



Department of Defense **INSTRUCTION**

NUMBER 7230.08
January 2, 2009

USD(P)

SUBJECT: Leases and Demonstrations of DoD Equipment

References: See Enclosure 1

1. PURPOSE

a. This Instruction reissues DoD Directive (DoDD) 7230.8 (Reference (a)) as a DoD Instruction (DoDI) in accordance with the authority in DoDD 5111.1 (Reference (b)) and Deputy Secretary of Defense Memorandum (Reference (c)).

b. Updates policy and responsibilities for:

(1) The leasing of DoD equipment to defense contractors and industrial associations for sales demonstrations to foreign governments in or outside the United States.

(2) The demonstration of DoD equipment to foreign governments in or outside the United States.

(3) The leasing of DoD equipment to defense contractors and industrial associations for display or demonstration at international trade shows or trade exhibitions.

(4) Direct DoD participation at international trade shows or trade exhibitions.

2. APPLICABILITY. This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS. These terms and their definitions are for the purposes of this Instruction.

a. direct DoD participation. The static display, demonstration (aerial or live), or staffing by DoD personnel of defense equipment. This includes displays providing information

on DoD systems and technology, as well as the transportation of equipment that will be part of a DoD exhibit or otherwise employed by the Department of Defense itself at an international trade show or trade exhibition. Staffing by DoD employees includes operating equipment, standing by displayed equipment, and answering questions on the equipment. Direct DoD participation also includes DoD employee attendance at international trade shows or trade exhibitions as official speakers or panel members. However, direct participation does not include attendance by DoD employees as observers or in other capacities not directly related to the transportation, display or demonstration, and staffing of defense equipment.

b. international trade shows and trade exhibitions. Events held outside the United States that are organized primarily for promoting the sale of aerospace and other defense products. Events that consist only of the demonstration or display of aircraft and other defense equipment for public enjoyment and community relations, including aerobatics demonstrations and static displays held on specifically-designated public days of international trade shows or trade exhibitions, are governed by DoDD 5410.18 (Reference (d)) and DoDI 5410.19 (Reference (e)).

4. POLICY. It is DoD policy that:

a. General

(1) When it is determined to be in the national security interest, the DoD Components may participate directly in international trade shows or trade exhibitions. Consideration of direct participation will normally be on a case-by-case basis using the following guidelines.

(a) Participation shall be based on national security and foreign policy objectives and shall be reserved for events held in strategically important regions in which the Department of Defense wants to demonstrate continued U.S. interest and commitment.

(b) Direct participation in a particular event must be supported by the relevant Military Department, Combatant Command, and U.S. Embassy before being considered.

(2) When foreign sales of U.S.-manufactured defense equipment would contribute to U.S. national security and foreign policy interests, the Secretaries of the Military Departments or their designees may lease DoD equipment to a defense contractor or industrial association for demonstration to foreign governments or for display or demonstration at international trade shows or trade exhibitions. Equipment may be leased only if: (1) the equipment is not needed for the term of the lease by the Military Department and can be made available without unduly impacting military readiness; and (2) appropriate Federal regulations governing export control are followed (parts 730-740 of title 15, Code of Federal Regulations (CFR) (Reference (f)), and parts 120-130 of title 22, CFR (Reference (g))).

(3) When considering requests pursuant to this Instruction, the DoD Components will comply with the requirements of DoD 5500.07-R (Reference (h)). In particular, avoid any appearance of DoD endorsement of a non-Federal entity, event, product, service, or enterprise,

stated or implied, by the Department of Defense or DoD employees; and ensure that no preferential treatment is given to any non-Federal entity.

b. Leases of Equipment to Contractors or Associations for Sales Demonstrations to Foreign Governments

(1) The Military Departments may lease DoD equipment to defense contractors or industrial associations for demonstration to foreign governments when that equipment is eligible for disclosure pursuant to National Disclosure Policy 1 (Reference (i)) or when an exception to Reference (i) has been obtained. (See DoD Directive 5230.11 (Reference (j).))

(2) The Military Departments may lease, pursuant to section 2667 of title 10, United States Code (Reference (k)), or lend, pursuant to section 2539b(a) of Reference (k), equipment to contractors or industrial associations. Lease and lending agreements shall be approved by the Secretary of the Military Department involved or a designated representative.

(3) Charges for leased equipment normally shall be determined in accordance with chapter 9 of Volume 11A, DoD 7000.14-R (Reference (l)); however, lease charges on equipment that has undergone significant modifications at the lessee's expense may be adjusted to recognize the lessee's investment. Furthermore, in accordance with section 2667 of Reference (k), the Secretaries of the Military Departments or their designees may, in order to promote the national defense or serve the public interest, determine that no lease charge will be assessed for the leased equipment or that a reduced charge (such as charging the contractor only for those hours that the equipment is operated in an aerial or live demonstration) will be assessed, notwithstanding the requirements of Reference (l). Examples of promoting the national defense or serving the public interest include, but are not limited to, helping preserve and broaden defense industrial base capabilities and enhancing economies of scale for DoD procurement.

