



DSCA FACT SHEET
Non-Recurring Costs and Waivers
April 26, 2018

Background. The purpose of this fact sheet is to provide basic information regarding nonrecurring costs (NC).

What are non-recurring costs (NCs)? Nonrecurring costs (NCs) are grouped into two categories: “nonrecurring research development test and evaluation costs (RDT&E)” and “nonrecurring production costs.” RDT&E NCs are those costs funded by RDT&E appropriations to develop or improve the product or technology either through contract or in-house DoD effort. Nonrecurring production costs are those “one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run” (DoD Directive (DoDD) 2140.2: “Recoupment of Nonrecurring Costs (NCs) on Sales of U.S. Items). NCs are “sunk costs,” in that the U.S. Government pays them in order to develop or produce a given defense article or weapons system specifically for the U.S. armed forces. NCs may include expenditures for preproduction engineering, special tooling, special test equipment, testing, evaluation, and other related costs.

What are NC recoupment charges? In cases where Major Defense Equipment (defined in 22 USC 2794(6) as equipment with nonrecurring costs greater than \$50 million or total production costs greater than \$200 million) is developed, an NC recoupment value is determined based on the estimated production volume of the item. This anticipated volume includes both U.S. Government purchases as well as those anticipated for international customers or partners. NC recoupment charges are calculated as a pro rata, or proportional, share of the DoD's total non-recurring investment. If this equipment is sold to foreign governments and international organizations through the Foreign Military Sales (FMS) program, DoD is required under the Arms Export Control Act (AECA) to assess the NC recoupment charge on the FMS case unless these costs are waived in accordance with existing waiver authorities. Collection of the charge ceases once DoD's investment is fully recovered. Sales made to international customers of the same items under Direct Commercial Sales (DCS) procedures do not collect these costs. Established NC recoupment charges are published in Appendix 1 (Nonrecurring Cost Recoupment Charges for Major Defense Equipment) of the Security Assistance Management Manual (SAMM), which can be found at the following link: <http://www.samm.dscs.mil/appendix/appendix-1>

How are NC recoupment charges collected? Any NC recoupment charges collected from a foreign government through an FMS case are collected only when the United States receives notice that the applicable items have been delivered--- which generally occurs at some time after the FMS case on which they are levied was implemented. Any collections are deposited in the Special Defense Acquisition Fund (SDAF).

What are NC cost waivers and how are they applied? The AECA authorizes DoD to waive NC recoupment charges on FMS cases if any one of three justifications are met:

(1) The sale would significantly advance U.S. Government interests in NATO standardization, standardization with the Armed Forces of Japan, Australia, the Republic of Korea, Israel or New Zealand, or foreign production in the United States under coproduction arrangements (waive or reduce); or

(2) Imposition of the charge likely would result in the loss of the sale (waive only); or

(3) The increase in quantity resulting from the sale would result in a reduced unit cost for the same item being procured by the U.S. Government (waive only).

What is the approval process for processing waivers of NC recoupment charges? An NC waiver request originates with a written request from the foreign government interested in procuring a defense article from the United States through FMS. That request follows a review chain that includes the implementing agency within DoD preparing the FMS case, the Office of the Under Secretary of Defense for Acquisition & Sustainment (OUSDA&S), the Office of the Under Secretary of Defense Comptroller (OUSDC), the DSCA General Counsel, and the Office of the Under Secretary of Defense for Policy (OUSDP). The DSCA Director is delegated authority to approve waivers or reductions. Requests using the “loss of sale” authority must be approved in advance of implementation of the Letter of Offer and Acceptance (LOA).

Why are “loss of sale” NC waivers approved? In accordance with the AECA, anticipated loss of sale is a valid reason for waiving NC recoupment charges. Waiving these charges may assist in keeping U.S. FMS programs competitive with offers from other countries. Blanket waiver requests from foreign governments are not accepted nor considered.

What is the difference between NC waived and NC granted? An NC waiver request is submitted, and a waiver amount is calculated, based on an estimate of the quantity of defense articles the partner is considering for purchase. This approved amount is known as the “granted” amount. For various reasons, the foreign partner may decide to purchase fewer items than it originally intended and thereby purchase up to the full “granted” amount. The amount actually “waived” will be calculated based on the actual quantities ordered on the LOA. The “waived” amount must be equal to or less than the amount “granted.”

Have any recent audits covered NC Recoupment Waivers? Yes. The Government Accountability Office recently completed an audit on NC cost waivers in the Foreign Military Sales Program (GAO-18-242, January 2018), under which DSCA’s NC waiver review process

was examined. In that audit, GAO concluded that DSCA's approval of all waiver requests was in accordance with statutory requirements. The audit made a single recommendation which was that, "the DSCA Director should continue to identify opportunities to streamline the review process for nonrecurring cost waiver requests."

References:

- Section 21(e) of the Arms Export Control Act (AECA)
- Section 47(6) of the AECA (MDE Definition)
- Title 32, Part 165 of the U.S. Code of Federal Regulations: Recoupment of Non Recurring Costs on Sales of U.S. Items: <https://www.gpo.gov/fdsys/pkg/CFR-2011-title32-vol1/pdf/CFR-2011-title32-vol1-part165.pdf>
- DoD Directive 7000.14-R, Department of Defense Financial Management Regulation: Special Military Pay/Personnel Programs and Operating Procedures, Volume 15, Chapter 7, Paragraph 070305: <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA382179>
- DoD Directive 2140.02: Recoupment of Nonrecurring Costs (NCs) on Sales of U.S. Items: <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/214002p.pdf>
- DoD Directive 5105.65: Defense Security Cooperation Agency (DSCA): <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/510565p.pdf>
- DSCA E-SAMM Chapter 9.6: Security Assistance Management Manual: C9 - Financial Policies and Procedures: Pricing Waivers: <http://samm.dsca.mil/chapter/chapter-9#C9.6>.