
END-USE MONITORING AND THIRD PARTY TRANSFERS

INTRODUCTION

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). Restrictions and procedures for transfer or disposal under these individual security cooperation (SC) programs may vary significantly due to the source of funding, specific legislation and other unique aspects of the various programs. This chapter is designed to augment chapter 8 of the Security Assistance Management Manual (SAMM), which is the authoritative source for information on the DoD EUM program, 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 U.S. origin defense articles and services primarily provided through various DoD and DoS programs.

Amending the AECA, Congress enacted section 40A in 1996 (Public Law 104-164) which states, “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.” The Director, DSCA, has been delegated authority by the Secretary of Defense and USD (P) to administer DoD’s EUM program, known as Golden Sentry, which will be covered shortly, to comply with Section 40A of the AECA.

The DoD has made a determination that this requires, to the extent practical, monitoring of U.S. arms transfers by providing “reasonable assurance” that recipients comply with U.S. government (USG) export control requirements regarding the use, transfer, and security of defense articles and services. DoD also determined that this requirement applies to all U.S.-origin defense articles and services transferred under any government program.

The U.S. policy goal for the EUM program is to preserve the technological advantages enjoyed by U.S. military forces over potential adversaries by impeding access to militarily significant items and technologies. As defined in the SAMM chapter 8, EUM is a program designed to verify that defense articles or services transferred by the USG to foreign recipients are being used in accordance with the terms and conditions of the transfer agreement or other applicable agreement. The foreign recipients of weapon systems and weapons systems technology from the U.S. must agree to a variety of controls as discussed in chapter 7 of this textbook. The release of defense articles or data to a non-USG entity must be properly cleared within the DoS and DoD coordination processes. The decision to transfer or not hinges in great part on the recipient’s willingness to comply with three conditions:

- Transfer - No transfer of or change in the end-use (including disposal of the articles) without prior consent of the USG
- Use - Use the articles or information for the intended purpose
- Protection - Provide substantially the same degree of security protection the USG would provide for the same article or information received

In addition, the recipient must permit verification of the security measures and end-use by representatives of the U.S.

These requirements are specified in the SAMM, chapters 5 and 8, and will be included in any of the documents authorizing the transfer of U.S.-origin defense articles and services.

DoD END-USE MONITORING

Department of Defense's Golden Sentry Program

As previously mentioned, DoD implements the requirements of the AECA with an end-use monitoring program known as "Golden Sentry." The Defense Security Cooperation Agency (DSCA) is responsible for reviewing 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.

Responsibilities for Golden Sentry

Monitoring the use of U.S.-origin items is a joint responsibility of the partner nations and the USG. USG representatives have full responsibility for defense articles until title is transferred to the partner nation. The partner nation assumes this responsibility based on the terms under which the transfers are made, including restrictions on physical security and accountability. USG representatives retain a continuing responsibility under Golden Sentry to assist DSCA to verify the appropriate end-use and security of U.S.-origin defense articles and defense services sold or transferred on a government-to-government basis.

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. This paragraph and table lay out the organizational responsibilities listed for DSCA, the Military Departments and Implementing Agencies, the Combatant Commands (CCMDs), the Defense Threat Reduction Agency (DTRA), and the Security Cooperation Office (SCO) (which can include elements of the Defense Attaché Office or U.S. Embassy as determined by SCO manning) and DISCS. All organizations listed in C8.T2 are required to maintain Golden Sentry POCs and must ensure EUM policies and programs cover the "cradle-to-grave" lifespan of transferred defense articles.

As part of their responsibilities, CCMDs and SCOs are required to develop EUM Standard Operating Procedures (SOP) to implement country-specific EUM policy and procedures. They must also forward these SOPs to DSCA (DSCA.NCR.BPC.MBX.EUM-HELPDESK@mail.mil); C8.T3 outlines the SOP Minimum Information Requirements. The SCO is normally assigned the responsibility for in-country EUM requirements of the Golden Sentry program. Depending upon the scope of the responsibilities, the SCO can request TDY assistance to conduct inventories.

