



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC



Office Of The Under Secretary

14 January 1999

MEMORANDUM FOR SEE DISTRIBUTION

FROM: SAF/IAX

SUBJECT: Interim Change to DoD 5105.38-M, Security Assistance Management Manual (SAMM) (IAX98015) (DSCA Memo, I-98/72261, 12 Aug 98, SAB)

The attached DSCA memorandum updates Sections 203, 502, 701, 702, 802, 804, 1003, 1400 and 1401 of the SAMM and is forwarded for your information and appropriate action.

If you have any questions or require additional information, please contact SAF/IAXM, Terry Bates, DSN 425-8925, or Lewis Witt, DSN 425-8966.

ERIC A. VRANEK, Colonel, USAF  
Chief, Policy Division  
Deputy Under Secretary, Int'l Affairs

Attachment:  
DSCA Memo I-98/72261

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DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

In reply refer to:  
I-98/72261

AUG 12 1998

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE ARMY  
(INTERNATIONAL AFFAIRS)  
DEPARTMENT OF THE ARMY

DIRECTOR, NAVY INTERNATIONAL PROGRAMS OFFICE  
DEPARTMENT OF THE NAVY

DEPUTY UNDER SECRETARY  
(INTERNATIONAL AFFAIRS)  
DEPARTMENT OF THE AIR FORCE

DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: DoD 5105.38-M, Security Assistance Management Manual (SAMM), Changes

The attached changes are being incorporated into the automated SAMM. Internet addresses for the SAMM and other DoD guidance are: [HTTP://WWW.DSAA.OSD.MIL](http://www.dsaa.osd.mil) (DSAA home page) or [HTTP://WEB7.WHS.OSD.MIL/CORRES.HTM](http://web7.whs.osd.mil/corres.htm) (DoD issuance library). The CD ROM Defense Acquisition Deskbook (DAD) is distributed quarterly by the DAD Joint Project Office. It is anticipated these changes will be included in the next distributed hard copies of the SAMM.

Any questions should be directed to Wayne Wells at (703) 604-6612, DSN 664-6612, or [wayne.wells@pentagon.osd.mil](mailto:wayne.wells@pentagon.osd.mil).

A handwritten signature in cursive script, appearing to read "Edward W. Ross", is written over a horizontal line.

Edward W. Ross  
Director  
Middle East, Asia, North Africa

Attachment  
As stated

cc:  
Cdt, DISAM

MEMORANDUM FOR COMMANDANT, DISAM

Subject: DoD 5105.38-M, SAMM Maintenance

The following changes should be made to the SAMM:

1. Pg 203-3, para 20301.K. Change "K. Stinger" to read "Stinger/MANPADS" at the beginning of paragraph K. Add paras 70105.L.9.c. through 70105.L.9.d.(8), taken from pg 701-13, to the end of 20301.K., including paragraph renumbering as annotated in attachment 1.
2. Pg 502-2, para 50202.B.2.b. In order to adjust guidance to reflect current practices, delete "P&A Data and", but leave "LORs", in the paragraph title and delete the following: "P&A data are classified where these data (1) identify a requesting foreign government and specific items of MDE (e.g., M-60 tanks) in which that government has expressed an interest, and (2) qualify for reporting under AECA Section 36(b), or (3) classification is authorized under paragraph 50202.A.1 above. Unless otherwise authorized by paragraph 50202.A.1 above, such classified data may be declassified when Congressional notification is completed or a subsequent Letter of Offer for these items is unclassified."
3. Pg 701-13, para 70105.L.9.c. through 70105.L.9.d.(8). Delete (this is added in 1. above to 20301.K.).
4. Pg 701-13, para 70105.L. Add "10. Anthrax Vaccine The following note applies to all LOAs with anthrax vaccine: 'The Purchaser agrees the US Government will not incur liability for adverse reactions, morbidity, mortality, or any other actual or possible consequential damages resulting from use, storage, or handling of anthrax vaccine by the Purchaser, to include acts or omissions of its officials, agents, or employees. The Purchaser further agrees to indemnify and hold harmless the US Government for any and all liability in the event liability is incurred.'"
5. Pg 702-4, para 70203. Delete the paragraph.
6. Pg 802-15, para 80207. Add "E. LOA - SDR Terminology SF 364 discrepancy code categories and LOA terminology do not directly correspond. For SDR processing purposes, the following phraseology cross-reference applies:

<u>SF 364 Discrepancy Category</u>	<u>Described in LOA Terms 5.4 as</u>
Condition of Material	Damage, Latent Defect
Supply Documentation	Improper Documentation
Misdirected Material	Overage, Shortage, Non-Shipment
Overage/Duplicate Shipments	Overage
[Packing Discrepancy	Not applicable for FMS unless packing services are purchased (may process SDR for damage or other loss caused by deficient packing)]
Product Quality Deficiency	Damage, Latent Defect
Shortage of Material	Shortage
Item Tech Data Markings	Improper Documentation
Wrong Item	Overage and Shortage
Other Discrepancies	Case-by-case consideration"

7. Pg 804-3, para 80403.B.2. Add "SDAF" in the first line between "MAP" and "or third country financing".

8. Pg 1003.8, para 100308. Add "C. Flight Training Exchanges (FTE) FAA Sec 544 (A) authorizes the exchange of comparable flight training. Flight training exchanges must be pursuant to an international agreement and section 1401, which provides for the exchange of students on a one-for-one basis during the same US fiscal year. The JSAT regulation provides the prescribed MOA to be used for this purpose. FTE requests will be forwarded to the IA for action with a copy to the DSAA regional division."

