



DEFENSE SECURITY ASSISTANCE AGENCY
WASHINGTON, D. C. 20301

1 October 1977

In reply refer to:
Transmittal No. 15
DOD 5105.38-M

MEMORANDUM FOR RECIPIENTS OF DOD 5105.38-M, MILITARY ASSISTANCE AND
SALES MANUAL - PARTS I, II, AND III

SUBJECT: MASM I, II, and III Transmittal

Attached is MASM Transmittal No. 15 which updates the procedures to
1 October 1977.

Highlights of this transmittal include chapters on Military Articles
and Services List (MASM); Policy; Military Education and Training; FMS
Policies, Guidelines and Restrictions; General Procedures; Implementa-
tion of FMS; FMS-Commercial Availability; FMS Training and Major Defense
Equipment List.

Update the portions of your current MASM in accordance with the List of
Changes. Specific changes are indicated by a broken line in the margin
of the chapter.

This transmittal supersedes the following correspondence/messages:

- DSAA Memorandum I-4947/77 dated 4 May 1977, subject: Part III,
(Chapter B) FMS Policies, Guidelines and Restrictions; (Chapter C)
General Procedures; (Chapter D) Preparation and Processing of LOA;
(Chapter H) FMS-Commercial Availability.
- DSAA Memorandum I-4644/77 dated 5 May 1977, subject: Part III,
Chapter F, Amendment or Modification of LOA.
- DSAA Memorandum I-5969/77 dated 27 May 1977, subject: Part III,
Chapter J, FMS Training.
- DSAA Memorandum I-7285/77 dated 6 July 1977, subject: Part III,
(Chapter B) FMS Policies, Guidelines and Restrictions; (Chapter C)
General Procedures; (Chapter D) Preparation and Processing of LOA;
(Chapter F) Implementation of FMS.
- DSAA Memorandum I-6476/77 dated 19 July 1977, subject: Part II,
Chapter E (Appendix 1), Standardization Format for the Invitational
Travel Orders (ITO).
- DSAA Memorandum I-8974/77 dated 9 August 1977, subject: Part III,
Chapter A, eligibility for Foreign Military Sales.



DSAA Memorandum I-10047/77 dated 9 September 1977, subject: Appendix C, Major Defense Equipment List (MDEL).



H. M. Fish
Lieutenant General, USAF
Director,
Defense Security Assistance Agency

Attachments

- (1) List of Changes
- (2) MASM Update Materiel

LIST OF CHANGES

Remove and insert the following portions of your current MASM:

Remove

Insert

List of Effective Pages

List of Effective Pages

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Table of Contents -

pages xiii - xviii

pages xiii - xix

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PART I -

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Abbreviations - 9-10
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Glossary of Terms and
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PART II -

Appendix 1 (Attach at back of
Chapter E)

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PART III -

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In addition to the above, post the following pen and ink changes:

PART I -

(1) DOD Directives and Instructions - Page 3 - *2140.2 - change the date from "January 23, 74" to January 5, 77".

PART II -

(1) Chapter H - Page H-1 - para 2 - third line from bottom of first paragraph - change "... administration are subject ..." to read "... administration are generally subject ...".

PART III -

(1) Chapter C - Page C-7 - para 8.b. - 4th line of para - change "FMS" to "AEC". Page C-8 - para 9.c. - change date of DODD 2140.2 from "17 January 1974" to "5 January 1977". Page C-17 - paras "18., 19. and 20." - change to read "19., 20. and 21.", respectively.

MILITARY ASSISTANCE AND SALES MANUAL

LIST OF EFFECTIVE PAGES

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DOD Directives and Instructions	1 through 8	1 October 1977
A	A-1 and A-2	15 January 1977
B	B-1 and B-2	1 May 1976
C	C-1 through C-3	1 October 1977
D	D-1 through D-11	15 January 1977
E	E-1 and E-2	1 July 1974
F	F-1 through F-3	15 June 1977
G	G-1 through G-5	15 January 1977
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A	A-1 through A-4	1 December 1975
B	B-1 through B-3	Deleted
C	C-1 through C-21	15 June 1977
D	D-1 through D-15	1 July 1974
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Appendix 1-E	App 1E-1 through App 1E-7	1 October 1977
F	F-1 through F-31	1 March 1976
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Appendix A	App A-1 through App A-24	1 October 1976
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C	C-1 through C-17	1 October 1977
D	D-1 through D-20	15 January 1977
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Appendix B	App B-1 through App B-5	15 January 1977
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package for shipment.