Additional Requirements for Country Team Assessment (CTA) for Sensitive Items

If a host nation has a request for Missile Technology Control Regime (MTCR) Category I Intelligence, Surveillance, & Reconnaissance (ISR) Unmanned Aerial Vehicle (UAV)/Unmanned Combat Aerial Vehicle (UCAV), C4ISR, GEOINT, STINGER, White Phosphorus, or NVDs, a plan for end-use monitoring for sensitive and advanced war fighting technology and the SCO's plan for compliance verification will need to be addressed in the CTA as referenced in SAMM C5.T1a.

There are two levels of EUM to be conducted by the SCO and the recipient nation: routine and enhanced.

Routine EUM

The SCO is required to conduct routine EUM visits with host nations, usually in conjunction with other assigned SC duties. SCOs should perform EUM of defense articles and services exported via the Foreign Military Sales (FMS) and other building partner capacity (BPC) programs during visits to the host nation's installations, through interaction with other assigned embassy personnel and USG individuals working with the host nation's military and security forces, embassy and interagency reports and news media information.

To assist SCOs in conducting routine EUM, DSCA has developed, in SCIP under the Routine EUM Options/Summary Report, a Routine EUM Report feature that allows the SCOs to identify all Routine EUM items in their country. They can print out this report, which contains controlled unclassified information, as an excel spread. DSCA has also developed a "watch list" of specific categories of defense articles exported via FMS that includes, but is not limited to: battle tanks, armored combat vehicles, artillery systems, fixed and rotary wing aircraft, unmanned aerial systems, warships and military vessels, missiles and missile systems, military vehicles, bombs, crew served and individual weapons, platform-mounted night vision systems, and man-portable NVDs monitored through Routine EUM. To further assist SCOs in documenting routine EUM that they have performed, DSCA developed in SCIP under the Routine EUM Options/Routine Checks a Routine EUM Check Template; see below. The SCOs can simply fill this out in SCIP and submit it. SCOs must document Routine EUM on at least a quarterly basis and maintain records for five years.

Figure 18-1
SCIP Routine EUM Report Template

The screenshot shows a web form titled "Routine EUM Check". It is divided into sections for data entry. The "Basic Information" section includes fields for Country, Defense Article, Generic Code, Date of Routine EUM Check, and Quantity. Below these are fields for Official, Office, and Duty Position. A section for "Routine EUM Performed through the following:" contains several radio button options: Inspection/Observation by Reporting Officer, Inventory by Reporting Officer, Report by U.S. Government Employee/Military Member, Report by U.S. Contractor, Review of the Host Nation's Records, Open Source Media (TV, Newspaper, Magazine, etc.), and Other. There is also a Location field. A large text area is provided for "Circumstances of monitoring (Site visit in conjunction with official business, etc.): (minimum 50 characters)". At the bottom, there are two tabs: "Optional" and "* Required". The form concludes with "Cancel" and "Next" buttons.

Of note, ownership "titles" to defense articles that are leased or loaned remain with the USG, as detailed in the terms of the lease; however, EUM requirements still apply. Additionally, there are instances in which particular items normally subject to routine EUM are transferred with notes restricting the conditions under which they may be transported, stored, or employed. SCOs should be aware of these restrictions and alert to indications or reports that suggest failure to comply. See SAMM C8.3.2 for further information.

