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# END-USE MONITORING AND THIRD-PARTY TRANSFERS

## INTRODUCTION

The sources for the policies and procedures for the end-use monitoring (EUM) and third-party transfer of U.S.-origin defense articles, technical data, services, and training are The *Arms Export Control Act* (AECA), the *Foreign Assistance Act of 1961* (FAA), as amended, various specific legislative initiatives, and the applicable regulations of the Department of State (DOS) and the Department of Defense (DOD). Because of the nature of funding, specific legislation, and other unique aspects of the various programs, the restrictions and procedures for transfer or disposal under these individual programs vary significantly. This chapter is designed to augment *Security Assistance Management Manual* (SAMM) and serves as a guide to assist the defense community and the recipient foreign governments in fulfilling the obligations for EUM and third party transfer of American defense articles and services.

The U.S. policy goal for the EUM programs is preserving the technological advantages enjoyed by U.S. military forces over potential adversaries by impeding access to militarily significant items and technologies.

A country receiving weapons and weapons technology from the U.S. must agree to a variety of controls. The release of materiel or data must be properly cleared within the DOS and DOD coordination process. Delivery will be to the proper representative of the recipient country or the organization which must provide substantially the same degree of security protection the U.S. government (USG) would provide for the articles or information received. The recipient guarantees that it will use the articles or information for the intended purpose and will not transfer or change the end-use (including disposal of the articles without prior consent of the USG). In addition, the recipient must permit verification of the security and end-use by representatives of the U.S.

These requirements, which are specified in the SAMM. Chapters 5 and 8, will be included in any of the documents authorizing the transfer of U.S.-origin defense articles and services. For items transferred under the Foreign Military Sales (FMS) system, this normally is the Letter of Offer and Acceptance (LOA) with specific notes related to protection and verification. For commercial sales the purchasing nation may sign either a *Nontransfer Use Certificate* (DSP-83) or a *Statement by Ultimate Consignee and Purchaser* (BIS-711 or BXA-711), and a security assurance agreement. Transfers of materiel and services through other grant programs (which are not documented on an LOA) are made only after the recipient has signed a bilateral agreement subject to the terms of the *Foreign Assistance Act* (FAA), Section 505.

## END-USE MONITORING

### The Department of Defense's Golden Sentry Program

The *Arms Export Control Act* (AECA) requires a comprehensive end-use monitoring program for arms sales and transfers authorized by the AECA and the FAA to verify with reasonable assurance a recipient's compliance with USG export controls. The DOS actively monitors, reports, and addresses unauthorized arms transfers and diversions in accordance with Section 3 of the AECA, and some of

the procedures and considerations used in the DOS Blue Lantern program are incorporated into the framework of the DOD Golden Sentry program. The Defense Security Cooperation Agency (DSCA) is responsible for administering the review of requests for government-to-government exports of defense articles, defense services, and related technical data. DSCA provides significant details for the EUM program in Chapter 8 of the SAMM.

Title to leased or loaned articles remains with the USG as detailed in the terms of the lease; however, EUM requirements still apply.

The SCO is normally assigned the responsibility for the in-country EUM requirements of the Golden Sentry program. For example, SCO officials may be inventorying the equipment of units where they are assisting in obtaining and integrating equipment, software and training. They will be able to certify end-use of equipment from personal observation in the course of other assigned duties in addition to holding the mandated inspections.

When an indication of unauthorized end-use is found within a country and the discrepancy is not resolved locally, the country team forwards the information to DOS to determine if an investigation and a report to Congress is required in accordance with Section 3 of the AECA.

### **Responsibilities for the Conduct of the Golden Sentry End-Use Monitoring Programs**

The responsibilities for the conduct of the Golden Sentry EUM program are found in the SAMM, Chapter 8, paragraph C8.2.3 and Table C8.T2.

There are two levels of EUM to be conducted by the SCO and the recipient nation, routine and enhanced. The level of monitoring of various articles and services whether enhanced or routine is indicated by the case line in the LOA. Routine EUM includes those actions by both the SCO and the partner nation government as a part of the daily business of the host nation and routine visits by the SCO in its relations with partner's military activities. It is conducted on non-sensitive defense articles or services. They will be able to certify end-use of equipment from personal observation in the course of other assigned duties, rather than making a special representation to the participating nation's government.

Enhanced EUM (EEUM) are those actions required by the SAMM and other directives as specified in the appropriate transfer documents for sensitive items which require greater physical security and accountability. EEUM articles require actual inventories by the purchasing country and the SCO, and, under certain circumstances, a compliance assessment visit by a DSCA-led team.

