
END-USE MONITORING AND THIRD-PARTY TRANSFERS

INTRODUCTION

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) are sources for the policies and procedures for the end-use monitoring (EUM) and third-party transfer of United States (U.S.)-origin defense articles, technical data, services, and training. 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 serve as a guide to assist the defense community to include 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 end-use monitoring 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 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 *Security Assistance Management Manual* (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 FAA, Section 505.

END-USE MONITORING

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 is called the Blue Lantern program. Blue Lantern end-use checks are conducted by U.S. mission personnel abroad or personnel from DoS's Directorate of Defense Trade Controls (DDTC) 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 assistance office (SAO) to conduct Blue Lantern checks in country. [SAMM C8.2.3. and C8.T2.] If there are expected TDY costs the SAO should request funding from the Embassy.

The Department of Defense’s Golden Sentry Program

The 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 SAO is normally assigned the responsibility for the EUM requirements of the Golden Sentry program. For example, SAO 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 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 C8.2.2 and Table C8.T2.

There are two levels of EUM to be conducted by the SAO and the recipient nation, routine and enhanced. Routine EUM includes those actions by both the SAO and the partner nation government as a part of the daily business of the host nation and routine visits by the SAO 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 SAO, and, under certain circumstances, a compliance assessment visit by a Defense Security Cooperation Agency (DSCA)-led team.

SAMM Section C8.3 defines the articles or services requiring additional controls on end-use and the additional measures to be used. Below is the current list of items that require EEUM:

- Classified items
- Communication security equipment (COMSEC)
- Arms, ammunition and explosives (AA&E)
- Night vision devices (NVDs)
- STINGER/man portable air defense system (MANPADS) missiles and grip stocks
- JAVELIN missiles and command launch units
- Tube-launched optically-tracked, wire-guided (TOW II-B) missiles
- Advanced medium-range air-to-air missiles (AMRAAM) and air-intercept missile (AIM-120)
- Category III missiles (stand-off land attack missile-expanded response (SLAM-ER), and AIM-9X)
- Harpoon Block II missiles
- Precision guided missiles, e.g., cruise missiles (Tomahawk and Harpoon variants, and the family of joint munitions e.g., JDAM and JSOW)
- Unmanned aerial vehicles (UAV)
- SLAM-ER

SECURITY ASSISTANCE OFFICE AND THE PARTNER NATION END-USE MONITORING PLAN

The SAO 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 SAO. As a minimum the records maintained by the host country should include but not be limited to:
 - Inventories of items received and on hand
 - Reports and authorization documents of items that have been consumed, expended, damaged, destroyed, transferred and changed end use
- Procedures for reporting possible violations and corrective action required
- Procedures for use of the Security Cooperation Information Portal (SCIP)

Visits to assess EUM compliance programs are an important part of the Golden Sentry program. There are three types of visits that the SAO 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 SAO, and the combatant command (COCOM) 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 SAO and the host nation and to assess host nation's compliance with the security and accountability provisos contained within the LOAs for EEUM items. [See checklist at SAMM C8.T4.] A 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 SAO tool box of the SCIP 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 gain access to the SCIP, all registered users can go to <https://www.scportal.us/portal>. For further assistance send an e-mail to EUMHELPDESK@dscamilitary.com. One can register on the web site to establish an account. To enroll for the SCIP EUM Application (SAO Toolbox/EUM) visit the DISAM web site at: <http://www.disamilitary.com/itm/Automation/SCIP.htm>.

THIRD-PARTY TRANSFERS

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
- Retransfer of possession or title of defense articles related technical data to any private companies
- Retransfer of possession or title of defense articles to *bona fide* museums within the original receiving country
- Retransfer of 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

- 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 of any retransfer of 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 [see Attachment 18-1, of this chapter] either directly or through the SAO by letter, fax, or e-mail to the DoS, Directorate of Regional Security and Arms Transfer (PM/RSAT) if the items were originally provided through a government-to-government program or to the Directorate of Defense Trade Controls (PM/DDTC) for items previously exported DCS. USML articles and technical data are contained in section 123.9(c) of the International Traffic in Arms Regulations (ITAR). The original exporter, or original recipient, may make an application to the DDTC directly. Some Commerce Department Commerce Control List-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 normally 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 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 normally 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 DoS 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 certain thresholds, as described in Chapter 2, “Security Assistance Legislation and Policy” of this textbook.

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. However 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 is neither redistributable for further use or cannot be employed any longer, 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 see 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 (FMF) 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 Commerce Control List (CCL). Regardless of whether or not the export application was accompanied by a duly executed 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 direct commercial sales 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 SAO and the partner nation must jointly develop an end-use monitoring plan that will ensure that proper care is taken of the material or data.

Third-party transfers always require the prior approval of 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 end-use monitoring 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.

FMS letter of offer and acceptance (LOA).

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

Defense Property Disposal System (DPDS) 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 Disposal Program.*

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

DoD 4160.21-M, *Defense Materiel Disposition Manual.*

DoD 4160.21-M-1, *Defense Demilitarization Manual*

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

Fleur A. Burk, *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.

