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## End-Use Monitoring of Defense Articles and Services

[The following is a reprint of SECDEF WASHINGTON DC//USDP: DSAA message, 151718Z November 1996, subject as above.]

REF: A. Public Law 104-164/AECA SEC 40A; signed into law 21 July 1996  
B. SAMM, DoD 5105.38-M (See Appendix A for acronyms below)

1. This is an action message. See Paras. 7-10. Reference A established Sec. 40A to the AECA. Extracts are as follows:
  - A. In order to improve accountability with respect to defense articles and services sold, leased, or exported under the AECA or the FAA, the President shall establish a program which provides for the end-use monitoring (EUM) of such articles and services.
  - B. To the extent practicable, such program shall provide for the EUM of defense articles and services in accordance with standards that apply for identifying high risk exports for regular end-use verification developed under AECA Sec. 38[G][7], commonly referred to as the Blue Lantern Program. The program shall be designed to provide reasonable assurance the recipient is complying with the requirements imposed by the USG with respect to use, transfers, and security of defense articles and services and such articles and services are being used for the purpose for which provided.
  - C. The program must provide for the end-use verification of defense articles and services that incorporate sensitive technology, that are particularly vulnerable to diversion or other misuse, or where diversion or misuse could have significant consequences. The program must also prevent diversion, through reverse engineering or other means, of technology incorporated in defense articles.
  - D. A report on program status is required in January, 1997. Annual reports within the DoS Congressional Presentation Document are required thereafter.
2. DSAA has completed a review of item accountability in conjunction with passage of this legislation. A number of actions are underway, in coordination with DoS, to ensure compliance with Sec. 40A. The actions are designed to provide accountability assurance, in accordance with AECA Sec. 38[G][7] Standards, at a level equal to the DoS Blue Lantern Program. The principal actions are:
  - A. A booklet is to be published to explain major EUM features of the transfer process. The booklet will be for use of those within the security assistance community with responsibilities related to EUM.
  - B. Reference B will be changed based on guidance in paragraphs seven through ten of this message.
  - C. Training, most notably at DISAM, will be adjusted to highlight the areas most critical to proper defense item accountability.
3. Sec. 40A emphasizes EUM assurances comparable to Blue Lantern. Blue Lantern is a DoS program initiated in 1990 to monitor U.S. commercial defense trade, specifically verification of end use. Its primary purpose is to ensure defense articles, defense services, and related technical data are exported in compliance with the AECA.

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- A. Blue Lantern provides pre and post-shipment checks as part of the export review process. Pre-shipment checks generally verify planned transactions [commodity type, quantities, and end-use] are accurately reported to DoS and item shippers and recipients as represented on export documentation are bona fide. Post-shipment checks ensure items were received by the approved entity and are being used in accordance with the terms of each DoS approval.
  - B. The Blue Lantern program has established a list of twenty standards, or catalysts for action, for identifying high risk commercial defense exports. For example, the first is "customer or purchasing agent is reluctant to provide foreign end-use or end-user information." Review indicates government controls provide good assurance of adequate controls for each standard. For example, the first Blue Lantern standard is met through the following features of the governmental transfer process:
    - (1) A Presidential determination must be in place [FAA Sec. 503[A]/AECA Sec. 3[A][1]] authorizing AECA and FAA Programs with the potential item recipient.
    - (2) DoS must have approved each sale (AECA Sec. 2).
    - (3) Generally, DoD may sell only to its defense equivalent within the recipient country.
    - (4) Government-to-government programs will not proceed, and item delivery will not occur, if any end-use or end-user questions are not resolved.

Each Blue Lantern standard is to be listed and compared with governmental programs in the EUM booklet [Publication projected by 1 Feb 97].

4. Blue Lantern adds USG oversight during defense item delivery. This is a standard feature of government-to-government programs. Government programs involve USG representatives from program planning to delivery of items, support of the items during many years of use, and ultimate disposal. SAO (FAA Sec.5[A]) and other members of the U.S. country team, U.S. commercial interests, and other contacts remain engaged beyond delivery, allowing interface with the user throughout an item's life.

- A. Most government program controls are embedded throughout security assistance processes. Their existence is seen through study of security assistance legislation, policies, and procedures. They are also shown through AECA Sec. 3 Reports to Congress, submitted by DoS based on indications of unauthorized use of items provided under AECA and FAA programs.
  - B. Procedures often have multiple purposes, one being end-use controls. Procedures incorporating those controls must be understood and followed in order to minimize item misuse.
5. End-use controls within government programs are focused on:
- A. Assuring item recipients understand and will comply with transfer agreement responsibilities, including maintenance of internal accountability. It is seldom effective for USG representatives to substitute their own actions for in-country accounting controls.
  - B. Checks and Cross-Checks. These ensure items are ordered by a country authorized to participate in AECA and FAA programs. The country must have formally agreed to

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provide protection for items received. The checks assure release only when approved within the DoS-DoD coordination process. They also ensure delivery to the proper representative of the ordering country.