SAMM Section C8.3 defines the articles or services requiring additional controls on end-use and measures on end-use. The following articles or services require additional controls and measures to be used on end-use:

- Classified items
- Communication security equipment
- Arms, ammunition, and explosives
- Night vision devices
- STINGER/Man Portable Air Defense System missiles and grip stocks
- JAVELIN missiles and command launch units
- Tube-launched Optically-tracked Wire-guided missiles

- Advanced Medium-Range Air-to-Air Missiles (AMRAAM) and Air-Intercept Missile
- Category III missiles (Stand-off Land Attack Missile-Expanded Response, AIM-9X and HARPOON Block II missiles)
- Precision guided missiles, e.g., cruise missiles (Tomahawk and Harpoon variants, and the family of joint munitions e.g.)
- Unmanned aerial vehicles

### **Additional Controls: Night Vision Devices Security Compliance Plan**

Paragraph C.8.3.3 of the SAMM outlines additional monitoring duties associated with the transfer of NVDs. The implementing agency will notify the SCO and DSCA with the serial numbers of all NVDs and provide the anticipated and actual shipping date. A USG representative will communicate to the host nation the requirements for specific EUM of NVDs at the time of the initial inventory. The USG representative will conduct 100% inventory by serial number. The SCO maintains this record. The host nation will make their storage facilities and physical security and accountability plan for the NVDs to the EUM team and SCO. The NVD Security Compliance Plan template may be downloaded from the Security Cooperation Information Portal (SCIP) EUM Community.

### **Country Team Assessment - Required Information [SAMM Table C5.T1]**

If the request is for Night Vision Devices (NVDs), the following information must be provided:

- Justification for the type and quantity of NVDs requested (LOR development may require coordination with MILDEP for recommended model/quantity.
- The operational plan for use and specific end-users to include:
  - Description of the primary mission for the units to receive the NVDs.
  - Extent of military interoperability missions/training with U.S. Forces
  - Extent of anti-terrorist missions for the units to receive the NVDs
- Assessment of the purchaser's capacity to afford substantially the same degree of security and accountability protection as given by the U.S. and willingness to accept the NVD physical security and accountability [note contained in Table C5.T5 of the SAMM]
- The SAO plan for EUM and compliance verification
- Additional information in support of transfer request (e.g., status of previous NVD transfers and results of past U.S. security inspections/inventories)

DOD has made a determination that the provisions of Section 40A of the *Arms Export Control Act* (AECA) enacted in 1996 apply to all U.S. origin defense articles and services transferred under any government program. [Public Law 104-164]

- The President shall establish a program that provides for End-Use Monitoring in order to improve accountability with respect to defense articles sold, leased or exported under the AECA or FAA.
- Required, to the extent practical monitoring of U.S. arms transfers by providing reasonable assurance that recipients comply with USG export control requirements regarding the use, transfer, and security of defense articles and services.

The *National Defense Authorization Act of 2008*, provides the legal basis for the requirement to implement a control system in Iraq. According to law, the president shall implement a policy to control the export and transfer of defense articles to Iraq. This includes registration and monitoring of all small arms provided to the Iraqi Government, as well as any Iraqi groups or individuals. A program of EUM and a detailed record of all defense articles transferred under any security assistance program are included in the export and transfer control policy.

This policy has been implemented by DOD Instruction 4140.66 *Registration and Monitoring of Defense Articles*, which provides the detailed guidance for Iraq and Afghanistan. It is currently under revision to include Pakistan and other countries.

## **SECURITY COOPERATION OFFICE AND THE PARTNER NATION END-USE MONITORING PLAN**

The SCO and the partner nation should develop a combined EUM compliance plan that spells out the procedures that will be followed to ensure the requirements for both routine and enhanced EUM as specified in the appropriate transfer documents are met. The plan should include the following provisions:

- Procedures to be followed for EUM visits
- Partner nation internal accountability procedures
- Procedures for reporting required inventories and inspections
- Procedures for record keeping on the part of the host nation and the SCO. As a minimum the records maintained by the host country should include:
  - Procedures for reporting possible violations and corrective action required
  - Procedures for use of the SCIP

Visits to assess EUM compliance programs are an important part of the Golden Sentry program. There are three types of visits that the SCO and host nation will be involved with. [See SAMM Chapter 8, Paragraph C8.2.4.] The purpose of the EUM familiarization visit is to assist the host nation, the SCO, and the Geographic Combatant Command (GCC) with the development of EUM compliance plans. [See checklist at SAMM C8.T3.] The EUM compliance assessment visit is to evaluate the overall EUM program of the SCO and the host nation and to assess host nation's compliance with the security and accountability provisions contained within the LOAs for EEUM items. [See checklist at SAMM C8.T4.] An EUM investigation visit must be conducted if a possible violation of the AECA, Section 3, and/or the FAA, Section 505 is suspected. Because of the unique nature and political sensitivity associated with these visits, they are handled on a case-by-case basis in concert with DOS.