9. Pg 1400-13, Table 1400-5. Delete this table.

10. Pg 1401, section 1401, and associated changes. Replace with attachment 2.

Attachments

As stated

20301.1

I. Incendiary Items, White Phosphorous, and Riot Control Agents. The following is USG policy regarding the sale of these items:

1. Napalm, including napalm thickener, dispensers, and fuses will not be provided through FMS or on a commercial basis.

2. Requests for white phosphorus munitions should be submitted in accordance with the procedures established for SME (Section 700). Requests should indicate, by type of ammunition requested, the quantity and intended use of the ammunition. Requests should be accompanied by the US mission's opinions as to whether the amount requested is reasonable in relation to the intended use, current on-hand inventories, and predictable usage rates of such items; and requests must also contain assurance from the host government that the white phosphorus munitions will be used only for purposes such as signalling and smoke screening. DSAA will be responsible for coordinating approval of the request. Upon approval, DSAA will advise the cognizant DoD component of the approval along with the conditions for its use which will be made a part of the LOA.

3. Riot control agents may not be provided via FMS, but certain types are available on a commercial basis. Such proposed commercial sales require that an export license be obtained from the DoS, Office of Defense Trade Controls.

J. M-833 and Comparable Depleted Uranium Rounds. FAA Sec 620G prohibits sale of M-833 depleted uranium ammunition and comparable anti-tank rounds containing a depleted uranium penetrating component except to NATO member countries, major non-NATO allies, Taiwan, and countries for which a Presidential national security interest determination has been completed. Such a determination has been completed for the M-833 round for Bahrain and Saudi Arabia and the M-829 round for Saudi Arabia and Kuwait.

MANPADS

K. Stinger. Section 532, Foreign Operations, Export Financing, and Related Programs Appropriations Act, FY94 continues the prohibition on provision of Stinger to countries bordering the Persian Gulf (Iraq, Iran, Kuwait, Saudi Arabia, Qatar, United Arab Emirates, and Oman).. Based on a Presidential Determination and other specific circumstances discussed in Section 581, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 PL 101-167, this prohibition does not apply to Bahrain's one-for-one purchase of replacement missiles.

*[Add 1. through 2.h next under]*

L. Anti-Personnel Landmines. Section 556 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of FY97 (PL 104-208) extends the moratorium on sale, transfer, or assistance with respect to the provision of anti-personnel landmines.

20302 SHIP TRANSFERS.

A. Vessels 20 years old or more and no more than 3,000 tons (light load displacement) or less may be transferred after 30 continuous days of the date that the USN notifies Congress of its intent to make the transfer. Naval vessels less than 20 years old or more than 3,000 tons may be transferred only after enactment of specified legislation authorizing the transfer. These criteria and Congressional oversight provisions are prescribed by 10 USC 7307.

B. Regardless of the method of transfer (sale or lease) the foreign government will normally pay all costs incidental to the transfer.

3. The US Government will be notified of deployments through the Security Assistance Organization.

1. The DoS will ensure that transfers of MANPADS under FAA Sec 506(a) include the security requirements ~~as previously mentioned in this paragraph~~ <sup>70105.L.</sup>

2. The following procedures apply after an LOA for the purchase of a MANPADS has been accepted or if MANPADS are provided under the authority of Section 506(a).

a. (1) The US Army will provide a copy of the LOA to the in-country SAO.

b. (2) US Army personnel will inspect the physical security arrangements prior to the delivery of the first shipment of MANPADS to ensure that security meets US requirements.

c. (3) The US Army will notify the SAO when delivery of the missiles has begun; serial numbers will be provided to the SAO for missiles received by the foreign government.

d. (4) The STINGER system and all its variants shall be accounted for by verifying receipt of missiles and, as applicable, launchers or gripstocks.

e. (5) The SAO will arrange with the purchasing government to verify by serial number receipt in country of the missiles. The first annual physical inventory should occur after the US Army notifies the applicable SAO of final delivery of missiles. Yearly requirements for US inspection and inventory will begin from that date.

f. (6) Except for missiles deployed to hostile areas, the SAO must physically inventory all MANPADS by serial number. This requirement cannot be satisfied by the foreign government, or through a review of host nation records.

(1) (2) Inventory will consist of 100 percent comparison of serial numbers on missile containers and lists discussed in ~~2.~~ <sup>c.</sup> above. At least five percent of those containers, selected to ensure an accurate sample of all country inventory, will be opened to ensure container and missile serial numbers correspond.

(2) (1) The CINC may determine, based on assessment of the threat to security of missiles in the area, if a percentage of missiles higher than five percent should be sampled.

(3) (1) For MANPADS obtained through foreign coproduction or manufacture, the inventory requirements imposed by the MOU and any implementing instructions will govern, subject to minimum standards in ~~(2)~~ and ~~(1)~~ above.

(1) (2)  
g. (7) The SAO must, at least once a year, randomly review the recipient government's records of monthly, two-man verifications.

h. (8) A report of the SAO findings shall be sent to DSAA MEAN and US Army (USASAC), with an information copy to the applicable UCOM.

M. Acceptance Process. The Purchaser should sign the LOA and complete the Typed Name, Title, Agency, and Information to be Provided by the Purchaser portions. Copies should be forwarded to the IA and to DFAS-DE-I along with the required initial deposit before the expiration date.

Add  
to  
20301.

## SECTION 1401 - TECHNOLOGY PROGRAMS

**140101 GENERAL** This section complements export control, disclosure, transfer, and other guidance in Chapter 5 and elsewhere in this manual. It discusses a range of programs which include the release of US technology. When used in this section, the capitalized term "Agreement" refers to an international agreement developed either under DoDD 5530.3 or within an LOA.

**A. Policy** It is DoD policy to treat defense-related technology as a valuable and limited national security resource. Defense articles and services, including USG "defense information" as defined in Section 644(e) of the FAA, can only be provided in accordance with provisions of the AECA.

**B. Foreign Manufacture** Foreign Manufacture of US equipment benefits the US when it strengthens friendly defense forces, improves US defense relationships, or enhances interoperability. It may also benefit the US when it is advantageous to assist in maintaining the Purchaser's defense industrial base or in improving general defense capabilities by means of collaborative defense programs. Program implementation can be through an FMS LOA that provides the Purchaser with technical data and authority necessary to operate and maintain or manufacture the defense article. Implementation can also involve an LOA and complementary DoDD 5530-3 agreement in the form of an MOU or MOA, or a DoDD 5530.3 agreement alone (such as for cooperative development).