Enhanced EUM

Enhanced EUM (EEUM), based on the principle of trust with verification, is required for defense articles and services or individual transfers specifically designated for EEUM by the MILDEP's export policy, the interagency release process, or by DoD policy as a result of consultation with Congress. All EEUM-designated defense articles are required to be sold on defined order lines using an EEUM-coded Military Articles and Services Listing (MASL) and are accompanied by specialized physical security and accountability (by item serial numbers) notes. The following items are currently EEUM-Designated Defense Articles and listed in Table C8.T4 of the SAMM:

- Advanced Medium Range Air-to-Air Missiles (AMRAAM)
- Air Intercept Missiles-9X (AIM-9X)
- Communication Security (COMSEC) Equipment
- Enhanced Targeting Data (ETD) Physical Security and Accountability Requirements
- Harpoon Block II Missiles
- Javelin Missiles and Command Launch Units (CLUs)
- Joint Air-to-Surface Standoff Missiles (JASSM)
- Joint Standoff Weapons (JSOW)
- Large Aircraft Infrared Countermeasures (LAIRCM)
- Night Vision Devices (NVDs)
- Standard Missiles-3 (SM-3)
- Standoff Land Attack Missiles Expanded Response (SLAM-ER)
- Stinger Missiles and Gripstocks
- Terminal High Altitude Area Defense (THAAD)
- Tomahawk Missiles
- Tube-Launched, Optically-Tracked, Wire-Guided Missiles (TOW-2B)
- Unmanned Aircraft Systems (UAS) designated as Category I by the Missile Technology Control Regime (MTCR)

Other defense articles may require EEUM on a case-by-case basis as a result of the transfer approval process.

SCOs are responsible for maintaining an accurate database of all EEUM-designated defense articles exported to the host nation by using the EUM application in the SCIP database for inventory monitoring and historical data. The SCIP-EUM database includes a Reconciliation Report of EEUM-designated defense articles by country that SCOs should use as the basis for establishing the baseline and all required inventories and reporting.

SCOs are required to conduct EEUM through planned/coordinated visits to the host nation's installations. SCOs must arrange with the partner nation to verify in-country receipt of EEUM defense articles by serial number within 90 days of delivery. Subsequent inventories require serial number verification and physical security checks of storage sites or other facilities where EEUM-designated

defense articles are kept and verification that recipients are complying with the terms and conditions stated in the transfer agreements. SCOs must physically inventory 100 percent of in-country EEUM defense articles annually except for EEUM defense articles not available for observation (deployed, returned to the United States for repair, etc.), or stipulated otherwise in the SCIP-EUM database or by separate policy memo. The inventory must include review of the recipient's records of verifications as required by the LOA or other arms transfer document note. Deployed equipment must be inventoried within 90 days after returning from operational use or deployment. SCOs will provide the host nation formal notification of all findings noted during EEUM checks and request the host nation to provide within 60 days the actions taken to correct the findings.

Country Specific EUM

Some countries have unique EUM requirements mandated by Congress. The National Defense Authorization Act of 2008 provides the legal basis for the requirement to implement a control program in Iraq. According to Section 1228 of NDAA 2008, the President shall implement a policy to control the export and transfer of defense articles delivered to Iraq. This includes all defense article registration and monitoring of all small arms provided to the Iraqi Government, as well as any Iraqi groups or individuals. Additionally, the law requires the USG to maintain detailed records of origin, shipping, and distribution for defense articles transferred under the Iraq Security Forces Fund authorization. This law was implemented by DoD Instruction 4140.66, Registration and Monitoring of Defense Articles (dated October 15, 2009).

The National Defense Authorization Act of 2010, section 1225, provides the legal basis for the requirement to implement control programs in Afghanistan and Pakistan. This law was implemented by the reissuance of DoD Instruction 4140.66 Registration and End-Use Monitoring of Defense Articles and/or Defense Services (dated September 7, 2010). This instruction directs the establishment of a registration and monitoring system for DoD government-to-government transfer or export of defense articles and/or defense services transferred to Iraq, Afghanistan, and Pakistan using funds made available to the DoD including, but not limited to, funds made available pursuant to the Iraq Security Forces Fund, Afghanistan Security Forces Fund, Pakistan Counterinsurgency Fund or any other security assistance program.