(4) In addition to any charges assessed in accordance with subparagraph 4.b.(3) of this Instruction, the lessee or the loan recipient shall pay other appropriate charges for any supplies or services provided by DoD personnel in connection with the lease. Such charges may include but are not limited to the cost of spare parts, maintenance services, fuel, crew pay, and crew per diem. The lease shall provide that the lessee shall not charge any costs assessed in accordance with this Instruction, directly or indirectly, to any U.S. Government contract except to the extent chargeable to contracts for foreign military sales pursuant to subpart 225.7303-2 of the Department of Defense Federal Acquisition Regulation Supplement (Reference (m)).

(5) The U.S. Government may assume the risk of loss or damage of the equipment for the lessee or when U.S. Government personnel operate the equipment. The lessee shall assume the risk of loss or liability for damage in all cases except those in which the U.S. Government has chosen to assume the risk. The lessee shall cover the risk by hull insurance or by posting a surety bond on the depreciated value of the equipment being leased or, with the approval of the Military Department involved, the lessee may be self-insured. The Military Department involved shall review and approve the flight or operation plan to ensure that the risks are not inordinate to the need. In all cases, the lessee shall be required to hold the U.S. Government harmless against claims by third parties arising out of the lease or demonstration and to

indemnify the U.S. Government against liability to third parties arising out of the lease or demonstration.

c. Demonstrations by a Military Department to a Foreign Government

(1) A request by a foreign government for a demonstration of DoD equipment directly by DoD personnel, rather than by a contractor in accordance with paragraph 4.d. of this Instruction, shall be approved by the relevant Military Department if such demonstration is determined to promote the national defense or is in the public interest. Only equipment eligible for disclosure pursuant to Reference (i) may be demonstrated unless an exception to Reference (i) has been obtained. (See Reference (j).)

(2) The U.S. Government shall assume the risk of loss or damage of the demonstration equipment when a U.S. Government pilot is the pilot-in-command during flights or when U.S. Government personnel operate the equipment. If a foreign government operator or pilot is in control of the equipment or the equipment is not in the custody of the U.S. Government, the foreign government shall assume the risk and be required to reimburse the U.S. Government for any loss or damage to the equipment. In all cases, the foreign government shall be required to hold the U.S. Government harmless against claims by third parties arising out of the demonstration and shall be required to indemnify the U.S. Government against liability to third parties arising out of the demonstration.

d. Leases of Equipment to Contractors or Associations for Display or Demonstration at International Trade Shows

(1) Pursuant to section 1082 of Public Law 102-484, as amended (Reference (n)), a request by a defense contractor or industrial association to lease DoD equipment for display or demonstration at international trade shows or trade exhibitions shall be approved only if the defense contractor or industrial association agrees to reimburse the Treasury of the United States for:

(a) All incremental costs of military personnel accompanying the equipment including food, lodging, and local transportation.

(b) All incremental transportation costs incurred in moving such equipment from its normally-assigned location to and from the event.

(c) Any other miscellaneous incremental costs to the U.S. Government that would not have been incurred had this equipment not been leased to the defense contractor or industrial association. Transportation of equipment to and from an event that fulfills legitimate training requirements of the applicable Military Department that would otherwise have to be met does not constitute an incremental cost that must be reimbursed.

(2) The Secretaries of the Military Departments or their designees shall determine charges for leased equipment in accordance with Reference (l). In accordance with section 2667 of Reference (k), the Secretaries of the Military Departments or their designees may, in order to

promote the national defense or serve the public interest, determine that no lease charge shall be assessed for the leased equipment or that a reduced charge (such as charging the contractor only for those hours that the equipment is operated in an aerial or live demonstration) shall be assessed, notwithstanding the guidance in Reference (l). In such instances, the Military Departments are required to recover from contractors or industrial associations only those incremental costs that must be reimbursed pursuant to Reference (n).

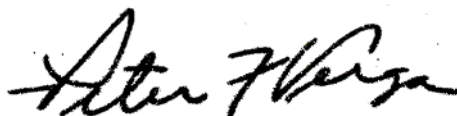
(3) In executing such leases, assumption of risk of loss or liability for damage shall be as provided in subparagraph 4.b.(5) of this Instruction.

e. Direct DoD Participation in International Trade Shows and Trade Exhibitions. In accordance with Reference (n), direct DoD participation in an international trade show or trade exhibition is authorized only if the Under Secretary of Defense for Policy (USD(P)) makes a determination that such participation is in the national security interests of the United States.

