foreign Military Sales (FMS) and Direct Commercial Sales (DCS), while protecting U.S. forces as well as critical production and manufacturing technology. It permits case-by-case reviews of image intensifier and thermal night vision end items. The Defense Technology Security Administration (DTSA) has overall responsibility for the formulation and management of NVD export policy.

It is a DoD policy objective to assure that U.S. forces maintain a clear advantage in night fighting capabilities. Therefore NVD technology is considered by DoD policy to be a valuable, limited resource to be developed and protected in support of national security objectives. The U.S. lead in both the manufacturing and deployment of advanced NVD equipment is vital to ensuring this advantage.

This memorandum clarifies the requirements for all government-to-government and government to international organization transfers of NVD as well as commercial transfers financed through U.S. Government grant funds. This memorandum also provides the required physical security and accountability note for NVD transfers and clarifies when this note should be used. The NVD review process is described in Attachment 1. This process was co-developed with the Joint Staff/J5 and DTSA/Policy.

This guidance is not retroactive -- there is no need to do Modifications or Amendments to add the NVD note. The DSCA point of contact for NVD policy is MAJ James Gentile, DSCA/P3-WPNS, (703) 604-6622 or Mr. Steve Harris, DSCA/P3-P2, (703) 604-6611.

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

Attachments:

1) Review Process for FMS/FMF Transfers of Night Vision Devices
2) Sample LOR Advisory for NVD
3) Sample Waiver Request for NVD
4) SAMM Table C5.T5 (NVD Physical Security and Accountability Note)

DISTRIBUTION LIST

DEPUTY UNDER SECRETARY OF DEFENSE FOR TECHNOLOGY SECURITY POLICY AND DIRECTOR, DEFENSE TECHNOLOGY SECURITY ADMINISTRATION

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Review Process for FMS/FMF Transfers of Night Vision Devices

A. The approval process for FMS transfers of NVD begins with a Letter of Request (LOR) for Price and Availability (P&A) data or for a Letter of Offer and Acceptance (LOA) from a purchaser submitted through appropriate channels as described in the Security Assistance Management Manual (SAMM), Chapter 5. For this process, NVD are defined as man-portable devices, which incorporate image intensification, infrared, thermal, or sensor-fused technologies. NVD are considered sensitive, unclassified Significant Military Equipment (SME). In order for the Joint Staff, DTSA and AT&L to properly evaluate an FMS or a FMF funded commercial transfer request, the following information must be included in or in support of the LOR:

1. Reason the purchaser requires NVD.
2. The operational plan for use and specific end-users to include:
   a) Description of the primary mission for the units to receive the NVD;
   b) Extent of military interoperability missions/training with U.S. forces;
   c) Extent of anti-terrorist missions for the units to receive the NVD.
3. Justification for the type and quantity of NVD requested (LOR development may require coordination with MILDEP for recommended model/ quantity).
4. 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 assurances note (SAMM Table C5.T5).
5. The U.S. Combatant Commander's concurrence in the case of initial transfer or significant increase in quantity or quality of NVDs to a nation.

B. Upon receipt of the LOR and supporting documentation, the Implementing Agency will determine if the information contained in the request is complete and ensure that the request is analyzed and approved in accordance with the appropriate U.S. Military Department's NVD release policy. Once the MILDEP has determined that all required information is present, the Implementing Agency should forward the request, along with a proposed list of items to be transferred (including model type and quantity), to the appropriate DSCA Country Program Director (CPD), with a recommendation to initiate the policy review process.

C. The DSCA CPD coordinates the LOR and supporting justification with DSCA Weapons Division. DSCA Weapons Division advises the DSCA CPD whether an LOR Advisory or a waiver request must be prepared based on DTSA guidance.

Attachment 1

D. The DSCA CPD prepares the appropriate LOR Advisory or waiver request memorandum signed by the regional director. The advisory or waiver is prepared in accordance with SAMM paragraph C5.1.4.5, with the exception that DTSA is an addressee. Attachment 2 provides a sample LOR Advisory. Attachment 3 provides a sample waiver request.

E. Upon completion of the LOR Advisory or receipt of the waiver approval, the DSCA Regional Directorate sends a memorandum, coordinated with DSCA Weapons Division, to the applicable Implementing Agency communicating the decision regarding the transfer of NVD and all required notes. Attachment 4 provides specific text for the required physical security and accountability note. Information copies of this memorandum are sent to all parties that were either an addressee or information copy addressee on the LOR Advisory or waiver request. In addition, the CPD will forward a copy of the LOR Advisory or approved DTSA waiver to the End Use Monitoring Program Manager in DSCA/P2.