(d) An estimated time of two months required to ship and receive.

Lease

An agreement for temporary transfer of the right of possession and use of a non-excess defense article or articles to a foreign government or international organization, with the transferee agreeing to pay rent to the U.S. Government and/or maintain, protect, repair, or restore the article(s), subject to and under authority of Title 10 USC, Section 2667.

Less Developed Country (LDC)

Excluded from the list of developed countries designated by Executive Order 11285 of June 10, 1966, for purposes of the Interest Equalization Tax, or which are considered LDC by the Eximbank for purposes of the Exim Act of 1945, as amended.

Loan

An agreement for temporary transfer of the right of possession and use of a defense article or articles not acquired with Military Assistance funds to a foreign government or international organization, at no rental charge to the transferee, with the transferor U.S. Military Department being reimbursed from MAP funds, subject to and under authority of the Foreign Assistance Act, Section 503.

Local Currency

The official currency of the foreign country.

Major Defense Equipment

Any item of significant combat equipment on the United States Munitions List having a non-recurring research and development

cost of more than \$50 million or a total production cost of more than \$200 million. Part III, Appendix C of this Manual lists items which constitute Major Defense Equipment.

MAAG (Military Assistance Advisory Group)

As used herein, the term MAAG encompasses Joint U.S. Military Advisory Groups, Military Missions, Military Advisory Groups, U.S. Military Groups, and U.S. Military Representatives exercising responsibility within a U.S. Diplomatic Mission for security assistance and other related DOD matters. Defense Attaches are included only when specifically designated.

Maintenance Float

End items or components of equipment authorized for stockage at installations or activities for replacement of unserviceable items when immediate repair of the unserviceable equipment cannot be accomplished by the field maintenance activity.

Major Item (Line)

A program line for which the requirement is expressed quantitatively as well as in dollars. These lines are identified in the MASL by a unit of issue other than dollars (XX).

Military Assistance Program (MAP)

An annual program for which the United States Government receives no dollar reimbursement, showing a detailed funding program for a given fiscal year related to specific military assistance requirements by area and country, and taking into account the lead times necessary to effect the deliveries or perform the services in that program.

MAP Assets

Materiel for which title has been transferred to MAP ownership, but not to a recip-

MILITARY ASSISTANCE AND SALES MANUAL—PART I

ient country or organization.

MAP Element

An integrated activity, a combination of men, equipment, supplies, facilities, and other resources, which together constitute an identifiable military force, unit, activity or specific function within a Country Military Assistance Program.

MASF (Military Assistance Service Funded)

All defense articles and defense services transferred to foreign countries under the authority contained in the Department of Defense Appropriation Act.

Military Articles and Services List (MASL)

Catalogue of materiel, services and training used in the planning and programming of Grant Aid, International Military Education and Training (IMET) and Foreign Military Sales (FMS). For Grant Aid this catalogue contains end item availability of materiel and services and for both Grant Aid and FMS it establishes a uniform level of line item detail in the automated program files of all agencies. Separate MASLs are maintained for IMET and FMS training. These catalogues disseminate course availability, price and duration of training to all concerned.

Military Export Sales

All sales of defense articles and defense services made from U.S. sources to foreign governments, foreign private firms and international organizations, whether made by DOD or by U.S. industry directly to a foreign buyer. Such sales fall into two major categories, Foreign Military Sales and Commercial Sales.

MILSTAMP

Military Standard Transportation and Issue Procedure.

MILSTRIP

Military Standard Requisitioning and Issue Procedure.

