

Chapter

18

END-USE MONITORING AND THIRD-PARTY TRANSFERS

INTRODUCTION

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 contained in the Arms Export Control Act (AECA), the Foreign Assistance Act (FAA), various specific legislative initiatives, and the applicable regulations of the Department of State (DoS) and the Department of Defense (DoD). This chapter is designed to augment Chapter 8 of the Security Assistance Management Manual (SAMM).

Congress enacted AECA, Section 40A, in of 1976, as amended, (22 U.S.C 2785), which requires the President to establish an EUM program to improve accountability with respect to defense articles sold, leased, or exported under the AECA or the FAA of 1961, as amended. The Director, Defense Security Cooperation Agency (DSCA), has been delegated authority by the Secretary of Defense and Under Secretary of Defense for Policy [USD(P)] to administer the DoD's EUM program, known as Golden Sentry, to comply with Section 40A of the AECA.

The EUM program is designed to provide reasonable assurances that the recipient of U.S. defense articles is complying with the requirements imposed by the USG regarding transfer, use, and protection. The foreign recipients of weapon systems and their related technologies from the U.S. must agree to a variety of controls as discussed in Chapter 7. 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 the following three conditions:

1. **Transfer:** Will not transfer title or possession to anyone who is not an officer, employee, or agent of the purchaser unless given prior consent of the USG
2. **Use:** Will not use defense articles for purposes other than those authorized
3. **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., typically accomplished by the Security Cooperation Office (SCO).

These requirements are specified in the SAMM, Chapters 5 and 8, and Letter of Offer and Acceptance (LOA) Standard Terms and Conditions 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, the DoD implements the requirements of the AECA with an End-Use Monitoring program known as "Golden Sentry." DSCA is responsible for reviewing requests or government-to-government exports of defense articles, defense services, and related technical data and for the overall objectives of the Golden Sentry Program. DSCA provides policy guidance for the EUM program in Chapter 8 of the SAMM.

Golden Sentry Responsibilities

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 monitoring defense articles until title is transferred to the partner nation. The partner nation assumes monitoring 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 SCO (which can include elements of the Defense Attaché Office or U.S. embassy as determined by SCO manning) and Defense Security Cooperation University (DSCU). 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 ensure the SOP is uploaded in the SCIP-EUM database or forward the SOPs to DSCA (DSCA.EUM-HELPDESK@mail.mil); C8.T3 outlines the SOP Minimum Information Requirements. An assigned SCO has the responsibility of in-country EUM requirements of the Golden Sentry program and must follow the policy guidance outlined in the SAMM, Chapter 8. Depending upon the scope of the responsibilities, the SCO can request TDY assistance to conduct inventories.

Two Levels of Monitoring

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

Routine EUM

Routine EUM (REUM) is required for all defense articles and services provided via government-to-government programs. The SCO is required to conduct a REUM check quarterly, usually in conjunction with other assigned Security Cooperation duties. SCOs should perform EUM of defense articles and services exported via Foreign Military Sales (FMS) and other building partner capacity (BPC) programs during visits to the partner nation’s installations, through interaction with other assigned embassy personnel and USG individuals working with the host nation’s military and security forces, and throughout embassy and interagency reports and news media information.

To assist SCOs in conducting REUM, DSCA has developed, in Security Cooperation Information Portal (SCIP) under the Routine EUM Options/Summary Report, a routine EUM Report feature that allows the SCOs to identify a “watch list” of specific routine EUM items in their country. The “watch list” displays specific categories of defense articles exported via FMS that includes, but is not limited to the following: 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 Night Vision Devices (NVD)s. 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 Figure 18-1. SCOs must document routine EUM on at least a quarterly basis and must use SCIP in order to maintain records.

**Figure 18-1
SCIP Routine EUM Report Template**

Routine EUM Check				
Basic Information				
*Country:	*Defense Article:	*Generic Code:	*Date of Routine EUM Check:	Quantity:
Select an option	Select an option	Select an option		
*Official:	*Office:	*Duty Position:		
Routine EUM Performed through the following:				
<input type="radio"/> Inspection/Observation by Reporting Officer: <input type="radio"/> Inventory by Reporting Officer: <input type="radio"/> Report by U.S. Government Employee/Military Member: <input type="radio"/> Report by U.S. Contractor: <input type="radio"/> Review of the Host Nation's Records: <input type="radio"/> Open Source Media (TV, Newspaper, Magazine, etc.): <input type="radio"/> Other:				
*Location:				
Circumstances of monitoring (Site visit in conjunction with official business, etc.): (minimum 50 characters)				
Optional		* Required		
				<input type="button" value="Cancel"/> <input type="button" value="Next"/>