Specifically, DoD Instruction 4140.66 directs the applicable SCO to develop the necessary compliance plans and procedures to administer and maintain a comprehensive system of registration and monitoring of defense articles and/or defense services provided to Iraq, Afghanistan, and/or Pakistan, including maintaining auditable records sufficient to certify that the system complies with this instruction. These plans and procedures include the necessary steps to ensure the registration of the serial numbers of all small arms to be provided to the governments of Iraq, Afghanistan, and/or Pakistan and/or to other groups, organizations, citizens, or residents of Iraq, Afghanistan, and/or Pakistan. It directs an EUM program of all lethal defense articles to be provided to the governments of Iraq, Afghanistan, and/or Pakistan and/or to other groups; and it mandates that the SCOs maintain auditable records to certify compliance of maintaining detailed records of the origin, shipping, and distribution of all defense articles provided to the governments of Iraq, Afghanistan, and/or Pakistan, and/or to other groups, organizations, citizens, or residents of Iraq, Afghanistan, and/or Pakistan.

Funding for EUM Requirements

Direct costs for EEUM are itemized in the SCO's 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 EEUM requirements. EEUM requirements for items received in country after budget submission and not included within the budget target ceiling level will be submitted as an unfunded requirement (UFR). As mentioned in Chapter 4, requests from the Ambassador for the SCO to assist with DoS and/or DoC EUM should also be submitted/predicted in the annual budget, and can also be submitted as UFR when accomplished (SAMM C8.T2).

The CCMD reviews and modifies the budgets submitted by each SCO. When the CCMDs 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 process (LOR) for an EEUM item. This allows time to include the EEUM monitoring requirements in the budget process and thus provide the additional EUM funds 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.”

Security Cooperation Office and the Partner Nation End-Use Monitoring Plan

The SCO and the partner nation should develop either a combined EUM compliance (control) plan or individual plans that spell 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 SCIP

DSCA EUM Visit Program

Visits to assess EUM compliance programs are an important part of the Golden Sentry program. There are three types of visits that involve the SCO and host nation (See SAMM chapter 8, paragraph C8.5). These three types of EUM visits are the familiarization assessment visit (FAV), the compliance assessment visit (CAV) and the investigation visit.

- Familiarization Assessment Visit (FAV) - The purpose of the FAV is to assist the host nation, the SCO, and the CCMD to develop an effective EUM compliance program. The FAV can be requested by the SCO, the host nation, or the CCMD to validate EUM programs, as well as when the host nation receives specific equipment.
- Compliance Assessment Visit (CAV) - The purpose of the CAV is to review and 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. FAV and CAV time lines and requirements are detailed in SAMM tables C8.T5 and C8.T6.
- Investigation Visit - 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 transfers to third parties. It also provides the capability to generate reports concerning the status

of selected items transferred to a partner nation, as well as other useful and required information. To enroll or access the SCIP EUM Community, visit the SCIP website: <http://www.scportal.U.S./home/>.

Compliance Assessment Visits

The purpose of a CAV is to review and evaluate the SCO's (or equivalent organization/office) compliance with Golden Sentry EUM policy and the host nation's compliance with the terms and conditions for the transfer of defense articles and services including specific physical security and accountability provisos pertaining to sensitive technologies. Activities during a CAV include facility visits, record reviews, review of routine and enhanced EUM policies and procedures, and inventories of U.S.-origin defense articles and/or services. EUM CAVs are coordinated well in advance with the GCCs and the SCOs to ensure timely coordination with the host nation.

The EUM Community (i.e. EUM=>Support=>EUM Resources) in SCIP has defense article checklists to assist the SCO in conducting self-assessments, to help prepare the host nation to receive EEUM defense articles, or to prepare for an upcoming CAV.