Obligations

Amounts of orders placed, contracts awarded, services received, and similar transactions during a given period requiring future payment of money. Such amounts include adjustments for differences between obligations previously recorded and accrued expenditures or actual payments.

Offer Date

The date which appears on the offer portion of DD Form 1513 and which indicates the date on which an FMS offer is made to a foreign buyer.

Open Sales Case

An FMS case is designated open as long as any portion of the transaction is incomplete, i.e., delivery of materiel, performance of services, financial transactions, or rendering of the final statement of accounts.

Open Sales Offer

An FMS offer made to a foreign buyer which is pending acceptance.

Operation & Maintenance Costs (O&M Costs)

Costs associated with equipment, supplies, and services required to train, operate, and maintain forces in a recipient country, including cost of spare parts other than concurrent spares and initial stockages, ammunition and missiles used in training or replacements for such items expended in training or operations, rebuild and overhaul costs (excluding modernization) of equipment subsequent to initial issue, training and other

CHAPTER C

POLICY

1. Purpose and Scope

This chapter sets forth basic DOD policies of general application to all Security Assistance programs and activities. More specific policies applicable to a particular program are contained in other chapters dealing with that subject and, in addition, more policies of limited application are set forth in planning guidance published periodically by the ASD/ISA.

2. Administration

Security Assistance shall be administered in accordance with the Foreign Assistance Act, the Arms Export Control Act, and related or successor legislation, and in support of the foreign policy and national security objectives of the U.S. It shall support and be in consonance with U.S. military strategic plans and objectives and in conformity with policy and planning guidance issued by or for the Secretary of Defense.

3. Planning

a. There will be close coordination between U.S. military force planning and Security Assistance planning under the "Total Force" concept at all levels in the Department of Defense.

b. The fundamental responsibility of foreign governments to determine the nature of their own security interests and the path of their own progress shall be recognized. U.S. advisory assistance and training provided to less developed countries will emphasize the development of a capability to manage military resources with particular emphasis on planning, programming and budgeting activities at the national level.

c. The development of regional defense arrangements and self-support capabilities suitable for multi-national participation shall be encouraged.

d. The development of the capability to counter insurgency and to provide for internal stability and security will be encouraged in less developed friendly countries.

e. To the extent feasible, the use of indigenous military forces or activities helpful to the economic development of less developed friendly countries shall be encouraged, provided that such participation does not significantly detract from the capability of the forces to perform essential military missions.

4. Economic Considerations

a. Security Assistance plans and programs shall take into consideration the economic capabilities of the specific foreign country concerned and the support provided by third countries. If economic considerations are expected to restrict the attainment of needed military strength, security supporting assistance will be sought from the Agency for International Development as may be appropriate.

b. The cost to the U.S. and allied/friendly countries of equipping, operating and maintaining recipient countries' military forces will be held to a minimum. Except for overriding military considerations, the buildup of military forces which the recipient country cannot ultimately support will be discouraged.

c. Security Assistance shall be implemented in such a manner as to mitigate adverse effects on the U.S. international balance of payments.

d. Consistent with other relevant considerations, Grant Aid (MAP) material assistance shall be reduced and terminated to any country having sufficient economic capability to enable it to equip and maintain its military forces at adequate strength without undue economic burden. Country plans and programs which facilitate the orderly phase-out of Grant Aid (MAP) material assistance will be encouraged and supported.

e. As rapidly as possible, consistent with the foreign country's economic capabilities, O&M support will be eliminated from the MAP, the foreign country assuming responsibility for meeting these requirements from its own resources.

(1) MAP funds may not be used to provide O&M support for equipment or systems acquired by purchase, lease, loan, or third country grant. (Excludes Training and Training Aids.)

(2) Exceptions to the above require prior approval of the Director, DSAA on a case-by-case basis, and will be favorably considered only where justified on the basis of exceptional circumstances.

