

## § 165.4

## 32 CFR Ch. I (7–1–10 Edition)

Defense. Production costs for the foreign military sales program and known direct commercial sales production are excluded.

(d) *Model*. A basic alpha-numeric designation in a weapon system series; e.g., a ship hull series, an equipment or system series, an airframe series, or a vehicle series. For example, the F5A and the F5F are different models in the same F-5 system series.

(e) *Nonrecurring production costs*. 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. Those nonrecurring cost include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. That includes costs of any engineering change proposals initiated before the date of calculations of the nonrecurring costs recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made or waived in accordance with the DoD FAR Supplement.

(f) *Nonrecurring research, development, test, and evaluation costs*. Those costs funded by a research, development, test, and evaluation appropriation to develop or improve the product or technology under consideration either through contract or in-house DoD effort. This includes costs of any engineering change proposal started before the date of calculation of the nonrecurring cost recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operation and maintenance appropriations.

(g) *Pro rata recovery of nonrecurring costs*. Equal distribution (proration) of a pool of nonrecurring cost to a specific number of units that benefit from the investment so that a DoD Component shall collect from a customer a fair (pro rata) share of the investment in

the product being sold. The production quantity base used to determine the pro rata calculation of major defense equipment includes total production.

(h) *Significant change in nonrecurring cost recoupment charge*. A significant change occurs as follows:

(1) A new calculation shows a change of 30 percent of the current system nonrecurring cost charge.

(2) The nonrecurring cost unit charge increases or decreases by 50,000 dollars or more; or

(3) Where the potential for a 5 million dollars change in recoupment exists. The total collections may be estimated based on the projected sales quantities. When potential collections increase or decrease by 5 million dollars, a significant change occurs.

(i) *“Special” research, development, test, and evaluation and nonrecurring production costs*. Costs incurred under a foreign military sale at the request of, or for the benefit of, a foreign customer to develop a special feature or unique or joint requirement. Those costs must be paid by the customer as they are incurred.

### § 165.4 Policy.

It is DoD policy that:

(a) A nonrecurring cost recoupment charge shall be imposed for sales of major defense equipment only as required by Act of Congress (e.g., Arms Export Control Act).

(b) The Under Secretary of Defense for Policy may grant a waiver to recoupment charges in accordance with § 165.7.

(c) Nonrecurring cost charges shall be based on the amount of the DoD nonrecurring investment in an item.

### § 165.5 Responsibilities.

(a) The Comptroller of the Department of Defense shall provide necessary financial management guidance.

(b) The Under Secretary of Defense (Acquisition) shall take appropriate action to revise the DoD Federal Acquisition Regulation Supplement in accordance with this part.

(c) The Under Secretary of Defense for Policy shall:

(1) Monitor the application of this part.

(2) Review and approve nonrecurring cost recoupment charges and non-recurring cost recoupment charge waiver requests received from foreign countries and international organizations for foreign military sales.

(3) Ensure publication of a listing of items developed for or by the Department of Defense to which nonrecurring cost recoupment charges are applicable.

(d) The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

(1) Determine the DoD nonrecurring investment in items developed for or by the Department of Defense and perform required pro rata calculations in accordance with this part and financial management guidance from the Comptroller of the Department of Defense.

(2) Validate and provide recommended charges to the Under Secretary of Defense for Policy. Supporting documentation will be retained until the item has been eliminated from the nonrecurring cost recoupment charge listing.

(3) Review approved nonrecurring cost recoupment charges on a biennial basis to determine if there has been a change in factors or assumptions used to compute a nonrecurring cost recoupment charge and, if there is a significant change in a nonrecurring cost recoupment charge, provide a recommended change to the Under Secretary of Defense for Policy.

(4) Collect charges on foreign military sales in accordance with DoD 7290.3-M,<sup>1</sup> "Foreign Military Sales Financial Management Manual" and on other sales, made prior to January 13, 1993, in accordance with DoD 7220.9-M,<sup>2</sup> "DoD Accounting Manual."

(5) Deposit collections to accounts as prescribed by the Comptroller, DoD.

(6) Request guidance from the Under Secretary of Defense for Policy, within 90 days, if an issue concerning a recoupment charge cannot be resolved.

<sup>1</sup>Forward written requests to Defense Institute for Security Assistance Management, ATTN: DISAM-DRP, Wright-Patterson Air Force Base, Ohio 45433.

<sup>2</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

#### § 165.6 Procedures.

(a) The nonrecurring cost recoupment charge to be reimbursed shall be a pro rata recovery of non-recurring cost for the applicable major defense equipment. Recovery of non-recurring cost recoupment charges shall cease upon the recovery of total DoD costs. Such charges shall be based on a cost pool as defined in §165.3. For a system that includes more than one component, a "building block" approach (i.e., the sum of nonrecurring cost recoupment charges for individual components) shall be used to determine the nonrecurring cost recoupment charge for the sale of the entire system.

(b) A nonrecurring cost recoupment charge shall not apply when a waiver has been approved by the Under Secretary of Defense for Policy in accordance with §165.7 or when sales are financed with U.S. Government funds made available on a nonrepayable basis. Approved revised nonrecurring cost recoupment charges shall not be applied retroactively to accepted foreign military sales agreements.

(c) When major defense equipment are sold at a reduced price due to age or condition, the nonrecurring cost recoupment charge shall be reduced by the same percentage reduction.

(d) The full amount of "special" research, development, test, and evaluation and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added "special" research, development, test, and evaluation and nonrecurring production costs, a pro rata share of those costs may be paid by the subsequent purchaser and transferred to the original customer if those special non-recurring costs exceed 50 million dollars. The pro rata share may be a unit charge determined by the DoD Component as a result of distribution of the total costs divided by the total production. Such reimbursements shall not be collected after 10 years have elapsed since acceptance of DD Form 1513, "U.S. DoD Offer and Acceptance," by the original customer, unless otherwise authorized by the Under Secretary of