

## 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 and sensitive or classified defense technology are contained in the Arms Export Control Act (AECA), the Foreign Assistance Act (FAA), various other laws and policies, 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) and provide additional details and guidance for the administration or oversight of EUM and third party transfers.

Congress enacted AECA, Section 40A (22 U.S.C. 2785), in 1976, and as amended, it 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 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 the transfer, use, and protection of U.S.-origin defense articles and technology in the possession of foreign partners. 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 of this text. 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 to a great extent 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 to do so by the USG;
2. **Use:** Will not use defense articles for purposes other than those authorized by the USG;
3. **Protection:** Will furnish substantially the same degree of security or protection that 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 USG, typically the members of the Security Cooperation Organization (SCO).

These requirements are specified in the SAMM, Chapters 5 and 8, and the standard terms and conditions of every Letter of Offer and Acceptance (LOA), and they will be included in any document 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 EUM program known as "Golden Sentry." DSCA is responsible for reviewing requests or government-to-

government exports of defense articles and defense services, 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 receiving partner country or international organization (i.e., NATO) and the USG. USG representatives have full responsibility for monitoring defense articles until title is transferred to the partner. The partner country or international organization assumes monitoring responsibility based on the terms under which the transfers is made, including any restrictions on physical security and accountability. USG representatives retain a continuing responsibility under Golden Sentry to assist DSCA in verifying the appropriate end use and security of U.S.-origin defense articles and defense services sold or otherwise transferred on a government-to-government basis. Verification is authorized under the LOA Standard Terms and Conditions (Paragraph 2.7).

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 jointly lay out the organizational responsibilities listed for DSCA, the military departments (MILDEPs) and implementing agencies (IAs), the geographic combatant commands (CCMDs), the SCOs (which can include elements of U.S. defense attaché offices or other elements of U.S. embassies as determined by SCO manning, duties, and other factors). In addition, responsibilities for the training and education of the security cooperation workforce in EUM through the Defense Security Cooperation University (DSCU) are also delineated in Chapter 8. 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 (SOPs) to implement region and country-specific EUM policies and procedures. They must ensure these SOPs are uploaded to the SCIP-EUM database or forwarded to DSCA (DSCA.EUM-HELPDESK@mail.mil); C8.T3 of the SAMM describes the minimum standards and content for EUM SOPs. Each SCO is responsible for the administration or oversight of the Golden Sentry Program in its assigned country or countries and must follow the policy guidance outlined in the SAMM, Chapter 8 as well as any supplemental guidance furnished by the respective CCMD. Depending upon the scope of its responsibilities, a SCO may be able to request and receive request TDY assistance to conduct inventories and other EUM-related duties.

## **Two Levels of Monitoring**

There are two levels of EUM which may need to be carried out by the SCO and the recipient country or organization: routine and enhanced.

### ***Routine EUM***

Routine EUM (REUM) is required for the vast majority of defense articles and technology provided via government-to-government programs. Articles and information subject to REUM are typically less sensitive or unclassified in comparison items/data subject to enhanced end-use monitoring, and there are normally no special or additional security, use, or handling requirements specified in the LOA. Every SCO is required to conduct at least one REUM check quarterly, usually in conjunction with other assigned security cooperation duties. SCOs should perform these REUM checks in conjunction with other duties, using opportunities such as visits to partner installations, training or exercise observation, etc., or, credible reports provided by local media sources or other embassy, USG, or USG contract personnel.

To assist SCOs in conducting REUM, DSCA has developed, in the 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 respective countries.

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 (NVDs). To assist SCOs in documenting routine EUM checks, DSCA has developed a standardized template for recording and reporting REUM checks in SCIP under the Routine EUM Options/Routine Checks a Routine EUM Check Template; see Figure 18-1.

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

**Routine EUM Check**

**Basic Information**

<b>*Country:</b> Select an option	<b>*Defense Article:</b> Select an option	<b>*Generic Code:</b> Select an option	<b>*Date of Routine EUM Check:</b>	<b>Quantity:</b>
<b>*Official:</b>	<b>*Office:</b>	<b>*Duty Position:</b>		

Routine EUM Performed through the following:

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.):  
  Other:

**\*Location:**

Circumstances of monitoring (Site visit in conjunction with official business, etc.):  
(minimum 50 characters)

Optional \* Required

Of note, title to defense articles that are leased or loaned remains with the USG, as detailed in the terms of respective transfer document supporting the lease or loan; however, EUM requirements still apply while the leased or loaned articles or information is under the possession or control of the foreign partner. 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 compliance failures See SAMM C8.3.2 for further information.