5. Emphasis on Sales

a. To the extent practicable and consistent with overall Security Assistance objectives, allied/friendly countries will be encouraged to acquire U.S. defense articles (including excess defense articles) and services through purchase rather than Grant Aid.

b. There are special cases in which the U.S. might find it necessary to recommend the use of commercial sources for the purchase of defense articles and services. Cooperation, to the extent such is practicable, with representatives of U.S. firms in the sale of U.S. defense articles and services to meet valid country requirements must be consistent with overall U.S. foreign policy and national security objectives, and within the provisions of current legislation.

c. Wherever practical and consistent with overall U.S. objectives and interests, foreign countries will be encouraged to purchase the residual rights of the U.S. Government to materiel furnished as grant aid.

6. Personnel

a. Consistent with the achievement of U.S. objectives, MAAGs and other DOD elements stationed abroad for Security Assistance purposes will be reduced in size as rapidly as possible to the minimum essential personnel needed to carry out the function of:

(1) Maintaining an effective military dialogue directly between the U.S. Department of Defense and the foreign military establishment.

(2) Assisting the foreign military establishment in arranging for the purchase of its requirements through FMS or directly from U.S. industry.

(3) To the extent required by law and appropriate DOD instructions, discharging responsibilities of the Secretary of Defense with respect to supervising the utilization of materiel supplied as grant aid, and administering disposition of such materiel as may be excess to the foreign country's requirements.

b. In minimizing the need for U.S. Security Assistance personnel stationed abroad, and simultaneously to further the doctrine of self-reliance on the part of foreign countries, special attention will be given to early elimination of overseas personnel spaces designated for advisory and training functions.

c. Wherever practicable, mobile training teams, technical assistance teams, and similar arrangements of a temporary or semi-permanent duration will be substituted for permanent MAAG personnel spaces.

7. Excess Defense Articles

a. To the extent practical, excess defense articles (EDA) will be used to meet Grant Aid requirements. Defense articles will not be programmed from new procurement or non-excess stocks if there is reasonable expectation that the requirement can be met with excess defense articles, including appropriate substitute items.

b. Excess defense articles will be provided only to meet programmed requirements and

Appendix I
(CHAPTER E)

FORMAT FOR INVITATIONAL TRAVEL ORDERS (ITO)
FOR FORMAL SCHOOLING, OJT, FAMILIARIZATION/QUALIFICATION
AND OBSERVER TRAINING

IMET _____

FMS _____

(DOD Security Assistance Organization) (Country)

DATE _____

File Number _____ (As Appropriate)

SUBJECT: ITO NUMBER _____

TO: (Grade, full name, service number and branch) (Surname
ALL CAPS) (Comparable US grade)

WCN

RCN (IMET)
Case No. (FMS)

GC/PROJECT
(Note 1)

MASL ID

1. (As Applicable):

a. Student completed DLI English Language Proficiency Examination _____
on _____ (Date) and has an English Comprehension Level (ECL) of _____ (Score)

b. Student successfully completed _____ Special English Terminology
(SET) Test on _____ (Date).

c. Student is exempt from ECL Testing pursuant to DOD directive, and is language qual-
ified to pursue courses indicated below.

2. The individual(s) listed above, members of the (country) (service), is/are authorized
and invited by authority of Secretary of _____ (appropriate Military Department) _____ to
proceed on or about (date) from (actual debarkation point in-country to _____
(appropriate aerial/water POE listed Note 2 or other appropriate location) for the purpose
of attending the course(s) indicated below:

a. Course, School and Location: (in order of attendance as listed by WCN)

b. Reporting Date: (Required for each course)

c. Class Starting Date: (Required for each course in Air Force Program only)

d. Ending Date: (Required for each course)

e. If feasible, request the following training be provided during periods *between* formal
courses where other training has not been scheduled. This does not apply to periods *during*
formal courses where trainees cannot attend portions of classes owing to disclosure or other
limitations. Following training may be provided only if permitted from a disclosure stand-
point: (Excludes USAF-sponsored trainees.)

MILITARY ASSISTANCE AND SALES MANUAL—PART II

- (1) Skill to be developed (detailed information required).
- (2) Knowledge to be acquired (detailed information required).
- (3) Type of equipment on which to be trained.
- (4) Reporting Date(s).
- (5) Ending Date(s).

