



**DEFENSE SECURITY COOPERATION AGENCY
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**MEMORANDUM FOR THE DEPUTY UNDER SECRETARY OF THE AIR FORCE
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FOR DEFENSE EXPORTS AND COOPERATION
DEPUTY ASSISTANT SECRETARY OF THE NAVY
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DIRECTOR, NATIONAL GEOSPATIAL-
INTELLIGENCE AGENCY
DEPUTY DIRECTOR FOR INFORMATION
ASSURANCE, NATIONAL SECURITY AGENCY**

**SUBJECT: Procedures for Handling Draft and Informal 36(b) Notifications For Official
Use Only, DSCA Policy 09-37 [SAMM E-Change 142]**

Effective October 3, 2009, Chapter 5 of the Security Assistance Management Manual (SAMM) is updated to include instructions on the handling of Letter of Offer and Acceptance (LOA) documents that may require notification under Section 36(b)(1) of the Arms Export Control Act, as amended (AECA).

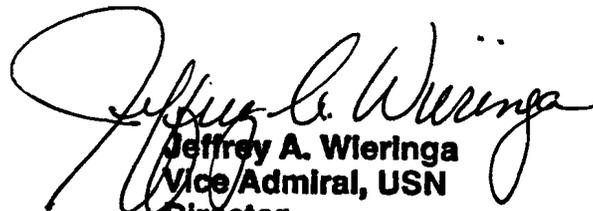
For many years, draft and informal 36(b) notifications have been coordinated in classified form until they are formally notified to Congress, at which time they normally become unclassified. The Department of State (DoS) has recently directed that it will determine on a case-by-case basis whether some draft and informal notifications may be handled as For Official Use Only (FOUO) until formal notification. New regulations

establishing the handling designation Controlled Unclassified Information (CUI) will eventually replace the FOUO designation. We have already begun implementing this direction, but the first opportunity to update the Defense Security Assistance Management System (DSAMS) will occur with a new software release slated for October 3, 2009. Concurrent with that update, the attached change will be included in the automated version of the SAMM found on the Defense Security Cooperation Agency (DSCA) webpage, as SAMM E-Change 142, to reflect changes in handling procedures summarized below.

1. Implementing Agencies (IA) will continue to treat all details related to a draft response to a Letter of Request (LOR) that meets 36(b) thresholds as classified and prepare them on the Secret Internet Protocol Router Network (SIPRNET) until advised by DSCA that DoS has approved FOUO handling.
2. The IA will provide the following information to DSCA (DBO/CFM) via SIPRNET as soon as enough detail exists to provide reliable data: 1) Purchaser, 2) Description of Major Defense Equipment or other main items being sold, 3) Quantity, 4) Total Case Value, and 5) whether annexes classified for other reasons (e.g., Sensitivity of Technology, Offset Certification) will be attached to the notification. DSCA (DBO/CFM) will forward this data to the DoS, which will advise in writing whether the draft notification may be prepared as FOUO.
3. DSCA (DBO/CFM) will notify the IAs of DoS' decision by email. If DoS does not approve FOUO handling, case details must remain classified until formal notification. If FOUO handling is authorized for the draft and formal notification, details of the case may be marked and handled as FOUO. Any annexes to the notification classified for other reasons will remain classified and will be handled separately via SIPRNET. IAs must maintain internal procedures to ensure all documents are handled appropriately.
4. IAs will continue to enter all cases requiring 36(b) notification into DSAMS using a masking country code, even if DSCA (DBO/CFM) has advised that FOUO handling has been approved, and will forward the masked case designator to DSCA (DBO/CFM) when it forwards the statutory notification data or by separate email. DSCA (DBO/CFM) will enter one of two new milestones in DSAMS: FOUO Approved (FOUOAPPROV) or FOUO Disapproved (DISAPFOUOU), to indicate whether DoS has authorized FOUO handling or not for the draft and informal notification.
 - a. If the milestone indicates DoS has approved FOUO handling for the draft and informal notification:
 - 1) The IA may replace the masking country code with the actual country code.
 - 2) DSAMS LOA documents will print with a FOUO header and footer until DSCA (DBO/CFM) enters the milestone indicating formal notification has been made.

- b. If the milestone indicates DoS has not approved FOUO handling, the IA will not be able to update the case with the actual country code until DSCA (DBO/CFM) has entered the milestone indicating that the formal notification has been delivered to Congress. The case will remain classified through staffing and the informal notification period, if one is required.

If you have any questions concerning the 36(b) processing, please contact Brenda English, DSCA (DBO/CFM), at (703) 601-3740 or email brenda.english@dscamil. If you have any questions concerning this policy or the SAMM, please contact Mike Slack, DSCA (STR/POL), at (703) 601-3842 or email michael.slack@dscamil.



Jeffrey A. Wieringa
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Director

Attachment:
As stated

cc:
STATE/PM-RSAT
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**Procedures for Handling Draft and Informal
36(b) Notifications as For Official Use Only (FOUO)
SAMM E-Change 142**

1. In Chapter 5, C5.4.11. and subparagraphs are deleted in their entirety and replaced with the following paragraphs:

C5.4.11. Preparing Classified LOAs. Paragraph C5.4.4. provides information on when LOAs may be classified. DSAMS is an unclassified system; therefore classified information cannot be entered into this system even on a temporary basis. Preparation of cases classified on a temporary basis in advance of Congressional notification is described at C5.6.4. In all other cases where classification is required, the following procedures should be applied when using DSAMS to write these cases.