Security Cooperation Office CAV Criteria

Compliance with the policies and procedures of the Golden Sentry program and the SCO's responsibilities stated in the SAMM, C8.T2 include:

- Implementation of written Standard Operating Procedures (EUM Compliance Plan) to perform routine and EEUM;
- Implementation of physical security and accountability plan(s) (NVD Compliance Plan) for the protection, storage, use and accountability of NVDs or other sensitive and advanced war fighting technology;
- Maintenance of records verifying routine and EEUM;
- Accuracy of the EEUM-designated items baseline as per the EEUM Reconciliation Report provided in the SCIP-EUM database;
- Timely performance of physical security and accountability checks of all EEUM-designated defense articles and services in accordance with Golden Sentry checklists;
- Use of the SCIP-EUM database to track inventories and to maintain an accurate disposition of EEUM-designated items;
- Verification and proper coordination with the DoS' Bureau of Political-Military Affairs / Office of Regional Security and Arms Transfers (DoS PM/RSAT) for the demilitarization, disposal, or destruction of EEUM-designated items and sensitive defense articles;
- Accuracy and timeliness of reporting losses, expenditures and destruction of EEUM-designated equipment;
- Proper coordination with DoS PM/RSAT regarding third party transfer requests and approvals.

Host Nation CAV Criteria

Compliance with the conditions of the transfer agreements for U.S.-provided defense articles and services include:

- Cooperation and coordination with U.S. officials to implement and maintain a viable EUM program which provides for routine and EEUM, including the CAVs conducted by DSCA;

- Potential end-use violations found during the assessment or previously reported by the SCO;
- Implementation of NVD physical security and accountability plan(s) (NVD Compliance Plan) as required;
- Implementation of physical security and accountability measures at storage sites/facilities maintaining EEUM-designated items in accordance with the special provisions stated in the LOA or other transfer agreement EEUM-designated equipment losses, action taken to prevent future losses (as appropriate) and reporting history;
- Accurate and timely notifications of demilitarization, disposal, destruction, loss, expenditure, or other change of end-use of EEUM-designated equipment and sensitive defense articles.

DSCA sends an annual message to all CCMDs and SCOs listing the countries that are subject to a CAV in the next two years. The two-year CAV plan is validated annually as necessary through coordination between DSCA and SCOs.

DEPARTMENT OF STATE'S BLUE LANTERN PROGRAM

The Blue Lantern program fulfills requirements stipulated in section 40A of the Arms Export Control Act (AECA) (22 U.S.C. 2785). The program monitors the end-use of defense articles, technical data, services, and brokering activities exported through commercial channels and subject to Department of State licenses or other approvals under section 38 of the AECA and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), which implement section 38 of the AECA. The Blue Lantern program is managed by the Regional Affairs and Analysis Division (RAA), Office of Defense Trade Controls Policy (DTCP), Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs (PM).

Blue Lantern's mission is to help ensure the security and integrity of U.S. defense trade. Blue Lantern prevents diversion and unauthorized use of U.S. defense articles, combats gray arms trafficking, uncovers violations of the AECA, and builds confidence and cooperation among defense trade partners.

Blue Lantern end-use monitoring includes pre-license, post-license, and post-shipment checks to verify the bona fides of foreign consignees and end-users, confirm the legitimacy of proposed transactions, and provide reasonable assurance that:

- the recipient is complying with the requirements imposed by the United States Government with respect to use, transfers, and security of defense articles and defense services; and
- such articles and services are being used for the purposes for which they are provided.

The Chief of Mission can request assistance from the SCO to conduct Blue Lantern checks in country. If there are expected temporary duty (TDY) costs, the SCO should request funding as an Unfunded Requirement (UFR) from the CCMD. For more information on this program visit the PM DDTC website at: www.pmdtc.state.gov. For their latest EUM report visit their website at: http://pmdtc.state.gov/reports/enduse_reports.html.