3. (Use one of the following for applicable travel):

a. The individual(s) listed herein will report upon arrival in the United States to the commander (appropriate aerial/water POE as listed Note 2) who will issue a transportation request for travel to (location of school). Upon completion of training, the above-named individual(s) will return to (appropriate location) for return to (actual point of embarkation in-country).

b. The individual(s) listed herein will report upon arrival in the United States to (appropriate office/aerial/water POE as listed Note 2) who will assist in the arrangement of onward transportation if required.

c. The individual(s) listed herein have been provided (round trip tickets to appropriate school/installation and return to homeland) or (tickets to appropriate school/installation). Assistance will be provided by (appropriate officer/aerial/water POE—Note 2) if required.

d. All travel is the responsibility of the government of _____.

4. (As Applicable):

a. Upon completion of training, student(s) is/are not authorized leave, and will proceed immediately as directed to home country.

b. Upon completion of training, student(s) is/are authorized _____ days leave in CONUS. Student(s) is/are not authorized grant aid living allowance while in leave status, other than constructive travel time to the port of debarkation. Upon completion of leave, student will proceed immediately to home country or as directed by competent authority.

c. Request for leave during training period or subsequent to course completion will be submitted direct by the individual to his embassy in Washington or appropriate CONUS based country representative. Written approval in English from the appropriate authority to the individual will constitute approval for the leave and must be obtained prior to course completion. Student(s) is/are not authorized grant aid living allowance while in leave status, other than constructive travel time to the port of debarkation. Upon completion of leave, if approved, student will proceed to next training installation or homeland, as appropriate.

5. Special instructions 12 and 13 apply. Travel and living allowance expenses authorized (see special instructions) are chargeable to: (appropriation). The finance officer effecting disbursement of funds under this authority will forward one copy of the executed voucher to the accounting station cited in the appropriation and other activities as required by appropriate service regulation.

6. (Enter appropriate statement from Note 4a, or b).

7. (Enter *one* statement from Note 5).

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8. Compliance with paragraphs (enter appropriate paragraph numbers) of attached special instructions is directed.

9. Authority (both must be indicated):

a. _____
(MAP Order Number or FMS Case Designator)

b. _____
(Service document which allocates spaces/authorizes issuance of ITO)

COMMAND LINE

SIGNATURE

DISTR: (Per Service Directives)

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NOTES:

1. For Air Force, enter Project No.; for Army and Navy, enter GC.

2.

EAST COAST

<i>Port of Entry/ Departure</i>	<i>Office</i>	<i>Telephone</i>	<i>Applicable</i>
John F. Kennedy Airport	Between 1500-2200 hrs	212-632-4534	Commercial
	Between 0800-1200 hrs Protocol Bureau Ft Hamilton, NY	212-836-4100 (Ext. 2124, 4244)	
	Between 2200-0800 hrs Staff Duty Officer Ft Hamilton, NY	212-836-4100 (Ext. 3165)	
McGuire AFB Wrightstown, NJ	Special Passenger Lounge	609-724-2100 (Ext. 2749)	MAC trans- ocean travel
Charleston AFB Charleston, S.C.	Protocol Section	803-747-4111 (Ext. 2347)	MAC Trans- ocean travel

WEST COAST

Travis AFB, CA	Military Personnel and Transportation Assistance Office	707-438-3164	MAC trans- ocean travel
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NOTE: Only above listed ports of entry or exit have U.S. military facilities available to aid students. Students arriving or departing such terminals as Boston, Miami, Washington, Los Angeles, and New Orleans must be prepared to make own travel arrangements. There are no billeting or dining facilities at Ft Hamilton; students must use commercial facilities in vicinity of JFK Airport and must have sufficient dollars to defray costs.

3. Modify ITO as appropriate for observer training (except USAF). Number of weeks of English language training in CONUS will be specified as well as reports and dates of language training.

4. a. U.S. security screening has been accomplished (for all training allocated on an unclassified basis).

b. U.S. security screening has been accomplished. Trainee(s) is/are authorized access to classified material up to and including _____ during authorized training. (Use only if classified training has been authorized and insert degree of authorized disclosure).