The SCIP EUM Community contains detailed information on items that have been transferred to a partner nation. It is to be used to report all inspections and other information concerning EUM and third party transfers. It also provides the capability to generate reports concerning the status of selected items transferred to a partner nation, as well as other information. To enroll or access the SCIP EUM Community visit the web site at: <http://www.scportal.us/home/>.

### **The Department of State's Blue Lantern Program**

The DOS program to conduct pre-license, pre-shipment/post-license, and post-shipment checks of defense articles and services transferred through direct commercial sales (DCS) is called the Blue Lantern Program. Blue Lantern end-use checks are conducted by U.S. mission personnel abroad or personnel from the DOS.

The purpose of the Directorate of Defense Trade Controls (DDTC) is to verify the destination and specific end-use and end-users of U.S. commercial defense exports and transfers. Blue Lantern cases are targeted based on potential risk, and are not randomly selected. These end-use checks encourage compliance with legal and regulatory requirements and have proven effective in addressing the growing problem of gray arms trade – the use of fraudulent export documentation or other techniques to acquire defense articles through legitimate channels for unauthorized end-users. The U.S. Chief of Mission can request assistance from the Security Cooperation Office (SCO) to conduct Blue Lantern checks in country. [SAMM C8.2.3. and C8.T2.] If there are expected temporary duty (TDY) costs the SCO should request funding from the Embassy.

### **The Department of Commerce’s EXTRANCHECK Program**

EXTRANCHECK is the Department of Commerce (DOC) program that focuses on monitoring dual-use items transferred by U.S. Industry to a foreign nation via the *Export Administration Regulation* (EAR). DOC approves the export license and primarily focuses on “pre-delivery” controls (licensing checks) and post-delivery inspections. Post-delivery inspections are performed by Bureau of Industry and Security (BIS) Attachés, “Sentinel Teams” from DOC BIS, and U.S. Foreign and Commercial Service Officers.

### **Funding for End-Use Monitoring Requirements**

Direct costs for EUM are itemized in the budget and include total estimated expenses that will require distribution of funding authority to the SCO. For management purposes, there will be a special exhibit for EUM requirements. Enhanced EUM requirements that have just been received in country and were not included within the budget target ceiling level will be submitted as a unfunded requirements (UFR).

The GCC reviews and modifies the budgets submitted by each SCO. When the GCCs are satisfied with their budgets, DSCA reviews the overall budget and prepares it for submission to DOD and Congress.

SCOs should start the request for funds as a budget requirement as soon as the country starts the Letter of Request (LOR) process for an EEUM item. This allows time to include the EEUM monitoring requirements in the budget process and thus should then have the funds required when needed. For a more detailed discussion of the overall budgeting process, refer to Chapter 17 of this textbook, “Resource Management for the Security Cooperation Organization”.

## **THIRD-PARTY TRANSFERS AND CHANGES IN END-USE**

A third-party transfer is any retransfer of title, physical possession or control of defense articles, training or technical data acquired under authorized USG transfer programs from the authorized recipient to any person or organization which is not an employee, officer or agent of that recipient country. A change in end-use is considered a third party transfer.

Examples of possible third-party transfers include retransfer of:

- Possession or title of defense articles or related technical data to any other foreign government
- Possession or title of defense articles related technical data to any private companies

- Possession or title of defense articles to *bona fide* museums within the original receiving country
- Possession or title of defense articles to private education organizations within the original receiving country

Change of end-use is defined as any change in the usage of defense articles and services that deviates from the original purposes for which the items were sold.