Of note, title 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 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)
- Advanced Threat Infrared Countermeasures (ATIRCM) System
- Communication Security (COMSEC) Equipment
- 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)
- Lethal Miniature Aerial Missile System (LMAMS) Switchblade
- Night Vision Devices (NVDs)
- Standard Missiles-3 (SM-3)
- Standard Missiles-6 (SM-6)
- 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) or as specified in the LOA

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 partner 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 identifying enhanced articles and help in establishing the baseline.

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. Subsequent EEUM checks require serial number verification and physical security assessments of storage sites or other facilities where EEUM-designated defense articles are kept to verify that recipients are complying with the terms and conditions stated in the transfer agreements. SCOs must visually inventory 100 percent of in-country EEUM-designated defense articles within one year of the last inventory performed, except for those EEUM-designated defense articles not available for observation (deployed, returned to the United States for repair, etc.) or as 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 of 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. Note that individual(s) who conduct EEUM serial number inventories and physical security checks must be employees of the United States Government and must be United States citizens.

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. This law was implemented by DoD Instruction 4140.66, Registration and Monitoring of Defense Articles.

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 pursuant to National Defense Authorization Acts for fiscal years 2008 and 2010.

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.

EUM Funding Requirements

DSCA oversees the fiscal budget planning, programming, and execution of the Foreign Military Financing (FMF) Administrative funding of EUM activities and is required by law to report annually to Congress. SCOs ensure that all costs for conducting EEUM activities are captured during the fiscal budget programming and execution cycles. At the end of each fiscal year, the CCMDs and SCOs are required to submit the actual annual costs and future two-year FMF Administrative budget projections associated with conducting EEUM, including travel to perform physical security and accountability inventories of in-country equipment and future deliveries and to attend EUM training. To maintain accurate cost data and reporting, EUM managers should ensure that, upon completion of each EEUM visit, the cost is documented and entered into the Defense Agencies Initiative (DAI) Code 210.15. On a case-by-case basis, SCOs may request, through the CCMD, FMF Administrative funding to meet unexpected requirements to perform EEUM checks due to disposal verifications or other unforeseen EUM-related activities for which funding was not requested in the regular budget cycle. Unfunded requirements must be submitted to the appropriate CCMD for approval. When CCMD FMF Administrative funds are not sufficient or available, CCMDs may request FMF Administrative funding from DSCA [Directorate of Business Operations (DBO)] to meet unforeseen SCO EEUM-related requirements.

Security Cooperation Office SOPs

The SCO must develop EUM standard operating procedures (SOPs) that spell out the processes that will be followed to ensure the requirements for both routine and enhanced EUM, as specified in the appropriate transfer documents, are met. The SOP should include the following provisions:

- EUM responsibilities and procedures for conducting routine- and enhanced-EUM (EEUM)

- Partner nation EUM points of contact and procedures for coordinating and conducting EUM-related visits
- Procedures for conducting timely physical security checks of the storage facilities and inventories of EEUM-designated defense articles and services in accordance with Golden Sentry checklist:
 - ◊ Use of the SCIP-EUM database to track inventories and maintain an accurate disposition of EEUM-designated items; maintenance of records of Routine and Enhanced EUM checks (Checklists)
 - ◊ Notifying the partner nation of all EEUM checks performed for information and/or corrective action
- Procedures for maintaining an accurate baseline of EEUM-designated items transferred to the partner nation as per the EEUM Reconciliation Report provided in the SCIP-EUM database, and obtaining partner nation reports of losses, firings/expenditures, or disposal of all EEUM-designated defense articles
- Procedures for verifying the demilitarization and disposal of EEUM-designated items; reporting inventories, losses, theft, unauthorized access, third-party transfers/disposal/damaged/expended defense articles, and possible violations
- Procedures for capturing and submitting to the CCMD and DSCA actual costs and projected FMF Administrative funding required to perform EEUM functions

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 four types of EUM visits are the Familiarization Assessment Visit (FAV), the Compliance Assessment Visit (CAV), the Investigation Visit, and the Focused Verification Checks (FVC):

1. 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.
2. 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 provisos contained within the LOAs for EEUM items. FAV and CAV time lines and requirements are detailed in SAMM, Tables C8.T5 and C8.T6.
3. 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 the DoS.
4. Focused Verification Checks (FVC): FVCs are ad hoc inspections of U.S.-origin defense articles for which there are concerns regarding their use, transfer, and physical security. FVCs are directed at the discretion of the Director, DSCA, and provide the Director, DSCA, greater visibility and real-time situational awareness of U.S.-origin defense articles. FVCs are a mechanism by which the Director can proactively address issues that could lead to actual end-use violations. 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 in 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 CCMDs and the SCOs to ensure timely coordination with the host nation.