C5.4.11.1. The country must ensure LORs are marked in accordance with classification guidelines described in C5.6.4.3. and must be specific in identifying the pieces of data to be classified. For example, some purchasers may wish for the nomenclature of the item to remain classified, others may want to classify the quantity or information normally provided in the line item description note. At a minimum, each paragraph must be annotated with the specific classification, to include data that can remain unclassified.

C5.4.11.2. Any piece of information that is considered classified cannot be entered into DSAMS. The bulk of the case (containing all unclassified information) may be created using DSAMS. Any classified information must be entered on the document via other means after the document has been printed (e.g., using a typewriter) or via separate classified annex. Pseudo or generic MASL lines may be used within the system to prevent the item from being disclosed. Using a pseudo MASL line does not allow automated application of pricing and/or waivers that are linked to the real MASL (e.g., Nonrecurring Cost (NC) Recoupment Charges). The case developer must ensure all appropriate charges are applied. If the application of specific pricing within DSAMS could reveal the item being purchased (e.g., inputting a specific NC value could be used to determine the exact item being sold), the pricing must be done off-line and only a total price for the line should be entered. When pseudo MASL lines are used, the correct MASL lines must be entered on the document off-line after it has been printed. The hard copy document must be marked in accordance with classification guidelines. Costs incurred to write and execute classified cases will be charged to the Purchaser in accordance with Table C5.T6.

2. In Chapter 5, C5.6.4. and subparagraphs are deleted in their entirety and replaced with the following paragraphs:

C5.6.4. Classification of AECA, Section 36(b)(1) Congressional Notifications. If a case is subject to AECA, section 36(b) (reference (c)) Congressional notification, any draft USG response document (e.g. LOA, notification, or Nonrecurring Cost Recoupment Waiver) that relates the country to the sale items is classified until DSCA notifies the Implementing Agency (IA) that the Department of State has authorized either For Official Use Only (FOUO) handling or unclassified formal notification to Congress. IAs must maintain internal procedures to ensure that all documents are handled appropriately. As DSAMS is an unclassified system, classified information cannot be entered into this system even on a temporary basis. It is the sum of the parts (purchaser, system, and quantity or value) in the context of their inclusion in a formal USG response that is classified. The individual parts, if unclassified in the LOR, remain unclassified and can be discussed in an unclassified environment provided that they are not associated with a USG response that has not yet been formally notified.

C5.6.4.1. Submission of Initial Information. The Implementing Agency will provide the following details to DSCA (DBO/CFM) via Secret Internet Protocol Router Network (SIPRNET) as soon as enough detail exists to provide reliable data: 1) Purchaser, 2) Description of Major Defense Equipment (MDE) or other main items being sold, 3) Quantity, 4) Total Case Value, and 5) whether annexes classified for other reasons (e.g., Sensitivity of Technology, Offset Certification) will be attached. DSCA (DBO/CFM) will forward this data to the Department of State, which will advise in writing whether the draft notification may be prepared as FOUO. All details related to potential 36(b) notifications will be continue to be classified and prepared on SIPRNET until State has determined that a particular case may be handled as FOUO.

C5.6.4.2. Initial Entry into DSAMS. All LOA documents for cases requiring 36(b) (reference (c)) Congressional notification will be entered into DSAMS with a case identifier using a “masking” country code (e.g. XX) to ensure the prospective purchaser is not identified. This identifier is used to enter all unclassified case information (including item descriptions) into DSAMS. Using the masking case identifier allows most of the case information to be entered and helps case developers continue their work prior to the notification. The purchaser cannot be named in the notes or other supporting data to ensure the information remains unclassified. The user must use caution when entering data under a masking country code. Many pricing waivers and restrictions are programmed in DSAMS under each specific country. When a masking country code is used, these waivers are not applied automatically and the user must apply them individually as appropriate. The application of specific pricing within DSAMS could reveal the purchaser (e.g., entering a specific waiver percentage for CAS could identify a list of potential purchasers). In these instances, the pricing is done off-line and only a total price for the line should be entered.

C5.6.4.3. Classified Attachments. If any data or attachments are classified by virtue of the information contained in them (e.g., Sensitivity of Technology, Offset

Certificate (see paragraph C5.6.5.5.)), then regardless of the Department of State's handling determination, those portions are kept on pages separate from the rest of the draft notification and marked with the required level of classification. Each paragraph is marked with the required classification level and the "classified by" and "declassify on" data are shown.

C5.6.4.4. Handling Determination and Procedures. As soon as the case has been entered into DSAMS, the Implementing Agency will inform DSCA (DBO/CFM) of the masked case identifier, either in conjunction with submission of the Advance and/or Statutory Notification Data Memorandum (Figure C5.F11.) or by separate email. Upon receipt of the Department of State's determination as to how the case will be handled, DSCA (DBO/CFM) will enter the appropriate milestone into DSAMS. If State approves FOUO handling, entry of the milestone will permit DSAMS to be updated with the actual country code and give LOA documents an FOUO header and footer until the formal notification is made. If FOUO handling is not approved, the milestone will not permit the actual country code to be entered prior to the unclassified formal notification to Congress. If none of the data or attachments is classified for other reasons, the documents are marked CONFIDENTIAL with all paragraphs preceded by (U). The bottom of the first page of each submittal shows: "Classified by SAMM (DoD 5105.38-M) (Chapter 5). Declassify On Statutory Notification To Congress Unless Required Otherwise By Competent Authority." In either event, upon entry of the actual country code, the remaining case information may be entered. Pricing that was not entered into the system to protect the classification is entered into DSAMS at this time.

3. In Chapter 9, add the following sentence at the end of paragraph C9.6.3.2.3.:

See C5.6.4. for classification requirements prior to formal notification for waiver requests associated with sales that require notification pursuant to section 36(b) of the AECA.