Examples of possible changes of end-use could be:

- Withdrawal of military end items from the operational inventory for display at a government run museum
- Use of unserviceable/non-repairable vehicles as targets on a firing range
- Transfer of demilitarized military end items or machinery from the armed forces to civil government or educational institutions
- Transfer of a U.S.-origin military vehicle from an operational military unit to be used as police vehicle assigned to a police department or other law enforcement agency
- Demilitarization and redistribution of defense articles re-cycled among host government agencies
- Demilitarization and complete disposal of defense articles such that the materiel is no longer considered a defense article

### **Requirement for Prior Approval**

The DOS, on behalf of the President, must consent to the retransfer of defense articles or services originally provided under the provisions of the FAA or the AECA to anyone not an officer, employee, or agent of that recipient country.

In considering a request for approval to retransfer any implement of war to another country, DOS will not agree to the transfer unless the United States itself would transfer the defense article under consideration to that country. In addition, DOS will not consent to the retransfer of any significant defense article on the *United States Munitions List* (USML) unless the item is demilitarized prior to transfer, or the proposed recipient foreign country commits in writing to provide appropriate security and to retransfer of the articles only after first obtaining the consent of the DOS.

The transferring government must send a written request either directly or through the SCO by letter, fax, or e-mail to the DOS, Directorate of Regional Security and Arms Transfer if the items were originally provided through a government-to-government program. [See Attachment 18-1 for more details] For previously exported DCS USML articles and technical data contained in Section 1123.9(c) of the *International Traffic in Arms Regulations* (ITAR), the original exporter or recipient may apply directly to the Directorate of Defense Trade Controls. Some Commerce Department *Commerce Control List* (CCL)-licensed items require a license for initial export, but may be retransferred within the receiving country, and in selected cases re-exported without further USG coordination.

The request for retransfer must be supported by end-use and retransfer assurances from the proposed recipient. If the initial recipient is not the final end-user, the final end-user must be identified and appropriate end-use and retransfer assurances must be provided by both the intermediate and final recipients. If proposed recipients are unable to, or unwilling to, identify the final end-user and end-use of the articles, the transfer will not be approved. In addition, if brokers are involved as

intermediaries in the transfer, they must be clearly identified in the transfer request, and they must be registered with the PM/DDTC as brokers.

If the receiving country has a blanket end-use and retransfer assurance agreement with the USG, end-use and retransfer assurances specific to individual transfers may not be required.

The DOS must notify Congress of proposed transfers that meet AECA Section 32, congressional reporting thresholds, as described in Chapter 2 of this textbook, “Security Cooperation”.

## **DISPOSAL**

When the recipient government no longer requires an item and there is no other agency that wants it, disposal may be in order. Thus, disposal is the final change of end-use. Normally, title to equipment acquired through a grant program such as Military Assistance Program (MAP) or excess defense articles (EDA) passes to the recipient country. The U.S. retains reversionary rights to the equipment so the recipient must agree to return the equipment to the USG when it is no longer required for its intended purpose should the USG so desire.

If the Defense Reutilization and Marketing System (DRMS) determines that the materiel can neither be employed any longer nor redistributed. The recipient is obligated to take responsibility for its proper disposal and seek consent of DOS prior to doing so.

Net proceeds of any such disposal or sale of MAP and grant EDA equipment will be paid to the USG unless another cost sharing arrangement has been previously approved. For guidance on MAP equipment disposal. [SAMM, Chapter 11, Section C11.12.10 and Table C11.T23]

For items acquired through FMS with a country’s own funds, or through Foreign Military Financing or grant programs other than MAP or EDA, the USG has no reversionary right. All proceeds of approved sales/transfers go to the host nation.

Title to DCS acquired U.S.-origin defense articles passes to the recipient country upon shipment. USG approval is required for third-party transfer and change of end-use only for those DCS purchased defense articles that are subject to export license control, i.e., those items on either the USML or the CCL. Regardless of whether or not the export application was accompanied by a duly executed form DSP83, all DCS USML exports must have retransfer authorization from the DDTC. It is the host nation, not the USG, which selects the proposed method of disposal/transfer. All proceeds of approved sales/transfers go to the host nation.

If the partner nation has been granted the right to dispose of materiel, its disposal procedures should follow in form and content those used by DRMS in disposing of U.S. excess defense articles, though local forms and channels may be used as appropriate. The following functional areas are those deemed most important in complying with security trade control requirements:

- Determination of demilitarization requirements
- Conduct of sale
- Bidder screening, end-use and retransfer assurance
- Import certificate/delivery verification as required

In some instances materiel can only be disposed of as scrap, but this does not negate the requirement to follow appropriate security procedures. Details, which must be followed in the conduct of local sales, are found in DOD 4160.21-M. *Defense Materiel Disposition Manual*, and DOD 4160.21-M-1, *Defense Demilitarization Manual*.