**C. Royalty Fees** For open FMS cases implemented prior to 31 December 1997 with current Royalty Fee lines, financial accounting processes and reporting shall continue until case closure. Cases implemented on or after 1 January 1998 shall not include royalty fee processing requirements.

**140102 RELEASE OF TECHNICAL DATA** The USG either owns or has legal rights of use to defense related technical data. This is in contrast with private ownership and no USG rights of use. Where private ownership exists, and barring substantial reason to do otherwise, foreign representatives will be advised to pursue the data through commercial channels. Technical data transferred in conjunction with defense articles will generally be released as part of the process for release of those articles (for example, technical manuals, repair parts lists, and product safety notices provided as part of the transfer of a major item). Technical data may also be released in conjunction with approved country programs (for example, cataloging data or general training publications in support of a logistics modernization project). Releasability of the data must be considered in the same manner as other potentially sensitive parts of the program. Specific controls apply for TDPs (technical data developed for the purpose of production) as discussed below. The LOA will cover the full cost for preparation, reproduction, and handling of technical data furnished under SA programs.

**A. TDPs Related to Defense Articles Manufactured by Watervliet Arsenal** 10  
USC Sec 4542 prohibits the transfer of TDPs from any government owned and operated defense plant manufacturing large caliber cannons (Watervliet Arsenal) to any foreign government, or assistance to any foreign government in producing any defense items currently being manufactured or developed in a government-owned, government-operated defense plant manufacturing large caliber cannons, unless the exceptional requirements of the statute are met. Department of Army must be consulted as to whether these requirements can be met before action may be taken to commit the USG to transfer these data.

**B. Channels for Transfer of TDPs** USG-owned TDPs will be released only when it has been determined to be in the US interest to do so and alternative means of meeting the requirement are less desirable. Privately-owned TDPs for which the USG has unlimited or Government purpose rights of use may be transferred via FMS or by the US firm holding associated rights, subject to USG approval through the export licensing process. When transferred via FMS, TDPs will be offered only as defined line items on LOAs, and the line item will identify the article to which each TDP applies.

**C. Types of TDP Requests** Requests for TDPs must specify (1) for use in O&M of US-origin defense equipment; (2) for study in determining if a request will be submitted for production authorization; or (3) for production of the defense article or component(s) or follow-on development or improvement of an item of US equipment (or derivations thereof). Each LOA will state, after identification of the defense article, "TDP for operation and maintenance (no production authorized)"; "TDP for study (no production authorized)"; or, "TDP for production", as applicable.

**D. Sale of TDPs for Operation and Maintenance** TDPs will normally be sold for O&M only if (1) the IA is able to verify that the specific article was provided to the Purchaser through authorized transfer and (2) there is no other viable means of ensuring that the US origin equipment can be maintained. The IA will provide information shown at Table 1401-1, for use in making a release determination, along with the LOA. The following note will be placed in each O&M LOA:

"The technical data package offered herein is provided only for the purpose of operation and maintenance of the [**defense article**] transferred to [**TDP Purchaser**] with USG approval. Should any new operation or maintenance procedures be developed by [**Purchaser**] for the [**defense article**], they will be shared without charge with the US program manager. In making this FMS offer to [**Purchaser**], the US Government makes no prior commitment or authorization for [**Purchaser**] to manufacture the defense equipment described herein. Separate US Government approval is required for such manufacture. The Purchaser agrees that unless specific authorization is provided in writing from the US Government, the technical data package will not be used for production."

**E. Sale of TDPs for Study or Production** An LOA will not be offered for study unless DoD is also prepared to release the TDP for production. If an article is in long supply, or if foreign production would adversely impact the US mobilization base, TDP requests for study or production will normally be denied. The IA will provide information shown at Table 1401-2, for use in making a release determination, along with the LOA. The following notes will be placed in each TDP study or production LOA:

**1. For study--**

"The technical data package offered herein is provided for study purposes only. In making this FMS offer to [**Purchaser**], the US Government makes no prior commitment or authorization for [**Purchaser**] to manufacture the defense equipment described herein. Separate US Government approval is required for such manufacture. If requested and approved, a new LOA or LOA Amendment will be issued for the provision of a certified production technical data package and any applicable charges for its use for manufacture.

**2. For production of articles for indigenous use--**

"1. The technical data package offered herein is provided for the manufacture of [quantity] [article] by [Purchaser] for indigenous purposes only. Such manufacture may be accomplished either by the Government of [Purchaser] in its own government-owned or government-operated facilities or in designated in-country private commercial facilities.

"2. Any manufacture in excess of this quantity will require separate approval of the US Government and the execution of an LOA Modification or Amendment.

"3. The information furnished under this LOA, and the product derived from the use of such information, shall not be disclosed or transferred to any third country, person, or organization without the prior written consent of the US Government and, where required, the execution of an LOA Modification or Amendment.

"4. The use of technical data which will be provided under this LOA will be limited to that required for the manufacture of the article(s) specifically authorized herein and its operation and maintenance. Information which has been acquired by the US Government without the unencumbered right to use and convey to others will not be furnished.

"5. It is understood that the furnishing of these technical data does not in any way constitute a license to make, use, sell, or transfer whatsoever any inventions, technical information, or know-how (hereinafter referred to as proprietary information) owned by third parties which may be described in the documentation.

"6. The US Government incurs no liability for any procurement, manufacture, use, or sale by the Government of [Purchaser] which makes use of any of the aforementioned proprietary information, or for any results derived from the use of the technical data furnished. The Government of [Purchaser] agrees to indemnify the US Government against any liability resulting from a claim asserted by the owner of any such proprietary rights in connection with such use by the Government of [Purchaser] of the documentation provided hereunder.

"7. The US Government will use its best efforts to furnish technical data that are accurate, adequate for the authorized purpose, current, and complete; however, the US Government does not guarantee the adequacy, accuracy, currency, or completeness of these data. Similarly, the US Government does not guarantee the accuracy, adequacy, currency, or completeness of any US industry documentation.