6. Certain categories of items provided under AECA and FAA programs are subject to extraordinary controls.

A. The following apply for classified items:

- (1) Security agreements are normally developed when release of classified military information is anticipated. This occurs before cooperative programs are actively pursued, including those under the AECA and FAA. General security of military information agreements (GSOMIA) provide, among other things, for U.S. personnel to conduct periodic security assessments of classified item recipient countries to determine whether the government has the capability and intent to protect the classified items, information, or materiel. This is done under the auspices of the U.S. National Disclosure Policy Committee (NDPC) security program for foreign governments. Under the program, teams of U.S. security professionals make these periodic assessment visits.
- (2) Early in the process leading to release of a defense item, analyses are completed to determine if classified hardware or information will be released and to what extent. Classified items are released cautiously, to meet the immediate needs within each program.
- (3) Standard terms within each LOA or other transfer agreement require the same security controls as the U.S. would provide for itself. Investigations and inspections are completed, and clearance is granted by DoD, prior to shipment of any classified item through a country freight forwarder. Transportation plans, which show specific controls in each stage of item delivery, must be approved by DoD prior to shipment of classified items outside defense transportation system channels.
- (4) Classified items receive extra attention from USG intelligence organizations, as well as groups such as the Technology Transfer Working Group (TTWG). The TTWG is made up of senior representatives of U.S. Intelligence Agencies and U.S. Departments of Commerce, Defense, Justice, Treasury, and State. It meets regularly to share information and plan actions to address problems related to illicit use or transfer of equipment or technology, U.S. and non-U.S., worldwide.

B. Extra controls also apply for arms, ammunition, and explosive items. The following, from DoD 5100.76-M, *Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives*, are illustrative:

- (1) The most sensitive AA&E items, designated category 1, require two person certification of serial numbers at the point of shipment; sealing and locking of the container in the presence of those individuals; use of DoD-owned, chartered, or approved carriers; and DoD physical security to the recipient country.
- (2) Once received, the country normally provides protection for all U.S.-origin items which is equivalent to that provided by the U.S. This includes all facets of item protection such as: storage facilities, construction and lock specifications, fences, and other fixed perimeter security, and timing of guard patrols.

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- C. There are further gradations of control for other items. For example, pilferable items require higher than routine protection but less protection than Classified or AA&E.

7. When an indication of unauthorized end-use is found within a country, checked locally, and not resolved, the country team forwards the information to DoS (PM/DTC and PM/ATEC). Among actions by DoS will be a determination as to whether AECA, Sec. 3, criteria for a report to Congress of a possible end-use violation have been met. These reports are an indicator of end-use and retransfer weaknesses within the EUM process for the involved country. Reports of violations during the past two years show no instance of unauthorized end-use prior to delivery in AECA or FAA government-to-government programs. The reports show a relatively small number of unauthorized end-use occurrences which are confined to the period after items were delivered. This tends to reaffirm that the greatest uncertainty in item control lies between the time the item is delivered to the foreign recipient and authorized disposal. This is the period during the life of each item when USG involvement is least direct, and feedback on item status is least structured. It is therefore to be viewed as the weakest segment within the processes supporting EUM. The following guidance will be followed:

- A. The need for post-delivery sample checks, led by the SAO, is indicated when:
- (1) There is any indication an AECA Sec. 3 violation has occurred. These checks are normally confined to the indicated problem, but expand if a larger problem or weakness is found.
  - (2) Substantial defense interaction or other ties are developing with countries whose interests are not compatible with those of the U.S. For example, the end user holds relatively high technology U.S. items and also holds items from, or has defense relationships with, countries:
    - (A) not eligible for AECA and FAA programs (See SAMM Table 600-1),
    - (B) for which AECA and FAA programs have been suspended for other than financial reasons, or
    - (C) for which exports are proscribed (See ITAR Part 126.1).
  - (3) Unusual political or military upheaval is impending or has occurred. This includes large troop and equipment movements which could weaken normal accountability controls.
  - (4) Countries unfriendly to the U.S. in the region are illicitly seeking U.S. equipment or support items of the types held by the end-user.
  - (5) Substantial problems or weaknesses are found during a GSOMIA security survey.
- B. Checks are mandatory at any time the DoS reports an AECA Sec. 3 violation as follows:
- (1) Within 60 calendar days after notification such a report has been made, the SAO within the involved country will initiate action to complete sample checks of at least two U.S.-origin items for each Sec. 3 Report. The SAO may itself conduct sample checks but assistance from other Country Team offices, the supporting Unified Command, or from experienced counterparts within the host country can

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often facilitate a level of checks which would not be possible using SAO resources alone.

- (2) Items selected for special checks will be those where receipt and subsequent accountability have been representative of the item involved in the DoS report.

8. Special checks discussed in Para. 7 are to gather information to ascertain the adequacy of the country accounting process. A secondary purpose is to determine if EUM problems exist for the specific items chosen. When the checks are performed, the SAO should be directly involved or kept informed in order to be aware of potential problems leading to the report which prompted the check. For example, transfer of an item to another country without DoS approval might result in a focus on:

- A. Areas where an accounting lapse is creating conditions where the country defense establishment could lose item control.
- B. Training of personnel regarding EUM requirements and procedures, and,
- C. Practices regarding personnel or other actions related to deliberate or repeated loss of control.

9. The check should provide information for both the country and the U.S. to help determine if:

- A. The country's process is sound but failed due to unusual circumstances,
- B. The process is not given sufficient priority, or
- C. The country is supporting economic initiatives, defense interests, or other agendas which are not consistent with EUM requirements and, from a local perspective, outweigh those requirements.

While making the above checks or taking other actions related to the checks, SAOs or other country team members should be alert for unauthorized use of hardware items as well as information provided during training or in technical assistance support. This includes misuse of O&M, study, or production technical data.

10. Information gained during these checks which could be useful in correcting the immediate problem or improving future end-use controls should be shared with DoS, DoD, and the Unified Command. Information obtained by country team members indicating a violation of end-use or retransfer assurances in AECA or FAA transfer agreements should always be reported to the country team leadership, DoS and DoD. Information from personnel not on the country team should be reported through the chain of command to DoS (Attn: PM/DTC and PM/ATEC).

11. This message has been coordinated with DoS. Guidance in paragraphs seven through ten is effective 1 Jan 97. Questions may be directed to Mr. Wayne Wells, DSN 664-6635 or Commercial (703)664-6635, X367.