DEPARTMENT OF COMMERCE'S EUM PROGRAM

The Department of Commerce (DoC) also has a program driven by End-Use Monitoring requirements. For DOC, the concern lies with articles listed on the Commerce Control List (CCL), and, more recently, items that have been moved off the U.S. Munitions List to the CCL. This includes so-called "dual-use" items (items that may have both a civilian use and a military use) transferred by U.S. industry to a foreign nation via the Export Administration Regulation (EAR). DoC approves export licenses and primarily focuses on "pre-delivery" controls (licensing checks), but also has established

a program for post-delivery inspections. Post-delivery inspections are performed by DoC's Bureau of Industry and Security (BIS) managed by the Office of Enforcement Analysis (OEA), BIS Attachés, "Sentinel Teams" from DoC BIS, and U.S. Foreign and Commercial Service Officers, SCOs should be aware of these visits and the "dual-use" items in the host nation. The Chief of Mission can request the SCO's assistance in the DoC EUM in-country program. If there are expected temporary duty (TDY) costs, the SCO should request funding as an Unfunded Requirement (UFR) from the CCMD. For more information on their End-use monitoring program visit their website at: <https://www.bis.doc.gov/index.php>.

THIRD PARTY TRANSFER AND CHANGES IN END-USE

As noted at the beginning of this chapter, any deviation from the "transfer, use and protection" requirements of USG arms transfer requires permission from the U.S. President (delegated to the DoS Political Military (PM) directorates: RSAT for FMS material; DDTC for DCS material). A Third Party Transfer (TPT) 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 not an employee, officer or agent of that recipient country. Note that a change in end-use is considered a third party transfer. While it is the countries' responsibility to properly request a third party transfer, the SCOs routinely become involved.

The USG may consent to a third party transfer if the USG would directly transfer the articles to the proposed recipient. The divesting government submits a written third party Government transfer request to the USG for consideration. The request is sent to the SCO and/or Country Team, which in-turn sends the request to DoS (PM/RSAT) with information copies to DSCA and the SCO of the proposed third party recipient country. The divesting government may also send the request directly to DoS (PM/RSAT). All transfer requests must include a signed cover letter, a completed Standard Questionnaire, and end-use, retransfer, and security assurances from the proposed recipient unless a member of the Blanket End-Use Assurance Program. See the SAMM Sections C8.7.2.2. and C8.7.2.3. The information required for the Standard Questionnaire is provided in Table C8.T7 or the DoS website at: www.state.gov/t/pm/rsat/c14031.htm for step-by-step instructions and an example of a completed questionnaire.

Examples of possible third party transfers include retransfer of possession or title of defense articles or related data to:

- Any other foreign government
- Any private companies
- Bona fide museums within the receiving country
- 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. Since EUM is a "cradle-to-grave" activity, disposal also constitutes a change in end-use for which prior consent from DoS is required for non-consumable items. Cannibalization is viewed as disposal only if the parts being removed will no longer be under the control of the ministry or agency that owns them, or will be used for purposes other than for national defense. Examples of possible changes (not an exhaustive list) 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 a 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

In accordance with the FAA section 505e (22 U.S.C. 2314), in considering a request for approval to retransfer any implement of war to another country, DoS will not agree to the transfer unless the USG 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 third party transfer assurances.

The transferring (divesting) 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 of this chapter for more details). For previously exported DCS USML articles and technical data, per section 123.9(c) of the International Traffic in Arms Regulations (ITAR), the original exporter or recipient may apply directly to the DoS, Directorate of Defense Trade Controls. Some Commerce Department Commerce Control List (CCL)-licensed items require a license for initial export, but they may be retransferred within the receiving country, and in selected cases, re-exported without further USG coordination. The Department of Commerce can advise in these cases.

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 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 DoS 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. Blanket assurance members under the Defense Trade Security Initiative (DTSI) program have the added benefit of limited advanced consent (see SAMM C8.7.3.2).

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 Legislation and Policy.”