"8. Production validation - The Government of [Purchaser] will permit US Government personnel access to government and contractor facilities, records, and storage sites to review the implementation of the requirements of this LOA. Such access will be permitted when mutually convenient, but within a reasonable period of time after the request. Visits will be accomplished under established visit procedures.

"9. Flowback of [Purchaser] Technical Data to the US: Technical Data - [Purchaser] will furnish or cause to be furnished the following technical data to the US Government at no cost to the US Government other than the cost of reproduction, preparation, and handling:

"(a) All technical data pertaining to changes, modifications, and improvements in the design of [article] made in the course of development, evaluation, production, operation, and maintenance of [article].

“(b) All technical data pertaining to manufacturing processes employed in the production of **[article]**.

“(c) Technical data pertaining to changes proposed in the design of **[article]** but not adopted.

“(d) Notwithstanding (a), (b), and (c) above, if **[Purchaser]** incorporates an existing commercial item without modification of either the item or the **[article]** and if: (i) the item is not based in whole or in part on US technical data or on US design; and (ii) the item is not in whole or in part funded or financed by **[Purchaser]** directly or indirectly; and (iii) there is no development contract or subcontract between **[Purchaser]** and the supplier, then **[Purchaser]** will only be required, to the extent that it has the right to do so without incurring liability to others, to provide the US Government sufficient information for the US Government to evaluate the item, to procure it, to incorporate it into the system, and to operate, maintain, repair, overhaul, and modify it.

“10. Right to Use - **[Purchaser]** will grant or cause to be granted to the US Government a non-exclusive, irrevocable, royalty-free license to use and have used for US defense purposes, including security assistance, the technical data defined in a.(1),(2), and (3) in above paragraph and any inventions (whether or not patentable) made in the course of activities covered by this LOA. Additionally, **[Purchaser]** will use its best efforts to obtain licenses on fair and reasonable terms to the US Government to use and have used the technical data defined in a.(4) of above paragraph and patented inventions depicted in such technical data for US defense purposes, including security assistance.

“11. Contract Provisions - **[Purchaser]** will include suitable provisions in all pertinent program contracts, including a requirement to include those same provisions in all subcontracts, to meet the requirements of this section.

“12. The cost of the documentation provided hereunder does not include periodic updating. Revisioning services may be requested under a separate LOA, if desired.

### **3. For production, with authorized third country sale--**

“1. The technical data package offered herein is provided for the manufacture of **[quantity]** **[article]** in **[Purchaser]** for indigenous purposes only and **[quantity]** of **[article]** in **[Purchaser]** for subsequent transfer to **[country name(s)]**. Such manufacture may be accomplished either by the Government of **[Purchaser]** in its own government-owned or government-operated facilities or in designated in-country private commercial facilities.

“2. Any manufacture in excess of this quantity and as authorized in 1. above require separate approval of the US Government and the execution of an LOA Modification or Amendment.

“3. The information furnished under this LOA, and the product derived from the use of such information, shall not be disclosed or transferred to any third country, person, or organization other than the Government(s) of **[country names(s)]** without the prior written consent of the US Government and, where required, the execution of an LOA Modification or Amendment.

"4. The use of technical data which will be provided under this LOA will be limited to that required for the manufacture of the equipment specifically authorized herein and its operation and maintenance. Information which has been acquired by the US Government without the unencumbered right to use and convey to others will not be furnished.

"5. It is understood that the furnishing of these technical data does not in any way constitute a license to make, use, sell, or transfer whatsoever any inventions, technical information, or know-how (hereinafter referred to as proprietary information) owned by third parties which may be described in the documentation.

"6. The US Government incurs no liability for any procurement, manufacture, use, or sale by the Government of **[Purchaser]** which makes use of any of the aforementioned proprietary information, or for any results derived from the use of the technical data furnished. The Government of **[Purchaser]** agrees to indemnify the US Government against any liability resting from a claim asserted by the owner of such proprietary rights in connection with such use by the Government of **[Purchaser]** of the documentation provided hereunder.

"7. The US Government will use its best efforts to furnish technical data that are accurate, adequate for the authorized purpose, current, and complete; however, the US Government does not guarantee the adequacy, accuracy, currency, or completeness of these data. Similarly, the US Government does not guarantee the accuracy, adequacy, currency, or completeness of any US industry documentation.

"8. Production Validation - The Government of **[Purchaser]** will permit US Government personnel access to government and contractor facilities, records, and storage sites to review the implementation of the requirements of this LOA. Such access will be permitted when mutually convenient, but within a reasonable period of time after the request. Visits will be accomplished under established visit procedures.

"9. Flowback of **[Purchaser]** Technical Data to the US:

"a. Technical Data - **[Purchaser]** will furnish or cause to be furnished the following technical data to the US Government at no cost to the US Government other than the cost of reproduction, preparation, and handling:

"(1) All technical data pertaining to changes, modifications, and improvements in the design of **[article]** made in the course of development, evaluation, production, operation, and maintenance of **[article]**.

"(2) All technical data pertaining to manufacturing processes employed in the production of **[article]**.

"(3) Technical data pertaining to changes proposed in the design of **[article]** but not adopted.

"(4) Notwithstanding (1), (2), and (3) above, if **[Purchaser]** incorporates an existing commercial item without modification of either the item or the **[article]** and if: (1) the item is not based in whole or in part on US technical data or on US design; and (2) the item is not in whole or in part funded or financed by **[Purchaser]** directly or indirectly; and (3) there is no development

contract or subcontract between [Purchaser] and the supplier, then [Purchaser] will only be required, to the extent that it has the right to do so without incurring liability to others, to provide the US Government sufficient information for the US Government to evaluate the item, to procure it, to incorporate it into the system, and to operate, maintain, repair, overhaul, and modify it.

“b. Right to Use - [Purchaser] will grant or cause to be granted to the US Government a non-exclusive, irrevocable, royalty-free license to use and have used for US defense purposes, including security assistance, the technical data defined in a.(1), (2), and (3) above, and any inventions (whether or not patentable) made in the course of activities covered by this LOA. Additionally, [Purchaser] will use its best efforts to obtain licenses on fair and reasonable terms to the US Government to use and have used the technical data defined in subparagraph a.(4) and patented inventions depicted in such technical data for US defense purposes, including security assistance.