The EUM Community (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 the following:

- 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.

DEPARTMENT OF COMMERCE'S EUM PROGRAM

The U.S. Department of Commerce (DoC) also has a program driven by End-Use Monitoring requirements. For the 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). The 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 the DoC’s Bureau of Industry and Security (BIS) managed by the Office of Enforcement Analysis (OEA), BIS Attachés, “Sentinel Teams” from the DoC BIS, and U.S. Foreign and Commercial Service Officers. 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.

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; DDTTC 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 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 the 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 the 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, and the DoS website at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-political-military-affairs/office-of-regional-security-and-arms-transfers/> has step-by-step instructions and an example of a completed questionnaire.

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 the 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 recycled among host government agencies
- Demilitarization and complete disposal of defense articles such that the materiel is no longer considered a defense article

The following TPT require a thirty-day Congressional Notification:

- Non-NATO Members
- Major Defense Equipment (MDE) with an original acquisition value equal to or greater than \$14M
- Any other defense article or related training or defense service with an original acquisition value equal to or greater than \$50M
- NATO members, Australia, Israel, Japan, the Republic of Korea, and New Zealand
- MDE with an original acquisition value equal to or greater than \$25M
- Any other defense article or related training or defense service with an original acquisition value equal to or greater than \$100M for non-NATO members

The DSCA EUM Team supports PM/RSAT in the TPT process, as required, by providing additional information related to the original transfer of the U.S. defense article, service, or technical data package in question. The DSCA EUM Team also supports PM/RSAT TPT efforts by allowing TPT requests to be formally submitted through the SCIP-EUM module. To ensure SCIP-EUM is properly accounting for the Enhanced EUM-articles, EUM Program Managers should regularly monitor the EEUM Baseline in SCIP-EUM for each country involved in the TPT. Regular coordination with the SCIP-EUM Helpdesk will further enhance accountability for EEUM-designated defense articles involved in the TPT.

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, the DoS will not agree to the transfer unless the USG itself would transfer the defense article under consideration to that country. In addition, the 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.

Potential Violations

An increasingly important role of the DoD security cooperation enterprise is to identify and take action on reports of potential EUM violations or incidents. The Department of State, PM/RSAT, is ultimately responsible for determining if a violation occurred and the USG's response to confirmed violations. However, GCCs, SCOs, and the DSCA EUM Team are critical to developing and enforcing preventative measures to mitigate risk of potential violations, sharing information with the State, assisting the State in gathering additional data and conducting investigations (when requested), and implementing USG response or courses of action, as required. The DSCA EUM Team is responsible for maintaining a central repository of all reported and observed potential EUM violations related to FMS sales, including the status and ultimate disposition of all entries.

While performing 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 diverge 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 Directorate of Security Assistance (DSA) Assistance and Monitoring Programs (DSCA-DSA/AMP).

In the past, the roles and responsibilities between the DoS and DoD, and internal to the DoS and DoD, were unclear or under-defined, contributing to an inefficient, ineffective, and insufficient methodology for EUM enforcement, potential violation investigation, and USG-response implementation. DSCA self-identified this issue in a 2018 deep-dive of the Golden Sentry Program, and, in 2019, updated, Chapter 8 of the SAMM, to better define EUM reporting policy. Additionally, DSCA and PM/RSAT established monthly synchronization meetings in an effort to improve information sharing, accountability, and communication.

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. If required, the recipient agrees 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 the 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,” 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, e.g., 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 disposal, 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 SAMM C8.8.2.

SUMMARY

To preserve United States 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 the 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 that focuses on the monitoring of items transferred by commercial channels that 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.

DoD 4160.21-M, Defense Materiel Disposition Manual.

DoD 4160.28-M, vol 1-3, Defense Demilitarization.

DoD Directive 4165.06, Real Property.

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 Act of 2001.

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

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

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

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