Attachment 1

Sample LOR Advisory for Night Vision Devices

MEMORANDUM FOR OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE
ATTN: DTSA/PD (TECHNOLOGY SECURITY POLICY)

DIRECTOR, J-5, JOINT CHIEFS OF STAFF
ATTN: WTC

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

SUBJECT: Letter of Request (LOR) Advisory- **[insert Country or International Organization Name]** Request for Night Vision Devices

DSCA has received a request from **[insert Country or International Organization Name]** for the following night vision devices with capabilities that are **[insert one of the following: state-of-the-art; equal to current DoD standard issue; less than DoD standard issue but greater than commercial off-the-shelf; commercial off-the-shelf]**, and considered to be of a sensitive nature: **[include list of specific devices to include model number and quantities being requested].**

[Briefly describe the reason the purchaser requires the NVD as well as the operational plan for use]. [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 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].**

The 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 Country or International Organization's]** letter of request, the supporting justification, the **[insert combatant command]** and **[insert implementing agency]** memorandums are also enclosed.

Attachments
[Purchaser Request Information]
[Supporting Justification]
[Appropriate Combatant Command Recommendation]
[Appropriate MILDEP Recommendation]
[Physical Security & Accountability Note]

cc:
[Applicable OASD/ISA or ISP]
OASD/SOLIC
DoS (PM/RSAT)
USD(P)-PS
[Applicable SAO]
[Applicable MILDEP]
[Applicable Combatant Command]
USSOCOM/SOOP/SDO

*NOTE: Memorandum will be classified if applicable

Attachment 2

Sample Waiver Request for Night Vision Devices

MEMORANDUM FOR OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE
ATTN: DTSA/PD (TECHNOLOGY SECURITY POLICY)

DIRECTOR, J-5, JOINT CHIEFS OF STAFF
ATTN: WTC

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

SUBJECT: Letter of Request (LOR) Waiver - **[insert Country or International Organization Name]** Request for Night Vision Devices

DSCA has received a request from **[insert Country or International Organization Name]** for the following night vision devices with capabilities that are **[insert one of the following: state-of-the-art; equal to current DoD standard issue; less than DoD standard issue but greater than commercial off-the-shelf; commercial off-the-shelf]**, and considered to be of a sensitive nature: **[include list of specific devices to include model number and quantities being requested].**

[Briefly describe the reason the purchaser requires the NVD as well as the operational plan for use]. [Additional information may be provided specific to this request if desired.]

The 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 Country or International Organization's]** letter of request, the supporting justification, **[insert combatant command]** and **[insert implementing agency]** endorsement memorandums are also enclosed.

Request your concurrence to offer the devices to the **[insert Country or International Organization Name]** under a government-to-government agreement (Foreign Military Sales case). Please provide your response by **[10 working days from date this memorandum is signed]**. The DSCA point of contact for this action is **[name, office symbol, phone, and e-mail address of DSCA country program director]**.

Attachments
[Purchaser Request Information]
[Supporting Justification]
[Appropriate Combatant Command Recommendation]
[Appropriate MILDEP Recommendation]
[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

*NOTE: Memorandum will be classified if applicable

Attachment 3

SAMM Table C5.T5

Note Name: Night Vision Devices (NVD) Physical Security and Accountability

Note Usage: Mandatory for LOAs for sales of NVD. Mandatory for Amendments and Modifications that add NVD to a case.

Note Text: "The purchaser agrees to secure the night vision devices (NVD) listed in this offer against loss, theft or unauthorized access and to perform routine inventory checks. The purchaser agrees to provide the **[insert the U.S. Government's security assistance organization assigned responsibility]** (USG) a written physical security and accountability control plan within thirty 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.[1] In case of the loss, theft or unauthorized access of any NVD 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 thirty calendar days to the USG. This report will include the steps being taken both to recover the equipment (if applicable) and to prevent recurrence.

To assist in the development of purchaser's physical security and accountability control plan, the following minimum measures, modeled after U.S. Army policy for security of night-vision devices, are included as recommendations:

a. Physical Security:

1) When not issued for use, the unit commander will provide NVD controlled-access, double barrier protection. Examples of double barrier protection include:

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;

b) A locked steel cage or vault secured in a locked or guarded structure.

2) When in use, individuals issued NVD will secure the devices and be responsible for maintaining control of the devices at all times. NVD may be secured inside a locked enclosed van, trailer or armored vehicle if these vehicles remain under constant surveillance.

b. Accountability:

1) While not issued for use, the unit commander or his 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.

2) While issued for use, the unit commander or his designated representatives will perform a daily visual inventory of NVD."

[1] Under cases where there is an increased risk of loss, theft, misuse or unauthorized transfer, DTSA Director may require a post transfer inventory/inspection and or subsequent routine or periodic inspections. In such cases, the following or similar language will be inserted: "Upon prior coordination, the USG shall be permitted to conduct a six-month post shipment verification followed by periodic inspections and inventories by serial number at locations selected by the purchaser and under conditions agreeable to both parties."