5. a. Student/authorized dependent is authorized medical services on same basis as U.S. military/dependent personnel. (For use by NATO countries).

b. Student/authorized dependent medical services are authorized by and will be reimbursed under provisions of (para 4-27 AR 40-3) (BUMEDINSTR 6320-31) (AFM 50-29) (Use one, as appropriate). (For use by non-NATO countries under IMET).

c. Student/authorized dependent medical services to be reimbursed by (FMS Case) (Embassy) (Student concerned) (Use one). Authorized dependent medical services will be furnished on a space available, reimbursable basis. (For use by non-NATO countries under FMS).

SPECIAL INSTRUCTIONS

1. No training other than that specified in ITO, paragraph 2, will be conducted on the basis of these orders.
2. Individual(s) is/are authorized to participate in flights of U.S. military aircraft as required in connection with scheduled course(s) of instruction or as specified in Service regulations. Travel by US military aircraft on a space available basis for personal convenience is not authorized.
3. The United States will relieve from attendance at school and request the return to the country of his (their) origin, student(s) who violate regulations or who otherwise are a detriment to the class as a whole. The (appropriate service department) will be informed when such action is contemplated in accordance with applicable service regulations.
4. The Government of the United States absolves itself from any blame or financial responsibility for injuries received by the individual(s) listed herein while in transit, while undergoing training or while in leave status, and any responsibility for and personal or property damage claim resulting from his (their) action(s).
5. Prior to departure from home country individual(s) listed herein will be required to be medically examined and found physically acceptable in accordance with the health provisions of the Immigration and Nationality Act (8 U.S.C. 1182(a)(1)-(7): Foreign Quarantine Regulations of Public Health Service, Department of Health, Education and Welfare, 42 CFR, Part 71; and paragraph 2-2, AR 550-50; paragraphs 2-26 and 4-1 AFM 50-29; OPNAVINST 4950.1F.) (McCarran Act Sec. 212A, 1-7, Public Law 414, 82d Cong.): Foreign Quarantine Regulations of Public Health Service, Department of Health, Education and Welfare, 42 CFR, Part 71; and paragraph 202, AR 550-50/paragraph 5-6, AFM 50-29/OPNAV Instr 4950.1 series.
6. The country concerned will provide the individual(s) concerned with sufficient funds in American dollar instruments to meet all expenses while enroute to, and for the first 20 days at the school.
7. Adequate uniforms as well as appropriate civilian clothing for off-duty wear should be taken. Appropriate country work uniforms for field duty or technical work must be furnished, or U.S. fatigue uniform must be purchased by individual(s). When USAF flying training is involved, special flight clothing/individual equipment required by AFM 50-5 must accompany student(s), or provisions made to obtain the use of all necessary equipment prior to commencement of training.
8. The mailing address of the individual(s) indicated herein will be in care of the U.S. service installation to which he (they) is/are attached.
9. Student will be responsible for reimbursement of any custodial fees required.
10. a. Student is not permitted by his government to purchase a power-driven vehicle in CONUS.
b. Student is permitted by his government to purchase a power-driven vehicle after

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arrival at training installation. Student must comply with local military installation and state regulations for registration of power-driven vehicles and will be required to purchase public liability and property damage insurance in the amount required by law of the state in which the vehicle is registered.

11. a. Student is authorized by his government to travel by POV between stations while in the United States.

b. Student is not authorized by his government to travel by POV between stations while in the United States.

12. a. No dependents are authorized to accompany or join student.

b. Dependents are authorized by the host country and the DOD Security Assistance organization in-country to accompany student or join student while in training, but will not be transported nor subsisted at U.S. Government expense.

13. a. Unless otherwise stated, grant aid living allowance is authorized during period covered by these orders and will be in accordance with Table E-1, MASM II, Chapter E, and chargeable to fund cite indicated basic order.

b. Living allowance is authorized while in CONUS only chargeable to fund cite indicated basic order.

c. Living allowance is authorized while in training status only chargeable to fund cite indicated basic order.

d. Living allowance is responsibility of host government.