## SUMMARY

To preserve American technological advantage, countries receiving weapons and weapons technology must agree to provide the same level of protection for the articles and information as would the U.S. itself. This requirement applies whether a country receives material through commercial channels or through a government-to-government mechanism. The DOS's Blue Lantern program applies to technologies acquired through DCS procedures, while the DOD's Golden Sentry applies to FMS transfers.

Under Golden Sentry, two levels of monitoring are possible, depending on the sensitivity of the technology involved. The SCO and the partner nation must jointly develop an EUM plan that will ensure that proper care is taken of the material or data.

Third-party transfers always require the prior approval change in the USG. These transfers are understood to be not just transfers to another country but to any use not agreed upon in the original transfer document. Disposal of the equipment is the final stage of EUM and must conform to U.S. principles to safeguard the technology from possible misuse.

## REFERENCES

*Arms Export Control Act of 1976 (AECA)*, as amended.

*Foreign Assistance Act of 1961 (FAA)*, as amended.

*Export Administration Act*.

DOD Instruction 4140.66, *Registration and Monitoring of Defense Articles*.

Defense Property Disposal System (DPDS) bidders' master file extract (list of cleared/barred bidders).

Defense Property Disposal System Demilitarization Microfiche.

*Defense Reutilization Marketing System Handbook*.

DOD Directive 4100.37, *Retention and Transfer of Materiel Assets*.

DOD Directive 4160.21, *DOD Personal Property Utilization and Disposal Program*.

DOD Directive 4140.1, *Supply Chain Materiel Management Policy*, April 22, 2004.

DOD 4160.21-M, *Defense Materiel Disposition Manual*, August 18, 1997.

DOD 4160.21-M-1, *Defense Demilitarization Manual*, October 2, 1991.

DOD Directive 4165.60, *Real Property Acquisition, Management, and Disposal*.

DOD Directive 5105.38-M, *Security Assistance Management Manual (SAMM)*.

DSP-83, *Nontransfer and Use Certificate* (Office of Defense Trade Control).

*Export Administration Regulations (EAR)*.

*International Traffic in Arms Regulations (ITAR)* (Title 22, Parts 120-130).

GAO/NSIAD-00-208, *Changes Needed to Correct Weaknesses in End-Use-Monitoring Program*, August 2000.

Burk, Fleur A. *How Little Is Enough? U.S. End-Use Monitoring and Oversight of the Weapons Trade*. Center for Defense Information January 2002.

**ATTACHMENT 18-1**  
**DEPARTMENT OF STATE THIRD PARTY TRANSFER REQUEST FORM**

**What does the foreign government include in the request?**

The following questions should be addressed in a written request by governments proposing to transfer of U.S.-origin defense articles/data to another country or private entity on a permanent or temporary basis prior to U.S. State Department taking action.

**Standard questions for requests to U.S. for authority to retransfer government-origin defense articles:**

1. Who is the divesting government?
2. What commodity/equipment/service/technical data is to be transferred? (Please provide NSNs.) What are the serial numbers? (These must be provided for significant military equipment).
3. How did the divesting country originally acquire the defense article(s)?
  - Foreign military sale? (Please provide case identifier or explanation as to why it is unavailable)
  - Military assistance program?
  - Excess defense article grant or sale?
  - Drawdown?
  - Cooperative development program?
  - Memorandum of Understanding?
  - Direct commercial sale? If DCS, contact Office of Defense Trade Controls
  - Was this equipment acquired with national funds or with grant funding such as foreign military financing?
  - Other?
4. When was/were the article(s) acquired by the divesting country?
5. What was the original acquisition value (necessary for congressional approval/reporting)?
6. What is the current value, if applicable?
7. Why does that government wish to divest itself of the equipment?
8. Who is the proposed recipient?
9. Is this a temporary or permanent transfer to the proposed recipient?
10. What is the proposed recipient's planned end-use for the articles? (Please provide as much detail as possible.)
11. Does the proposed recipient currently possess this model of equipment?
12. Are there any intermediaries? If so, who? What is their role? Where are they located and what are the points of contact?
13. Will any net proceeds be realized from this sale, transfer, or disposal? If so, what are the estimated net proceeds?
14. Is there a certain date requested for approval? If so, please indicate the date and provide the relevant details.
15. Please provide point of contact details for the divesting government, the proposed recipient, and any intermediaries.

