



THE ASSISTANT SECRETARY OF THE NAVY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20380-1000

DEC 4 2012

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Guidance for Implementing Statute Prohibiting Modifications of a Weapons Platform Within Five Years of Disposal

- Ref: (a) ASN(RDA) memo "New Guidance for Statute Prohibiting Modification of a Weapons Platform Within Five Years of Disposal; SECNAV Waivers and Statutory Exceptions" of 9 August 2006
(b) ASN(RDA) memo "Additional Guidance for Statute Prohibiting Modification of a Weapons Platform Within Five Years of Disposal" of December 23, 2009

Encl: (1) ASN(RD&A) Guidance on Statute Prohibiting Modifications of a Weapons Platform Within Five Years of Disposal; SECNAV Waivers and Statutory Exceptions

Enclosure (1) provides guidance and uniform procedures to implement Section 2244a of Title 10 United States Code – "Equipment scheduled for retirement or disposal: limitation on expenditures for modifications." This guidance supersedes previous guidance provided by References (a) and (b).

My point of contact for any questions regarding Section 2244a is Mr. Dan Gulotta, at 703-697-3781 or daniel.gulotta@navy.mil.

Sean J. Stackley

Distribution:

FFC N4

COMPACFLT N4

OPNAV (DNS, N8, N4, N6, N95, N96, N97, N98, N9D)

DASN Ships

DASN Air

DASN AP

DASN C4I and Space

DASN M&B

DASN ELM

DASN RDT&E

DACM
AGC
CNR
OLA
NAVAIRSYSCOM
NAVSEASYS
COM
MARCORSYS
COM
NAVSUPSYSCOM
PEO JSF
PEO (T)
PEO (A)
PEO (U&W)
PEO Space
PEO LCS
PEO Ships
PEO Subs
PEO Carriers
PEO IWS
PEO EIS
PEO C4I & Space
PEO LS
CHENG
DRPM SSP

ASN(RD&A) GUIDANCE

Statute Prohibiting Modifications of a Weapons Platform Within Five Years of Disposal; Secretarial Waivers and Statutory Exceptions

Purpose.

To disseminate information on the statutory prohibition against modifications of a weapons platform within five years of platform disposal; and to provide guidance and uniform procedures for the consistent implementation of this statute throughout the Department of the Navy. The Assistant Secretary of the Navy for Research, Development and Acquisition (ASN(RD&A)) is the Secretary of the Navy's delegated authority for determinations and approvals.

Background.

History of Statute. Section 8053 of the Fiscal Year (FY) 98 Department of Defense (DoD) Appropriations Act (Section 8053) prohibited the use of appropriations to modify any weapon platform within five years of the planned disposal of that platform. The only modifications not covered by this statute were safety modifications. Covered modifications could proceed only if a Secretariat waiver of the restriction was issued for the modification based on the interests of national security. Section 8053 was first enacted in FY 91 as an annual appropriations act provision, and then became permanent law in FY 98. The Office of the Assistant Secretary of the Navy for Research, Development and Acquisition (OASN(RD&A)) prepared a legislative proposal for the FY 06 DoD Omnibus Authorization bill that would exclude modifications valued at \$100,000 or below; this proposal was approved by DoD, OMB and forwarded to Congress. Subsequently, Congress executed statutory relief in a form broader than requested by the Navy via Section 372 of the National Defense Authorization Act for Fiscal Year 2006. Section 372 excludes from the statutory restriction not only those modifications less than \$100,000 in cost, but also those that involve reusable items (removed when the weapons platform is retired and installed on another platform) when the total cost of the modification (including removal, refurbishment and installation on another platform), as determined by the Secretary, is less than \$1 million. Section 372 also codifies the statute at Section 2244a of Title 10, United States Code (Section 2244a).

Current Statute. Section 2244a prohibits "modification of an aircraft, weapon, vessel, or other item of equipment that the Secretary plans to retire or otherwise dispose of within 5 years after the date on which the modification, if carried out, would be completed." Section 2244a provides that the following modifications are "exceptions" that are not covered by the Section 2244a prohibition: safety modifications; modifications that cost less than \$100,000; and modifications that, as determined by the Secretary, cost less than \$1,000,000 for reusable items that, upon the retirement or disposal of the platform will be removed, refurbished, and installed on another platform. Section 2244a allows the Secretary to waive the statutory prohibition for any modification covered by

the statute if the Secretary determines that carrying out the modification is in the national security interest of the United States. Whenever the Secretary issues such a waiver, the Secretary shall notify the congressional defense committees in writing.

Implementation Guidance and Procedures.