14. a. Unless otherwise stated, all travel is chargeable to fund cite indicated basic order.

b. CONUS travel only is authorized chargeable to fund cite indicated basic order.

c. All travel is responsibility of host government.

15. a. Individual(s) named on basic order is/are authorized to transport at IMET expense 100 pounds gross weight of personal baggage to the U.S. and return. Baggage will accompany the trainee. (If USAF flying training is involved and does not exceed 270 days, an additional 30 pounds is authorized if baggage includes flying training equipment.)

b. Individual(s) named on basic order is/are authorized to transport at IMET expense 150 pounds gross weight of personnel baggage to the U.S. and return. Baggage will accompany the trainee. (Use if programmed training duration exceeds 270 days).

c. Individual(s) named on basic order is/are authorized to transport within CONUS at IMET expense 100 pounds gross weight of personal baggage. Baggage will accompany the trainee. Personal baggage from host country to CONUS to host country is responsibility of government of individual(s). (Additional 30 pounds authorized if USAF flying training of less than 270 days is involved and baggage includes flying training equipment.)

d. Individual(s) named on basic order is/are authorized to transport within CONUS at IMET expense 150 pounds gross weight of personal baggage. Baggage will accompany the trainee. Personal baggage from host country to CONUS to host country is responsibility of government of individual(s).

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e. No baggage will be transported at U.S. Government expense.

16. a. Retainable instructional material may be shipped to host country in accordance with applicable Departmental regulations, chargeable to fund cite in basic order. No personal effects will be shipped with instructional material.

b. Retainable instructional material will not be shipped at IMET expense.

17. Student is parachute qualified and authorized to participate in jumps from U.S. aircraft.

18. When qualified flying personnel desire to participate in flights under AFR 60-1, include statement: "_____ Government certifies that student is physically, professionally, and administratively qualified to participate in flights in his country air force aircraft as pilot (or as applicable)." (These personnel must meet medical clearance requirements as specified in AFR 160-39.)

Of the foregoing special instructions, the following are mandatory and must be identified in the basic ITO for all services: 1, 2, 3, 4, 5, 6, 7, 8, and 9.

Of the foregoing special instructions, one of the optional statements must be identified in the basic ITO:

Army—10a or b; 11a or b; 12a or b; 13a, b, c or d; 14a, b or c; 15a, b, c, d, or e; 16a or b; 17 (if applicable).

Navy—Same as Army (less 17).

Air Force—Same as Army (less 17 and plus 18).

CHAPTER B

FOREIGN MILITARY SALES POLICIES, GUIDELINES AND RESTRICTIONS

1. Purpose

Supplement information provided in MASM—Part I, DOD Directive No. 5132.3, Department of Defense Policy and Responsibilities Relating to Security Assistance, December 20, 1972 and other related basic directives and instructions governing military export sales activities.

2. Basic Sales and Guidelines

In enacting the Arms Export Control Act (AECA), as amended, the Congress consolidated and revised foreign assistance legislation relating to reimbursable exports.

a. Basic Sales Policy. In this Act, the Congress:

(1) Declared the ultimate goal of the U.S. to be a world free of the dangers and burdens of armaments with the use of force subordinated to the rule of law;

(2) Affirmed the increasing cost and complexity of defense equipment and recognized that there continues a need for international defense cooperation to maintain peace and security;

(3) Established that the United States will facilitate the common defense by entering into international arrangements with friendly countries on projects of cooperative exchange of data, research, development, production, procurement and logistics support to achieve national defense requirements and objectives of mutual concern;

(4) To this end, authorized sales to friendly countries to equip their forces with due regard to impact on social and economic development and on arms races; and

(5) Declared the sense of the Congress that all such sales be approved only when

they are consistent with the foreign policy interests of the United States.

b. Military exports sales support specific foreign policy and security interests of the United States. Such sales have in the past improved internal order and increased the prospects for regional stability, thereby reducing the likelihood of direct U.S. military involvement. Standardization of materiel, doctrine, and training is enhanced among our allies and friends. The U.S. production base is maintained, U.S. employment is increased, research and development costs are spread wider, unit costs to the U.S. Services reduced, and forward materiel support is facilitated. The U.S. balance of payments is aided and closer relations, cooperation, and partnership with other nations are engendered.

c. Guidelines

Except where overriding considerations dictate otherwise, the following guidelines will govern Department of Defense sales activities:

(1) Department of Defense sales will support the foreign policy interests of the United States.