***Enhanced EUM***

Enhanced EUM (EEUM), based on the principle of trust with verification, is required for specific kinds of defense articles and services and certain individual transfers of articles or technology otherwise subject to REUM. These "individual transfers" may be designated for EEUM by MILDEP export policies, stipulations imposed by interagency release approvals, or through special conditions imposed on these particular transfers by DoD, DoS, or 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 found in the LOA or other document governing these transfers. 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)
- Small Diameter Bomb, Increment Two (SDB-II)/GBU-53
- 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

SCOs are responsible for maintaining an accurate baseline of all EEUM-designated defense articles exported to the partner nation by using the EUM application in the SCIP database. Maintaining this database, in turn, assists SCOs in monitoring duties and provides historical or operational continuity data. The SCIP-EUM database includes a reconciliation report of EEUM-designated defense articles by country that SCOs should use a baseline for identifying enhanced articles.

SCOs are required to conduct EEUM through planned/coordinated visits to the partner nation installations. SCOs must arrange with their respective partner governments to verify in-country receipt of EEUM defense articles by serial number within 90 days of initial delivery. Subsequent inventories require serial number verification and physical security checks of the 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 are required to use the DoD Golden Sentry EEUM Checklist when conducting physical and accountability checks. The checklist are required to be linked to the inventories within the SCIP-EUM database. SCOs must visually inventory 100 percent of in-country EEUM-designated defense articles at least once per year (and potentially more frequently), except for those EEUM-designated defense articles not available for observation (deployed, returned to the United States for repair, etc.) or otherwise exempt by USG approval. Each

EEUM inventory must normally include a review of the recipient's records of internal inventories, changes in custody, losses, expendable item consumption, etc. as required by the LOA or other transfer documents. Deployed equipment must be inventoried within 90 days of returning from operational use or deployment. SCOs will provide the partner with the formal results or findings of each EEUM inspection and request that the partner, in turn, provide a summary of all measures taken to correct any noted deficiencies with 60 days of receipt of the inspection report. Note that any individual who conducts an EEUM inventory or related physical security inspection must be both an employee of the United States Government (e.g., U.S. military, DoD/State Department employee) and a U.S. citizen.

### **Country-Specific EUM**

Some countries have unique EUM requirements mandated by Congress. For example, several annual national defense authorization acts (NDAA) beginning with the National Defense Authorization Act of 2008 have required additional controls and verification requirements on REUM items transferred to certain countries. For example, Section 1228 of NDAA 2008, required the President to implement special controls for the export or other transfer of defense items to Iraq. This particular law led to the registration and frequent inspection 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, similarly provides the legal basis for the implementation of special controls for certain items transferred to Afghanistan and Pakistan. Guidance regarding the implementation of this law has been incorporated in the latest change to DoD Instruction 4140.66, published 24 May 2017 continues to require the maintenance of registration and monitoring systems for select REUM items transferred to Iraq, Afghanistan, and Pakistan.

DoD Instruction 4140.66 directs the SCOs in these countries to develop the necessary compliance plans and procedures to administer and maintain comprehensive systems of registration and monitoring for impacted defense articles services provided to Iraq, Afghanistan, and Pakistan, including maintaining auditable records sufficient to certify compliance with this instruction. These plans and procedures are required to detail controls and processes to ensure the registration of the serial numbers of all small arms provided to the governments of Iraq, Afghanistan, and Pakistan and to other groups, organizations, citizens, or residents within these countries. It further mandates the establishment and maintenance of special EUM controls for all lethal defense articles to provided to these governments and individual groups or parties subject to their laws.

### **EUM Funding Requirements**

DSCA oversees the fiscal budget planning, programming, and execution of the Foreign Military Financing (FMF) administrative funding of DoD-executed 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 reports of the actual annual costs and future two-year FMF administrative expense budget projections associated with conducting EEUM, including travel costs related to performing physical security and accountability inventories of in-country equipment, processing and recording initial equipment deliveries, and attending 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, such as performing out-of-schedule EEUM checks due to disposals 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 additional FMF administrative funding from DSCA's Directorate of Business Operations (DBO) to meet unforeseen SCO EEUM-related requirements.