Potential Violations

While making end-use checks, SCOs should be alert for unauthorized use of defense articles, defense services, or technical data, including information provided during CONUS or in-country training. The check should provide information for both the recipient country and the United States to determine whether a country’s generally sound processes failed due to unusual circumstances, because security and accountability procedures are not given sufficient priority, or because country interests are

diverging from those of the United States. Information gained during the checks that could be useful in correcting the immediate problem or improving future end-use controls should be shared with the DoS and DSCA (Programs Directorate).

SCOs must report all potential unauthorized end-use, including unauthorized access, unauthorized transfers, or security violations. It is particularly important that SCOs are alert to, and report on, any indication that United States-origin defense articles are being used against anything other than a legitimate military target, are otherwise being used for unauthorized purposes, are being tampered with or reverse engineered, or are accessible by persons who are not officers, employees, or agents of the recipient government. Information regarding any potential violations should be forwarded to the Combatant Command EUM Program Manager, as well as to the Golden Sentry program team, Weapons Division, Directorate of Programs at the DSCA. DSCA will then forward all potential end-use violations to the Bureau of Political Military Affairs' Regional Security and Arms Transfers (PM/RSAT) Division at the DoS. DoS PM/RSAT will determine if an investigation and a report to Congress is required in accordance with section 3 of the AECA. (See SAMM C8.6)

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.

If the Defense Logistics Agency (DLA) Disposition Services determines that the materiel can neither be redistributed nor 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 by the DoS. For guidance on MAP equipment disposal see SAMM, chapter 11 section C11. HR.1.9.3. Note: the HR stands for "Historical Record" which can be found by moving your cursor to the right side of the chapter list when pointing at chapter 11 in the online SAMM chapter pulldown. The HR section has the entire chapter devoted to MAP processes.

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 DSP-83, all DCS USML exports must have retransfer authorization from the DoS PM/DDTC. 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 DLA Disposition Services 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 4160.28-M volume 1-3, Defense Demilitarization Manual. For more on the EUM and the Disposal Process see the SAMM C8.8.2.

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 DoD's EUM program is the Golden Sentry program, which applies to all defense articles, services, and training transferred by DoD. The DoS' EUM program is the Blue Lantern program, which applies to all defense articles, services, and training transferred through commercial channels (e.g. Direct Commercial Sales). The Department of Commerce has an EUM program which focuses on the monitoring of items transferred by commercial channels which may have "dual-use" applications.

Under Golden Sentry, two levels of EUM are possible (routine and enhanced), depending on the sensitivity of the technology involved. The SCO and the partner nation must jointly develop an EUM control (compliance) plan that will ensure the procedures are taken to protect defense articles, services, and training transferred by the DoD.

Transfers of defense articles, services, and training to a third party and changes of end-use always require prior approval from USG. These transfers and changes in end-use terms are covered in the standard terms and conditions of the LOA, which are discussed in chapter 8 of this textbook. Disposal of the equipment is the final stage of EUM and must conform to USG demilitarization requirements 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 of 2001.

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

DoD 4160.28-M, vol 1-3, Defense Demilitarization, June 7, 2011.

DoD Directive 4165.06, Real Property, November 18, 2008.

DSCA Manual 5105.38-M, Security Assistance Management Manual (SAMM). <http://www.dsca.mil/samm/>.

DSP-83, Non-transfer and Use Certificate (Office of Defense Trade Control).

Export Administration Regulations (EAR) (title 15 CFR parts 730–774).

International Traffic in Arms Regulations (I TAR) (title 22, parts 120–130).

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

ATTACHMENT 18-1

DEPARTMENT OF STATE THIRD PARTY TRANSFER REQUEST FORM

DoD Instruction 4140.66, Registration and Monitoring of Defense Articles and/or Defense Services, September 7, 2010

DoD Instruction 4160.28, DoD Demilitarization (DEMIL) Program, April 7, 2011

DoD Instruction 4140.01, DoD Supply Chain Materiel Management Policy, December 22, 2011

What does the foreign government include in the request?