“c. Contract Provisions - [Purchaser] will include suitable provisions in all pertinent program contracts, including a requirement to include those same provisions in all subcontracts, to meet the requirements of this section.

“10. The cost of the documentation provided hereunder does not include periodic updating. Revisioning services may be requested as an Amendment to this LOA or under a separate LOA, if desired.”

**F. Revisioning Services** Services which provide for TDP updating may be offered for TDPs which have been approved for transfer. Revisioning services may be offered on the LOA which initially authorizes the TDP transfer. The services must be offered as a separate line item, and note 140102.F.2.12 or 140102.F.3.10 must be deleted. Subsequent sale of revisioning services requires separate LOA authorization and supplemental LOA terms and conditions as discussed below.

1. If TDP transfer notes in the basic LOA comply with the current version of the SAMM, and if the basic LOA is maintained in the active files and can be produced upon request, the following note will be used:

“The revisioning services offered herein are intended for updating the Purchaser’s existing [enter “production”, “O&M”, or “study”] technical data package (TDP) furnished on FMS case [case designator], accepted [date]. All TDP notes supporting [case designator] are incorporated herein by reference and apply to the revisioning services transferred pursuant to this LOA.

2. If a previous revisioning services LOA brought supplemental terms and conditions into compliance with the current version of this SAMM section, the updated notes (vice the original LOA) must be maintained in the active revisioning case file, and the following note will be used:

“The revisioning services offered herein are intended for updating the Purchaser’s existing [enter “production“, “O&M”, or “study”] technical data package (TDP) furnished on FMS case [designator], accepted [date], and on revisioning service LOA [designator], accepted [date]. All TDP notes supporting [revisioning services LOA designator] are incorporated herein by reference and apply to the revisioning services transferred pursuant to this LOA.

3. If previous TDP transfer notes are no longer current on the matter of the Purchaser’s rights and obligations regarding the use of the basic TDP, or if previous notes - even if believed to be

adequate - cannot be produced and verified, the revisioning services LOA will contain the complete provisions required for initial TDP transfer.

**G. Restrictive Markings on TDPs** The IA will ensure the TDP, when transferred, includes markings clearly showing what right of use are/are not authorized, any security classification which may apply, and other restrictions. The markings will be applied, to the extent possible, to each separate part of the technical information provided, including drawings and aperture cards. If individual part marking is not possible, TDP cover information will provide the restrictions.

**140103 SECURITY ASSISTANCE PROGRAM DODD 5530.3 AGREEMENTS** Since such agreements involve matters which must be resolved on a governmental basis as part of a broad program of cooperation, copies of DoDD 5530-3 agreements under negotiation will not normally be released to third parties. They may be discussed with representatives of appropriate US industry to the degree necessary to obtain Congressional reporting or other information. With the consent of the foreign party, these agreements may be released to specific US firms for implementation.

**A. Need for Agreement** The munitions license or LOA is normally sufficient to establish the rights and obligations of each party for commercial or FMS SA programs. Even though LOA and DoDD 5530.3 agreements will have common provisions, FMS LOAs are among international agreements exempted from the requirements of DoDD 5530.3. In some exceptional instances, it is in the US interest to conclude a DoDD 5530.3 agreement before initiation of a commercial or USG program. The final determination as to whether a DoDD 5530.3 agreement will be negotiated is the responsibility of DSAA. The following are examples of factors which may support a DoDD 5530.3 agreement:

1. The program is complex, it involves licensed production, or it is considered sensitive (for example, classified data will be released) by the USG or US industry.
2. Delineation of responsibilities and authorities of the parties is required.
3. The country has requested, and provided rationale for, a separate agreement.

**B. Agreement Elements** DoDD 5530.3 agreements include standard provisions, required by US law or regulations, which are not negotiable. These agreements also normally include unique provisions reflecting the interests of the involved parties. Therefore, the final content of each agreement is determined during negotiations. A typical agreement contains provisions on at least the following topics (specific guidance is included in other parts of the SAMM):

1. Scope of agreement, including any items and quantities to be produced in the US and authorized for production by the participating country. The participants in the program and their obligations must be clearly stated.
2. Terms and, when required, their definition.
3. Export, including anticipated use of commercial or FMS transportation channels (see 80206). Any role of DoD in assisting in obtaining commercial export licenses or technical data belonging to US companies may also be defined.

4. Authorization for use of technical data, usage limits, and restrictions on its transfer to third parties. Any use of USG facilities will be incorporated.
5. Flowback, including provisions relative to the return to the US of any technical improvements to transferred equipment or manufacturing processes. The USG must have the right to use the improvements without payment of any fees.
6. Management, such as establishment of a joint project office to serve as the channel for exchange of information.
7. Configuration management, to ensure systems are produced to specific (normally US standard) specifications. The agreement will normally provide for incorporation of engineering changes and modifications, and the procedures to manage the changes.
8. Existing security arrangements.
9. Customs, duties, and taxes. This may show new or existing reciprocal arrangements.
10. Audit access and production validation, see 140104.C below.
11. Third party transfer and end use. This will include any production incorporating US equipment or based on US information obtained under the program from any source.
12. Reimbursement for applicable costs. It will be shown that USG costs for support to Purchaser program management, FMS administrative fees, transportation, or other costs must be financed under FMS procedures.
13. LOA-DoDD 5530.3 agreement precedence. It will be shown that, should there be a conflict between the DoDD 5530.3 agreement and LOA, the terms of the LOA will take precedence.
14. Logistics support. This may include items such as USG responsibilities for support or any authorization for foreign production of spares, and any other pertinent requirements.
15. Supplemental compensation. No requirement can be imposed by a participant for compensation that is not in accordance with the agreement.
16. Administrative provisions to show procedures to amend or change the agreement, identification of the effective national language, resolution of conflicts, and specific duration (such as ten years) before the agreement will expire or must be renewed. Also, each agreement will contain procedures for the early termination by either party, provisions for certain elements of the MOU/MOA to remain in effect after termination (third party transfer, security, flowback, and limitations on any further weapon system production), and consideration of authorization to produce spare parts following termination.