Method to Determine Application of Section 2244a to a Particular Modification. When a specific fiscal year, but no specific date, is identified for the planned decommissioning of a ship or disposal of a weapons platform, then the Navy will use the last day of that fiscal year (September 30, 2XXX) for purposes of calculating whether or not the modification of the ship or other platform will be completed within five years of the disposal. Using this method, if the modification will be completed within five years of the September 30, 2XXX date, then Section 2244a is deemed to apply to that modification for purposes of processing any required Secretarial determinations or waivers.

Safety Modifications. Section 2244a provides that a safety modification is an exception that is not covered by Section 2244a. No Secretarial determination is required for these modifications. Where the modification is approved and documented through established processes (e.g. Navy Modernization Process), no further action is required. When no formal approval process for implementing the modification exists, and the modification would otherwise not be documented, a Memorandum for the Record (MFR) shall be created documenting the following minimum information.

- The name and hull number of the ship/aircraft involved.
- The title/ name of the alteration, and description of the work.
- The Fiscal Year and type of appropriations to be used (Other Procurement Navy, Operations and Maintenance, Navy, Research Development Testing and Evaluation)
- A description of the safety features of the modification.
- The planned date of disposal or decommissioning of the platform.
- Contact information for the requiring command, funding authority, and funding source. Information shall include name, office designation, address, e-mail address and telephone numbers.

For non-nuclear surface ships, aircraft carriers, and submarines, the MFR shall be signed by the Ship Program Manager (delegable to the Deputy Ship Program Manager). For other platforms, the MFR shall be prepared by the organization that initiates the modification of the weapons platform (e.g. Type Commander, Fleet Commander, Program Executive Office, and Systems Command), reviewed by legal counsel, and approved by an official within the chain of command at the SES/Flag level. A copy of the approved MFR shall be forwarded to ASN(RD&A), the Deputy Assistant Secretary

of the Navy for Ship Programs (DASN Ships), the Deputy Assistant Secretary of the Navy for Air Programs (DASN Air) and the Office of the Chief of Naval Operations (OPNAV) SECNAV Waiver Coordinator (N2/N6).

Modifications Below the \$100,000 Threshold. Section 2244a provides that a modification that costs less than \$100,000 is an exception that is not covered by Section 2244a. No Secretarial determination is required for these modifications. Where the modification is approved and documented through established processes (e.g. Navy Modernization Process), no further action is required. When no formal approval process for implementing the modification exists, and the modification would otherwise not be documented, a MFR shall be created documenting the following minimum information.

- The name and hull number of the ship/aircraft involved.
- The title/name of the alteration, and description of the work.
- The Fiscal Year and type of appropriations to be used (Other Procurement Navy, Operations and Maintenance, Navy, Research Development Testing and Evaluation).
- The planned date of disposal or decommissioning of the platform.
- The source of funds (Resource Sponsor).
- The total cost of the modification. The total cost of the modification is calculated by adding the cost of equipment procurement, installation, and removal. Identify the cost of each of these items.
- The coordination Points of Contact (POCs) for each of the following: requiring command, funding authority, and funding source. Include POC name, e-mail address, phone, office code.

For non-nuclear surface ships, aircraft carriers, and submarines, the MFR shall be signed by the Ship Program Manager (delegable to the Deputy Ship Program Manager). For other platforms, the MFR shall be prepared by the organization that initiates the modification of the weapons platform (e.g. Type Commander, Fleet Commander, Program Executive Office, and Systems Command), reviewed by legal counsel, and approved by an official within the chain of command at the SES/Flag level. A copy of the approved MFR shall be forwarded to ASN(RD&A)/DASN(Ships)/DASN(Air) and the OPNAV SECNAV Waiver Coordinator (N2/N6).

Software-Only Modifications. A Secretarial determination is not required for modifications that involve only software changes (regardless of added functionality or capability), with no associated physical changes to the system or platform. Software-only modifications that are valued less than \$100,000 do not require a MFR. Examples of software-only modifications:

- Mailout software updates: CD/DVD with updated software actually mailed to individual ships to be installed by ships force. Cost is indicated as zero in Ship Change Documents (SCDs) (although there is a minimal cost associated with CD/DVD procurement and associated testing/certification).
- Software download updates: Software is pushed to units via the NIPR or SIPR NET or actively downloaded online by ships force. Cost is indicated as zero in SCDs (although there is a minimal cost associated with testing/certification).

Inclusion of System/Equipment Procurement Cost in Calculations of Modification Cost. The system or equipment procurement cost shall be included when calculating the total cost of the modification, with the following exceptions:

- Cross-decked equipment that is drawn from a rotatable pool which is intended to be installed and removed as needed.
- Laboratory and test equipment or non-permanent changes installed to support a specific test, which will be removed upon completion of the test.
- Developmental systems that are installed for the purpose of assessing the system itself, and will be removed upon completion of the assessment.
- Embarkable systems, such as the laptops and servers brought with the Marine Expeditionary Units, are not considered modifications to the vessel.