5. RESPONSIBILITIES. See Enclosure 2.

6. RELEASABILITY. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This Instruction is effective immediately.



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Under Secretary of Defense for Policy

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 7230.8, "Leases and Demonstrations of DoD Equipment," February 16, 1995 (hereby canceled)
- (b) DoD Directive 5111.1, "Under Secretary of Defense for Policy (USD(P)), December 8, 1999
- (c) Deputy Secretary of Defense Memorandum, "Delegations of Authority," November 30, 2006
- (d) DoD Directive 5410.18, "Public Affairs Community Relations Policy," November 20, 2001
- (e) DoD Instruction 5410.19, "Public Affairs Community Relations Policy Implementation," November 13, 2001
- (f) Export Administration Regulations (EAR), Title 15, Code of Federal Regulations, Parts 730-740, as amended
- (g) International Traffic in Arms Regulations (ITAR), Title 22, Code of Federal Regulations, Parts 120-130, as amended
- (h) DoD 5500.7-R, "Joint Ethics Regulation," August 1, 1993, as amended
- (i) National Disclosure Policy 1, "National Policy and Procedures for the Disclosure of Classified Military Information to Foreign Governments and International Organizations," October 1, 1998
- (j) DoD Directive 5230.11, "Disclosure of Classified Military Information to Foreign Governments and International Organizations," June 16, 1992
- (k) Sections 2667 and 2539b(a) of title 10, United States Code
- (l) Chapter 9 of Volume 11A, DoD 7000.14-R, "Department of Defense Financial Management Regulation," March 2008
- (m) Subpart 225.7303-2 of the Department of Defense Federal Acquisition Regulation Supplement, current edition
- (n) Section 1082 of Public Law 102-484, National Defense Authorization Act for Fiscal Year 1993, as amended by section 1031(d)(2) of Public Law 108-136, National Defense Authorization Act for Fiscal Year 2004

ENCLOSURE 2

RESPONSIBILITIES

1. USD(P). The USD(P) shall make the determination required by Reference (n) as to whether direct DoD participation in particular trade shows or trade exhibitions is in the national security interest.

2. DEFENSE SECURITY COOPERATION AGENCY (DSCA). The DSCA, under the authority, direction, and control of the USD(P), shall:

a. Formulate policy on DoD participation in international trade shows or trade exhibitions and elevate policy recommendations to USD(P) for consideration and issuance as appropriate.

b. Prepare decision memorandums for the USD(P) upon receipt of requests from the DoD Components for direct participation.

c. Provide guidance to the appropriate Combatant Commanders to assist in planning, coordination, and execution of the event after the USD(P) has decided on direct participation.

d. Oversee planning and implementation of direct DoD participation at international trade shows or trade exhibitions.

e. Compile records of DoD aircraft, vehicles, or vessels displayed in support of DoD participation at international trade shows or trade exhibitions.

3. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall submit written proposals for direct DoD participation in a particular trade show or trade exhibition to the Director, DSCA. At a minimum, requests for direct DoD participation shall be made by October 1 of the fiscal year prior to the fiscal year of show execution. The Heads of the DoD Components considering such proposals shall evaluate events using the criteria established in section 4 of the front matter of this Instruction. Requests originating with a Combatant Command shall be submitted through the Chairman of the Joint Chiefs of Staff. Requests shall include:

a. A general description of the event including what characterizes the event as an international trade show or trade exhibition.

b. A list of equipment or technology desired for display or demonstration.

c. The reasons that participation is in the national security interest.

d. The possible implications of participation for arms control efforts.

e. Acknowledgment of the requirement to provide DSCA, within 90 days after the event, a report listing equipment displayed or demonstrated.

4. SECRETARIES OF THE MILITARY DEPARTMENTS. In addition to performing the responsibilities in paragraph 3 of this enclosure, the Secretaries of the Military Departments shall:

a. Approve all leases to defense contractors or industrial associations of DoD aircraft and other equipment for demonstrations to foreign governments or for display at international trade shows and trade exhibitions. In the case of leases for demonstrations to foreign governments, the responsible Military Department shall ensure that the equipment is eligible as required by paragraph 4.b.(1) in the front matter of this Instruction.

b. For international tradeshow and trade exhibitions, provide to the Director, DSCA:

(1) A list of equipment proposed for lease before the opening of the event.

(2) Within 90 days of the end of the event, a report listing:

(a) DoD equipment under the control of that Military Department leased for the event.

(b) In the case of direct DoD participation, the Military Department equipment displayed or demonstrated at the event.

5. COMMANDERS OF THE COMBATANT COMMANDS. In addition to performing the responsibilities in paragraph 3 of this enclosure, the Commanders of the Combatant Commands, through the Chairman of the Joint Chiefs of Staff, shall:

a. Plan, coordinate, and execute direct DoD participation in international trade shows and trade exhibitions after the USD(P) has decided on direct DoD participation.

b. Provide to DSCA Director, within 90 days of the end of an international trade show or trade exhibition, a report listing:

(1) DoD equipment under the control of that Combatant Command leased for the event.

(2) In the case of direct DoD participation, a list of DoD equipment displayed or demonstrated at the event.