### **Security Cooperation Organization SOPs**

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

- EUM responsibilities and procedures for conducting REUM and EEUM in the partner country/countries administered by the SCO
- 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 under the Golden Sentry Program, to include:
  - ◊ Use of the SCIP-EUM database to track inventories a, create accurate disposition records of EEUM designated items, and maintain records of REUM checks and EEUM inspections
  - ◊ Communication/notification procedures for conveying the results of EEUM inspections and soliciting corrective actions
- Procedures for maintaining an accurate baseline of EEUM-designated items transferred to the partner nation(s) as per the EEUM Reconciliation Report provided in the SCIP-EUM database, and obtaining partner nation reports of losses, firings/expenditures, or final disposal or current disposition 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 requirements 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 four types of visits that involve the SCO and the foreign partner (see SAMM, Chapter 8, paragraph C8.5). These 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 foreign partner, the SCO, and the CCMD in developing an effective EUM compliance program. The FAV can be requested by the SCO, the partner, or the CCMD and can be used to validate existing EUM programs or to help establish a new program or revise an existing one to accommodate new types of equipment or other new circumstances..
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 that partner's compliance with the security and accountability provisos contained within the transfer agreements 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 may be conducted when a possible violation of the AECA, Section 3, or the FAA, Section 505, is suspected. Because of the unique nature and political sensitivity associated with these visits, they are extremely rare, and handled on a case-by-case basis in concert with the DoS.
4. **Focused Verification Checks (FVC):** FVCs are ad hoc inspections directed at the discretion of the Director, DSCA, of select types of U.S.-origin defense articles which normally occur when concerns arise regarding their use, transfer, or physical security. FVCs provide the Director, DSCA, with greater visibility and real-time situational awareness on the status, disposition, and treatment of U.S.-origin defense articles; FVCs provide the Director with a way to assess and possibly resolve issues that could lead to significant end-use violations.

The SCIP EUM Community contains detailed information on items that have been transferred to a partner and it can be utilized to not only track the status of items and reporting for EUM purposes, but also for third party transfers. SCIP also offers the ability to create customizable reports on this and other information. To enroll in or access the SCIP EUM Community, visit the SCIP website: <http://www.scportal.U.S./home/>.

### **Compliance Assessment Visits**

CAVs review and evaluate the compliance of SCOs and other USG organizations with the Golden Sentry Program and related laws, policies, and regulations, and the partner 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, assessments 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, SCOs, and partners concerned.

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 partner nation to receive EEUM defense articles, and to prepare for upcoming CAVs.

### ***Security Cooperation Organization 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 including the development of an EUM compliance plan to perform REUM and EEUM
- Implementation of physical security and accountability plan(s) i.e., compliance plans for the protection, storage, use, and accountability of NVDs or other sensitive/advanced war-fighting technology
- Maintenance of records verifying REUM and EEUM
- Verification of the accuracy of the EEUM-designated items baseline 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 record of EEUM-designated items
- Verification and proper coordination with the 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
- Timely and accurate reporting of expenditures, and destruction of EEUM-designated equipment
- Proper coordination with PM/RSAT regarding third-party transfer requests and approvals

***Partner Nation CAV Criteria***

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

- Cooperation and coordination with U.S. officials to implement and maintain a viable EUM program, which support both REUM and EEUM, including the CAVs conducted by DSCA
- Substantial, good faith efforts to correct and otherwise address end-use violations found during SCO, CAV, and other assessments
- Implementation of compliance plans 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 and other transfer agreements to prevent, report, and mitigate losses and other discrepancies
- Accurate and timely notifications of demilitarization, disposal, destruction, loss, expenditure, or other changes in 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 following two year period. The two-year CAV plan is revalidated or revised annually as necessary through coordination between DSCA, the CCMDs, and the SCOs.

**DEPARTMENT OF STATE 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) concerning the transfer of defense articles and technologies via commercial channels. More specifically, the program monitors the end use of defense articles, technical data, services, and brokering activities concerning such exports 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 the 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 the use, transfer, and security of defense articles and defense services; and, that
- such articles and services are being used for the purposes for which provided.

The U.S. chief of mission in a given foreign country can request assistance from the respective SCO or DAO to conduct Blue Lantern checks which may be required in his/her 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](http://www.pmdtc.state.gov).

## **DEPARTMENT OF COMMERCE EUM PROGRAM**

The U.S. Department of Commerce (DoC) also has a program driven by end-use monitoring requirements. DoC is tasked with EUM responsibilities related to 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 normal, legitimate civilian and military uses) transferred by U.S. industry to foreign customers via the Export Administration Regulations (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 may also request the SCO’s assistance in the DoC EUM in-country program. If there are expected temporary duty (TDY) costs related to the SCO's support of this Department of Commerce program, 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 the U.S. Government requires permission from the U.S. President (which, as an authority, is delegated to the DoS Political Military (PM) directorates: RSAT for FMS material transfers; DDTC for DCS material transfers). 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 original authorized recipient to any person or organization not an employee, officer or agent of that recipient country (or international organization). Note that a change in end use is considered a third-party transfer. While it is the receiving partner's responsibility to properly request a third-party transfer, the SCOs routinely become assist in processing these requests.

The divesting government submits a must submit written third-party transfer request to the USG for consideration. The request may be submitted initially to the SCO or in-country U.S. mission (embassy), State PM/RSAT with information copies furnished 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 (available online at <https://www.state.gov/third-party-transfer-process-and-documentation/#templates>), and end use, retransfer, and security assurances from the proposed recipient (unless the recipient participates in the Blanket Assurance Program). For further information, refer to the SAMM, C8.7.