Modifications of Reusable Items Below the \$1 Million Threshold. Section 2244a requires a Secretarial determination that a modification meets the qualifications for the less-than-\$1 million threshold exception. Secretarial determination authority is delegated to DASN Ships and DASN Air for platforms under their cognizance. This authority may not be delegated below the DASN level. In absence of the cognizant DASN, the ASN(RD&A) Principal Civilian Deputy (PCD) may issue the determination. A copy of the signed determination will be provided to ASN(RD&A). To obtain the required Secretarial determination, the following information must be documented and forwarded to DASN Ships/DASN Air as appropriate, via OPNAV N2/N6 for staffing waivers and determinations:

- The name and hull number of the ship/aircraft involved.
- The title/name of the alteration, and description of the work.
- The Fiscal Year and type of appropriations to be used (Other Procurement Navy, Operations and Maintenance, Navy, Research Development Testing and Evaluation).
- The source of funds (Resource Sponsor).
- The total cost of the modification. The total cost of the modification is calculated by adding the cost of equipment procurement, installation, removal, and refurbishment. Identify the cost of each of these items.

- Documentation and certification that the equipment to be installed on the platform is reusable, and will be removed, refurbished and installed on another platform. A Navy official (Flag/SES level) at the requiring command (see Note 1) shall sign a certification that "the reusable items of value will, upon retirement or disposal of the platform, be removed from the platform and be refurbished and installed on another platform." Describe procedures to be followed to ensure that these three steps will be executed in the future, including what other possible platforms would receive the equipment and the Navy office responsible for execution of the equipment removal, refurbishment and installation.
- The coordination POCs for each of the following: originating command, funding authority, and funding source. Include POC name, e-mail address, phone, office code.

Secretarial Waivers. Modifications that are covered by Section 2244a can proceed only if a Secretarial waiver of the restriction is issued in advance based on the interests of national security. Secretarial waiver authority is delegated to DASN Ships and DASN Air for platforms under their cognizance. The cognizant DASN will be responsible for signing the waiver as well as the Congressional notifications. This authority may not be delegated below the DASN level. In absence of the cognizant DASN, the Principal Civilian Deputy (PCD) may issue the waiver. A copy of the signed waiver will be provided to ASN(RD&A). Requests for a waiver must be forwarded to ASN(RD&A)/DASN Ships/DASN Air via OPNAV N2/N6 for staffing waivers and determinations, for approval, with the following minimum information.

- The name and hull number of the ship/aircraft involved.
- The title/name of the alteration, and description of the work.
- Identification of whether the equipment is separable and useable after disposal of the platform.
- A detailed description of the need for, and purpose of, the modifications.
- Identification of the impact to the Navy if the modifications are not performed. This information is relevant to support the Secretarial certification that the modification is in the best interests of national security.
- A certification that the modification is mission critical and that there is no alternative to the installation.
- The Fiscal Year and type of appropriations to be used (Other Procurement Navy, Operations and Maintenance, Navy, Research Development Testing and Evaluation).
- The planned date of disposal or decommissioning of the platform.
- The source of funds (Resource Sponsor).

- The total cost of the modification. The total cost is calculated by adding the cost of equipment procurement, installation, and removal. Identify the cost of each of these items.
- The coordination POCs for each of the following: originating command, funding authority, and funding source. Include POC name, e-mail address, phone, office code.

Accelerated Decommissionings: In the event an acceleration of planned retirement or disposal date moves a unit within the five year window after obligation or expenditure of funds, the platform in-service program manager shall prepare a Memorandum for the Record documenting the circumstances and timeline vice submission of a waiver request. The following minimum information should be provided:

- Ship Name and Hull Number:
- Retirement/Disposal Dates:
 - Previous: *XX* as per *Mon Yr SASDT*
 - Current: *XX* as per *Mon Yr SASDT*
- Ship Change Document (SCD)/Title and Description of Work:
- Total modification cost (sum of items 1-4 below): \$XX already expended/\$XX unexpended
 - Cost of equipment procurement: \$XX already expended/\$XX unexpended
 - Cost of installation (includes DSA): \$XX already expended/\$XX unexpended
 - Cost of removal: \$XX remaining
 - Cost of refurbishment: \$XX remaining
- Fiscal year and type of appropriations to be used:
- The source of funds (Resource Sponsor):
- Coordination POCs:
 - Requiring Command
 - Funding Authority
 - Funding Source