**C. Responsibility for Monitoring** DoD enters into agreements with friendly and allied countries on the basis of common goals to achieve mutual national security objectives, with the expectation that both parties will fulfill their commitments. To complement the agreements, monitorship responsibilities are established. The overall responsibility for assuring that terms and conditions are adhered to rests with the IA, including the designated IA for agreements negotiated at

OSD level. This responsibility is accomplished with the assistance of other involved USG organizations as well as US industry.

#### **D. Responsibilities**

1. The implementing agency must assure that:

a. Commitments are not made until OSD-level approval is obtained. Export license approvals which could impact the Agreement will not be provided prior to completion of negotiations.

b. Agreements are drafted consistent with DoD policy and negotiation and conclusion authorities are obtained and provisions are included to assure USG and foreign rights and obligations are defined.

c. IA coordination is conducted and any required Congressional notification data is provided to DSAA.

d. Copies of the concluded Agreement are provided to DSAA, the SAO, DIA, OGC (original), State Department Treaty Affairs, and other involved organizations.

e. Overall responsibility rests with the IA program manager. For complex programs, monitoring and implementation of individual aspects of the Agreement will be the responsibility of the cognizant functional area. Implementing arrangements will identify individual responsibilities.

f. Procedures are established to assure compliance with all elements of the Agreement.

g. Production facilities are visited, consistent with the provisions of the Agreement. During the visits, US personnel will, as a minimum, review production records and validate production and retransfer reports. Findings will be recorded in a trip report and distributed to involved agencies. The visits may be conducted by knowledgeable personnel in conjunction with other regularly scheduled visits. DSAA will be provided an information copy of any correspondence issued or received relative to Agreement compliance.

h. Reports are submitted as required in paragraph E. below.

2. DSAA will:

a. Receive, and staff within OSD and DoS, draft SA Agreements and IA requests for authority to negotiate and conclude the Agreements.

b. Provide guidance on coproduction and other SA Agreements following any necessary staffing within OSD and with DoS.

c. Staff and provide to Congress notifications required by legislation.

d. Initiate appropriate action within DoD and with DoS when issues of Agreement non-compliance are identified.

e. DSAA/MEAN-AP is the point of contact within DSAA for general issues relative to Agreement compliance. A point of contact within the regional directorates will be identified to the IA for specific Agreements.

3. SAOs will:

- a. Identify the individual to maintain contact with the IA, be familiar with the Agreement, and be responsible for monitoring status in country. Provisions will be made for continuity of the requirement after departure of the individual identified.
- b. Be responsive to requests for information from the program manager or DSAA.
- c. Provide information on problems, including possible non-compliance.
- d. Serve as the conduit for production status information from the country to the IA.

**E. Quarterly Report of Security Assistance Coproduction Agreements** Each IA will maintain appropriate data and report (RCS DSAA 1226) to DSAA information regarding coproduction and licensed production programs under its purview. Portions of the information will be consolidated by DSAA and included in the quarterly AECA 36(a) Report through DoS to Congress. Each report will be titled "Quarterly Report of Security Assistance Coproduction Agreements" and will be submitted on the following schedule:

First FY Quarter -- 1 October through 31 December, by 31 January  
Second Quarter --- 1 January through 31 March, by 30 April  
Third Quarter ---- 1 April through 30 June, by 31 July  
Fourth Quarter ----1 July through 30 September, by 31 October

Information for active and inactive coproduction programs, for which agreements have been concluded but have not been closed, will be reported. Programs for which agreements have not been concluded and closed programs will not be reported. Negative reports are required.

1. Active program reports will include the title of the agreement or name of the weapon system centered at the top, and the following information:

1. Country, international organization, or foreign firm If the agreement is bilateral and the partner heads up an approved production group or consortium, identify the other members.

2. Description of articles authorized for production

3. Estimated value of articles authorized to be produced

4. Estimated quantity of articles authorized to be produced

5. Authorized third country sales and description of third party transfer

Restrictions Specify item and quantity for each third country, date of U.S. authorization, and status of deliveries. Identify source of information.

6. Alternate measures to ensure compliance with third party transfer and

production quantity restrictions (if applicable)

7. Date of LOA and, if applicable, DoDD 5530.3 Agreement

8. Agreement expiration date If the Agreement has no expiration date, the projected termination date, not simply an event such as "completion of production", should be furnished and identified as such.

**Items 9 – 13 will begin on a separate page and will be for internal use.**

9. Quantity produced during the reporting period, quantity produced to date

10. Incidents of agreement noncompliance during the reporting period If incidents have occurred, provide a full accounting and identify source of information. If none, so state.

11. Technology flowback and monetary return Provide a summary of flowback requested or received during the reporting period and the status of its value. If none, state why and provide a statement of previously received or projected flowback, if appropriate. Include the total monetary return to the US as a result of the agreement and actual expenditures in the US to date.

12. Summary of actions Provide narrative summary of significant events for the period, such as meetings or program reviews, monitoring actions, support provided, significant problems, and the outlook for the coming year.

13. Points of contact Names, organizations, and telephones number of US and foreign project officers who can provide additional information and interim updates.

2. Inactive program reports will include the title of the program or name of the weapon system centered at the top, and:

1. Country, international organization, or foreign firm If the agreement is bilateral and the partner heads up an approved production group or consortium, identify the other members.

2. Date of LOA and, if applicable, DoDD 5530.3 Agreement

3. Reason program is inactive, vice closed

4. Estimated closure or termination date of the agreement

5. Summary of action for the reporting period Briefly explain agreement close-out actions, including monitoring actions which continue beyond agreement expiration. Provide narrative summary of significant events for the period, if applicable.