Change of end-use is defined as any change in the usage of transferred defense articles, services, or technology that deviates from the original purposes for which they were provided. 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 received them from the USG, or will be used for purposes other than for national defense. Examples of possible changes (not

an exhaustive list) of end use include:

- 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 non-military law enforcement agency
- Demilitarization and redistribution of defense articles among several host government agencies outside of the military/ministry of defense
- Scrapping U.S.-origin end items in order to reclaim and sell their components (e.g., copper wires, titanium)

Certain third party transfers also require a thirty-day Congressional Notification:

- Those which include major defense equipment (MDE) with an original acquisition value equal to or greater than \$14M for non-NATO recipients, or, equal to or greater than \$25M for members of NATO, Australia, Japan, the Republic of Korea, or New Zealand
- Those involving any other defense article or related training or defense service with an original acquisition value equal to or greater than \$50M for non-non-NATO recipients, or, \$100M or more for members of NATO, Australia, Japan, the Republic of Korea, or New Zealand

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 EEUM-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 third-party transfer.

### **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 State Department 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 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 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 USML articles and technical data exported commercially, per Section 123.9(c) of the International Traffic in Arms Regulations (ITAR), the original exporter or recipient may apply directly to the Directorate of Defense Trade Controls. Some Commerce Department Commerce Control List (CCL)-licensed items require a license for initial export, but they may be retransferred within the receiving country and, in selected cases, re-exported without further

USG coordination. For more information on CCL exports and transfers, refer to the website of the Bureau of Industry and Security, Department of Commerce (<https://www.bis.doc.gov/>).

Any request to retransfer a defense article or technology 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 the proposed recipients are unable or unwilling to identify the final end user and end-use of the articles or data, 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 Department of State must notify Congress of proposed transfers that meet AECA, Section 32, Congressional reporting thresholds, as described in Chapter 2 of the SAMM.

### **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 formulating the USG's response to confirmed violations. However, the CCMDs, SCOs, and the DSCA EUM Team are critical to developing and enforcing preventative measures to mitigate the risk of potential violations, sharing information with the State, assisting the State in gathering additional data and conducting investigations (as requested), as well as, assisting in developing and executing USG responses 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 their status and ultimate disposition.

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. SCO checks and inspections should provide information for both the recipient country and the USG in determining whether or not a country’s generally sound processes failed due to unusual circumstances, or because security and accountability procedures are not given sufficient priority, or because country interests diverge from those of the United States. Information gained could be useful in correcting immediate problems or improving future end-use controls, should be shared with the DoS and the DSCA Directorate of Security Assistance (DSA) Assistance and Monitoring Programs (DSCA-DSA/AMP).

In the past, the roles and responsibilities shared between the DoS and DoD, and internal , respectively, to the DoS and DoD, were unclear or under-defined, contributing to an inefficient, ineffective, and insufficient USG approach to EUM enforcement, potential violation investigation, and response. DSCA self-identified this issue during an extensive 2018 analysis of the Golden Sentry Program, and, in 2019, updated, Chapter 8 of the SAMM to better define EUM reporting policies. 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 partner or entity that wants it, disposal may be in order. Thus, disposal is the final change of end-use and requires State Department authorization prior to demilitarization. For 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 certain kinds of grant items, depending on the transfer program and authorities used. If required by these programs or authorities, the recipient must agree in advance and in writing to return the equipment to the USG when it is no longer required for its intended purpose.

If the Defense Logistics Agency (DLA) 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 the consent of the DoS prior to doing so. The net proceeds from any such disposal or sale of MAP and other grant 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 the 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 an entire chapter devoted to MAP). For items acquired through FMS with a country’s own funds, or through FMF or grant programs other than MAP or EDA, the USG has no reversionary rights; 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 require an that are subject to export license, (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 be approved for retransfer by 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 U.S. defense materiel or articles, its disposal procedures should follow, in form and content, those used by DLA Disposition Services, though local methods and channels may be used when deemed to be appropriate by the USG. The following areas of attention are those deemed most important for ensuring U.S. 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. The procedures and standards 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 see the SAMM C8.8.2.

## **SUMMARY**

To preserve the defense and economic technical advantages of the United States, foreign partners receiving weapons and weapons technology must agree to provide the same level of protection for the articles and information as would the USG itself. This requirement applies whether a partner 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 via government-to-government channels. 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 that 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 the 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. Defense article or materiel disposal is always the final change in end-use and 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).

International Emergency Economic Powers Act (IEEPA).

Export Controls Act of 2018.

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).