The following questions should be addressed in a written request by governments proposing to transfer 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.

ATTACHMENT 18-2

SCO EUM CHECKLIST/RESPONSIBILITIES

SECURITY COOPERATION ORGANIZATION (SCO) EUM PROGRAM CHECKLIST
EUM TEAM MEMBER(S):
LOCATION:
SCO:
DATE:

SCO EUM RESPONSIBILITIES		
ASSESSMENT	Y/N	COMMENTS
Does the SCO have a primary Golden Sentry EUM POC designated in writing? (C8.T2.)		
Does the SCO have an updated and signed EUM SOP? (C8.2.4.)		
Has the SCO submitted a signed copy of the EUM SOP for uploading in the SCIP-EUM database? (C8.2.4.)		
Does the EUM SOP contain all the minimum information requirements? (C8.T3.) 1) Responsibilities and procedures for conducting EUM. 2) HN POCs and EUM visit scheduling requirements. 3) Procedures for recording Routine/Enhanced EUM checks. 4) Procedures for HN internal physical security/accountability. 5) Procedures for record keeping and reporting dispositions. 6) Procedures for capturing and submitting cost.		
Has the SCO obtained from the MoD a copy of the NVD Control Plan using the latest DSCA template available in the SCIP-EUM database? (C8.T4.)		
Does the SCO EUM POC have the necessary user access to the SCIP-EUM database to conduct all required EUM functions? (C8.2.4.)		
Has the SCO EUM POC reviewed all security and accountability provisos contained in LOAs or other transfer agreements for EEUM-designated items transferred to the Host Nation? (C8.T2.)		
Has the SCO ensured that the serial numbers of all EEUM-designated items transferred to the Host Nation are entered in the SCIP-EUM database? (C8.4.1.1.)		
Has the SCO ensured that all required inventories are timely annotated in the SCIP-EUM database? (C8.4.1.1., C8.4.1.2., and C8.4.1.4.)		
Is the SCO using Golden Sentry checklists to conduct EEUM checks and filing the checklists (or electronic records) for five years? (C8.4.1.3.)		
Is the SCO forwarding to the Host Nation the results of the EEUM checks for corrective action, if needed? (C8.4.1.3.)		
Is the SCO recording Routine EUM checks at least quarterly and filing electronic records or MFRs for five years? (C8.3.1.)		
Is the SCO assisting the Host Nation to submit third party transfers and change of end-use requests? (C8.7.3.)		

Has the SCO ensured that copies of disposal/destruction certificates and State Department (PM/RSAT) authorization letters have been uploaded to the SCIP-EUM database? (C8.8.2.)		
Is the SCO ensuring that all potential end-use violations are promptly reported to the State Department, the GCC and DSCA? (C8.6.1., C8.6.2., C8.6.3., and C8.1.1.)		
Has the SCO properly annotated in SCIP-EUM the disposition of all EEUM-designated items lost and obtained from the Host Nation supporting documentation which has been uploaded in the SCIP-EUM database? (C8.5.3.3.2.)		
Has the SCO obtained from the Host Nation all required documentation verifying the expenditure or destruction of EEUM-designated items and uploaded them to the SCIP-EUM database? (C8.5.3.3.2.)		
Is the SCO supporting Golden Sentry visits such as FAVs, CAVs, Investigation Visits, and Regional EUM Training Seminars? (C8.T3., C8.T4., C8.2.4.3)		
Is the SCO capturing the cost of conducting EEUM checks, attending EUM Training Seminars, and submitting future funding requirements via the Security Assistance Automated Resource Management System (SAARMS) using Expense Code 40901? (C8.4.3.1.)		
Has the SCO ensured that all costs related to conducting and supporting Blue Lantern Checks are captured in SAARMS? (C8.T2.)		

Procedures / Concerns / Additional Comments		
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