6. Points of contact Include the names, organizations, and telephone numbers of US and foreign project officers.

**140104 COPRODUCTION** Coproduction policy is provided in DoDD 2000.9. Per DoDD 5530.3, para C.2., for coproduction programs which include FMS provisions for transfer of defense articles or services, written authority must be obtained from the Director, DSAA prior to entering into

negotiations. Requests for DSAA authority must include a description of the project as well as fiscal and legal memoranda. DoDD 5530.3 agreements for coproduction of MDE will be classified Confidential, as a minimum, until the agreement is concluded. Programs implemented via LOAs are subject to normal LOA classification guidance.

**A. Program Initiation.** Discussions on coproduction programs may be initiated by the IA or by authorized representatives of foreign governments or international organizations. For programs involving FMS, the IA will ensure appropriate coordination with DSAA, furnish technical and negotiating assistance, and perform managerial and reporting functions. When partially or fully implemented through DoDD 5530.3 agreements, the IA recommendation will be forwarded to DSAA for authorization to proceed and will include, to the degree possible:

1. The program origin, nature, scope, and supporting rationale;
2. Implications of proposed technology transfer, including the scope and limitations of any needed NDP-1 exceptions;
3. Impact on US industry prime and subcontractors, and the views of these producers;
4. Impact on any other authorized foreign production of the same article; and
5. Impact on the US mobilization base for the article.

**B. FMF-Financed Coproduction Program** TDPs are normally sold with the understanding release could lead to production. LOAs for the sale of TDPs will normally be financed with Purchaser cash. AECA Sec 42(b) requires DoS to advise Congress prior to approval of use of FMF to finance coproduction or licensed production in a foreign country. DSAA regional directorates will not approve release of an FMS LOA or FMF funding until DoS has advised Congress. Regional directorate letters to DoS will advise of the country, type of proposed transaction (FMS LOA or direct commercial sale), description of program, the extent of foreign production, and impact on employment and production within the US (to the extent such information is available).

**C. Monitoring** USG monitoring requirements will be determined on a case-by-case basis. USG audits of production facilities may not be required when there is clear evidence of commercial arrangements which are satisfactory to DoD, such as when there will be a direct agreement between a US firm and the foreign government or firm which provides access to facilities and records. The need for direct USG involvement in oversight may also be reduced while the US firm will have technical representatives in the foreign plant or the US will retain control over critical technology or components essential to the item being produced. Industry technical representatives will be requested to provide information to the IA on foreign production including items and quantities, third party transfers, and any non-compliance with provisions of the LOA or DoDD 5530-3 agreement. When USG monitoring is reduced based on industry arrangements, Agreements will be structured to provide for USG monitoring once industry technical representatives are no longer required. Whether or not USG monitoring and validation provisions exist does not change the IA requirement to assure reports required by Para D.1 below are submitted, and for maintaining program oversight. These factors will be considered in the initial DoD-industry program discussions between DoD and US industry relative to program monitoring and access requirements. LOAs or DoDD 5530-3 agreements will be structured to assure there are acceptable monitoring provisions for each program and also that the IA

receives adequate data to prepare status reports. When USG responsibilities may only be satisfied by arranging for access for USG personnel, the following note will be included:

"Production Reporting/Validation-The Government of [Purchaser] agrees to provide periodic reporting of quantities of defense items produced under this Agreement and will permit US Department of Defense personnel access to government and contractor facilities, storage sites, and those records necessary to verify production quantities, as well as control of technical data and other implementation requirements of this Agreement. Such access, if requested, will be permitted when mutually convenient, but within a reasonable period of time after the request. Visits will be accomplished under established visit procedures."

**140105 COOPERATIVE PROJECTS UNDER AECA SEC 27** Sec 27 projects allow partnership arrangements where the US and another eligible country make equitable contributions during weapon systems development and production. The projects do not authorize programs for production of wholly US developed weapons systems; they must fulfill requirements of both the foreign party and DoD. NATO and non-NATO (friendly countries identified by DoD in reports to Congress) programs eligible for implementation as cooperative projects must meet the definition and waiver criteria of AECA Sec 27 and 10 USC 2350b. No FMF, MAP, or other USG financing may be used to fund project costs. A joint management office is normally established to administer each program on behalf of the participants.

**A. NATO and Non-NATO Cooperative Projects** A NATO cooperative project is a jointly managed arrangement, described in a formal agreement among the parties, undertaken to further the RSI objectives of the armed forces of NATO or one or more NATO member countries. A non-NATO cooperative project under AECA Sec 27(j)) is the same, but its purpose is to enhance participant conventional defense capabilities. Authorized non-NATO countries are certified annually by Congress based on OUSD(A&T) recommendations. FAA Sec 517 had the effect of initially designating Australia, Egypt, Israel, Japan, The Republic of Korea, and New Zealand. The project DoDD 5530.3 agreement will provide for:

1. One or more of the participants to share with the US the costs of research, development, testing, evaluation, or production (with follow-on support) of certain defense articles;
2. Concurrent production in the US and in the country of another participant of a defense article jointly developed under a. above;
3. US procurement of a defense article or service from another Agreement party.

**B. Waiver of Charges** AECA Sec 27(e)(1) provides authorization to waive certain charges associated with cooperative projects if the other participants agree to waive corresponding charges. Waiver of appropriate charges must be approved by the Director, DSAA, prior to conclusion of the cooperative project agreement, whether or not the agreement commits to the waivers.

1. NC Recoupment Charge Waiver. Newly initiated cooperative projects for development with no use of items previously developed with USG funds would incur no NC charges since each participant will have contributed its equitable share of the cost. If a cooperative project includes use of items listed in Table 700-6, a waiver of the US charges must be processed in accordance with DoDD 2140.2. See Chap 13 for applicability of these waivers. The request for waiver should be submitted to the Director, DSAA, at the same time the AECA Sec 27 certification is provided (see Para D. below).

2. FMS Administrative Charges. AECA Sec 27 programs will not normally be implemented through the FMS system, and administrative charges are not applicable. When the FMS system is used, the administrative charge will be assessed. Non-assessment of administrative charges required by Sec 21(e)(1)(A) and AECA Sec 43(b) to the participants necessitates that the IA program use its O&M or R&D funds to finance these costs.

**C. Implementation** Authority to negotiate and conclude cooperative agreements is delegated to USD(A&T), with authority to redelegate to the MILDEPs.

