



DEFENSE SECURITY COOPERATION AGENCY

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MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE AIR FORCE FOR
INTERNATIONAL AFFAIRS
DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR
DEFENSE EXPORTS AND COOPERATION
DEPUTY ASSISTANT SECRETARY OF THE NAVY FOR
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DEPUTY DIRECTOR FOR INFORMATION ASSURANCE,
NATIONAL SECURITY AGENCY
DIRECTOR FOR SECURITY ASSISTANCE, DEFENSE FINANCE
AND ACCOUNTING SERVICE – INDIANAPOLIS OPERATIONS

SUBJECT: Guidance on the Sale of Cluster Munitions, DSCA Policy 11-33 [SAMM E-Change 151]

This memorandum provides guidance on the sale of cluster munitions. Section 7056(b) of the Department of State, Foreign Operations and Related Appropriations Act 2010, P.L. 111-117 (Division F of the Consolidated Appropriations Act for FY 2010), provides that:

“No military assistance shall be furnished for cluster munitions, no defense export license for cluster munitions may be issued, and no cluster munitions or cluster munitions technology shall be sold or transferred, unless--

(1) the submunitions of the cluster munitions, after arming, do not result in more than 1 percent unexploded ordnance across the range of intended operational environments; and

(2) the agreement applicable to the assistance, transfer, or sale of such cluster munitions or cluster munitions technology specifies that the cluster munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present or in areas normally inhabited by civilians.”

This provision continues a similar one-year ban that had been enacted in Section 646(b) of the Consolidated Appropriation Act, 2008, PL 110-161 with an effective date of December 26,

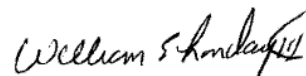
2007. This provision does not apply to technology used to clear or disarm unexploded cluster munitions.

Cluster munitions are composed of a non-reusable delivery canister or body containing multiple, conventional explosive submunitions designed to disperse at an optimum altitude and distance from the desired target for dense area coverage. This applies to systems delivered by cruise missiles, artillery, mortars, missiles, bombs, tanks, rocket launchers, or naval guns capable of deploying payloads of explosive submunitions that detonate via target acquisition, impact, or altitude, or that self-destruct (or a combination of both). Cluster munitions technology includes, but is not limited to, cluster munition components, accessories, attachments, parts, firmware, software, or other related technical data.

At present the only cluster munition with a compliant submunition (one that does not result in more than 1 percent unexploded ordnance across the range of intended operational environments) is the CBU-97B/CBU-105, Sensor Fused Weapon (SFW). The CBU-107 Passive Attack Weapon, which contains non-explosive rods, is not captured by the ban. No other cluster munitions or cluster munitions technology, technical assistance, or related technical information is eligible for release at this time. No new Foreign Military Sales cases or Price and Availability Data should be developed or offered for them. Implementing agencies may not complete deliveries or provide support or cluster munitions technology for non-compliant cluster munitions provided under Letters of Offer and Acceptance (LOA) accepted prior to December 26, 2007.

The attached SAMM E-Change adds a paragraph to the SAMM explaining what may not be sold and adds a mandatory note, to be applied by the Implementing Agency, for use on LOAs that include permissible cluster munitions and cluster munitions technology.

As the statute is in effect, this policy is effective immediately. These changes will be included in the on-line version of the SAMM found on the DSCA Web Page as SAMM E-Change 151. Questions regarding this policy should be directed to Mr. Mike Slack, DSCA/STR/POL, at (703) 601-3842 or e-mail: michael.slack@dca.mil.



William E. Landay III
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Director

Cluster Munitions
SAMM E-Change 151

1. The following paragraph is added to section C4.4. WHAT MAY NOT BE PURCHASED USING THE FMS PROGRAM:

C4.4.6 Cluster Munitions and Cluster Munition Technology. No military assistance shall be furnished for cluster munitions, and no cluster munitions or cluster munitions technology shall be sold or transferred, unless the submunitions of the cluster munitions, after arming, do not result in more than 1 percent unexploded ordnance across the range of intended operational environments. Cluster munitions are composed of a non-reusable delivery canister or delivery body containing multiple, conventional explosive submunitions designed to disperse at an optimum altitude and distance from the desired target for dense area coverage. This applies to systems delivered by cruise missiles, artillery, mortars, missiles, bombs, tanks, rocket launchers, or naval guns capable of deploying payloads of explosive submunitions that detonate via target acquisition, impact, or altitude, or that self-destruct (or a combination of both). Cluster munitions technology includes, but is not limited to, cluster munition components, accessories, attachments, parts, firmware, software, or other related technical data. This restriction does not apply to technology used to clear or disarm unexploded cluster munitions.

2. The following mandatory note is added to Table C5.T5. of the Security Assistance Management Manual (SAMM) and will be required in all new LOAs or Amendments that add compliant cluster munitions or cluster munitions technology:

Cluster Munitions with Submunitions with a Confirmed 99 Percent or Higher Tested Rate

<i>Note Usage</i>
Mandatory for LOAs that include cluster munitions or cluster munitions technology. Mandatory for Amendments and Modifications that add cluster munitions or cluster munitions technology.
<i>Note Text</i>
“The purchaser agrees that the [name munition] will be used only against clearly defined military targets and will not be used where civilians are known to be present or in areas normally inhabited by civilians.”