1. SA funds may not finance the cost of any AECA Sec 27 cooperative project. Proposals for Sec 27 programs which rely in any manner on the FMS system will not be offered to participants unless an exception has been made in writing by the Director, DSAA. Proposals submitted to DSAA should include information on MOU terms which provide for waiver of any FMS costs.

2. For NATO member country cooperative projects, AECA Sec 36(b) (see section 703) shall not apply to sales made under AECA Secs 21 and 22 or to production and exports made pursuant to cooperative projects under Sec 27. AECA Sec 36(c) shall not apply to the issuance of licenses or other approvals under AECA Sec 38 if sales are made, production and exports ensue, or such licenses or approvals are issued as part of a cooperative project. For non-NATO cooperative projects, certifications under AECA Sec 36(b) and (c) are required.

**D. Certification to Congress** All cooperative projects require Congressional notification in accordance with the Case Act (DoDD 5530.3). Projects which are to receive waivers or utilize the provisions of AECA Sec 27 must also be notified to Congress 30 days prior to signature of the agreement (Sec 27(f)). When the proposed agreement is in the final version agreed to by all participants and the IA will submit, not later than 60 days prior to signature, information below (estimates where actuals are not available) to the applicable DSAA country director:

1. A detailed description of the project;
2. Total quantity of the defense articles expected to be produced;
3. Full cost of the cooperative project; the part of the cost to be incurred by the USG, including the cost to be incurred as a result of waivers of charges which would otherwise be required under AECA Secs 21(e)(1)(A) and 43(b); and the cost to be incurred by the other participants;
4. The dollar value to be contributed by the US and each of the other participants;
5. A description of the defense articles and services to be contributed by the US and each of the other participants;
6. A statement of the foreign policy and national security benefits; and,
7. Whether it is likely that prime or subcontracts will be awarded to particular contractors.

DSAA will then consult with DoS and Treasury per Executive Order 11958 prior to submissions to Congress.

## TABLE 1401-1

### DATA SHEET FOR TDP TRANSFERRED FOR OPERATION AND MAINTENANCE

1. Nomenclature of hardware, major end item, or component, as applicable:
2. Major assemblies or components in TDP having USG patent or other proprietary rights not releasable without prior approval:
3. Statement as to whether the TDP requirement would be met by means of pertinent DoD instructions, maintenance manuals or other similar publications:
4. In-country inventory of major end items requiring maintenance support from the requested TDP:
5. Current status of DoD maintenance capability; for example, is there an excess depot level capability at the DoD facility:
6. Estimated date by which USG repair parts support will terminate:
7. Security classification of the TDP:
8. Verification of legal rights to release the TDP for this purpose:
9. DoD component recommendation on releasing the TDP:

(Attach copy of pertinent correspondence with Purchaser)

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**TABLE 1401-1. Data Sheet for TDP Transferred for Operation and Maintenance.**

**TABLE 1401-2**

**DATA SHEET FOR TDP TRANSFERRED FOR STUDY OR PRODUCTION**

1. Nomenclature of defense article to be studied or produced:
2. Quantity to be produced by, and production schedule of, the requesting government:
3. Use of article to be produced, with names of third country purchasers if for third country sale:
4. Stock on hand, show separately any quantity beyond approved acquisition objective:
5. US and foreign production history for last five years:
6. Production plans (a) underway, (b) approved, and (c) proposed:
7. Estimated date by which USG repair parts support will terminate:
8. Known US source(s) of supply:
9. USG cost of the article:
10. Security classification of the TDP and of the article to be produced:
11. Other countries authorized to produce the article:
12. Anticipated impact of TDP sale on US, FMS, or other programs:
13. Whether production recipients previously obtained the article and quantities obtained:
14. Verification of legal rights to release the TDP for this purpose:
15. TDP elements having patent or other proprietary rights not releasable without prior approval:
16. Whether TDP requirement could be met by maintenance manuals or other publications:
17. DoD component recommendation regarding release of the TDP:

(Attach copy of pertinent correspondence with Purchaser)

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**TABLE 1401-2. Data Sheet for TDP Transferred for Study or Production**

Replace the definition for “Technical Data” in Appendix B with the following:

**Technical Data** – Recorded information, regardless of form or the method of recording, of a scientific or technical nature. Examples of technical data include research and engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information and computer software documentation. Computer software, financial, administrative, cost and pricing, or other information incidental to contract administration are excluded.

To Section 801, add the following:

**80106 OFFSET PROCUREMENT** USG funds may not be used to finance offsets. Also, USG agencies may not enter into or commit US firms to any offset agreement. Any Purchaser requesting offset arrangements in conjunction with FMS should be informed that the responsibility for negotiating offset arrangements and satisfying all related commitments resides with the US firm involved. Under certain circumstances, the costs to administer offsets may be recouped through FMS as follows:

A. DFARS 225.7303-2 allows US contractors to recover, under FMS contracts based on LOAs financed wholly by Purchaser cash or repayable FMF credits, offset administrative costs of any offsets which are associated with those contracts. These costs should be included, as part of the applicable line item unit cost, in P&A data and in estimated prices quoted in the LOAs (see also Section 70105.L).

B. It is the contractor's responsibility to inform the IA when estimated offset administrative costs have been included in the FMS pricing information provided. The costs should be included as early as possible, but before submittal of the LOA. Requests to include these costs after LOA acceptance will require LOA Modification.

C. It is the responsibility of the IA to specify to DSAA, in the transmittal of an LOA and of any subsequent LOA Modification or Amendment, when offset administrative costs have been included in a line item unit cost.

D. It is inappropriate to discuss with the Purchaser the nature or details of an offset arrangement; however, the fact that offset administrative costs have been included in the P&A or LOA price estimate will be confirmed, should the Purchaser inquire. The Purchaser should be directed to the US contractor for answers to all questions regarding its offset arrangement, including the cost of administering the arrangement. IA involvement in any discussion, beyond confirmation of their inclusion in price estimates, of these costs with the Purchaser requires case-by-case review and approval by DSAA.