(2) Department of Defense will be responsive to foreign requests for sales proposals.

(3) Countries will be encouraged, consistent with economic-financial capabilities, to make the transition from grant aid to sales.

(4) To the extent practicable, the Department of Defense will assist U.S. industry in making sales directly to foreign governments. Relationships with industry will be forthright, factual, and will avoid all connotation of favoritism.

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(5) The Department of State has advised commercial firms who plan to discuss the sale of defense articles overseas to:

(a) touch base with the local MAAG or American Embassy representative upon arrival in-country, and

(b) inform the MAAG or Embassy representative whether or not they have a license to discuss technical data regarding the project planned to be discussed with host nations, and if not, how the commercial firm expects to handle the matter.

There is no mandatory requirement for a commercial firm to contact the MAAG or local Embassy representative but it is in the best interests of all concerned if commercial firms do so.

Department of Defense policy is one of even-handedness when dealing with commercial firms engaged in overseas marketing activities. When U.S. industry representatives approach the MAAG for assistance in conducting normal marketing efforts abroad, MAAG personnel should, within policy guidelines, use their own best judgement in determining whether a commercial firm should be referred to foreign country officials for the purpose of discussing a possible sale or whether any other assistance should be given.

(6) Unless dictated by overriding logistics considerations approved by the Secretary of Defense, the Department of Defense will not enter into sales arrangements which entail commitments for Department of Defense procurement in foreign countries.

(7) Credit and credit guaranties under the Arms Export Control Act will be used only to assist countries in acquiring essential items which cannot reasonably be financed by other means and normally will be used only to finance investment requirements.

(8) Wherever practicable, guaranteed credit will be used instead of direct FMS credit.

(9) Concessionary FMS credit terms (i.e., interest rates less than cost of money to the U.S. Government) will be granted only

when determined by the President to be required by the national interest.

(10) We welcome consultation with our friends and allies on research, development, production, and logistic support programs of mutual interest.

d. When procuring for a foreign government, DOD will apply the same contract clauses and contract administration as it would use in procuring for itself, except where exceptions are authorized in the Armed Forces Procurement Regulations. When a sole source procurement requested by a foreign government appears to be motivated by objectives in conflict with this requirement or with any U.S. legislation, the request must be forwarded to DSAA, which will forward the request to the Department of State for consideration. No Letter of Offer in such cases will be issued without approval of the Director DSAA.

e. The DOD Offer and Acceptance (DD Form 1513) is an agreement entered into pursuant to the authority of the Arms Export Control Act whereby the United States Government offers to sell and another government or international organization agrees to buy defense articles and/or defense services. In those instances where defense articles or defense services covered by a DD 1513 agreement are to be obtained by DOD through procurement, the implementing purchases or contracts are required to be in compliance with the Armed Services Regulation (ASPR 1-102 and 6-1302). Accordingly, in order to assure such compliance, it is essential that those provisions of the DD 1513 agreement (and any associated contemporaneous agreements such as reciprocal procurement arrangements) which bear upon the related contract or purchase action be coordinated between the Defense Security Assistance Agency and the cognizant DOD procuring activity. In those instances where a deviation from ASPR must be obtained in order to incorporate a DD 1513 special provision in an implementing DOD contract, the ASPR procedures for obtaining such deviation

should be accomplished prior to the inclusion of such provision in the DD Form 1513 agreement.

3. Major Restraints and Significant Recurring Reports to the Congress

The following is a summary of the major restraints and requirements for reporting to the Congress which govern foreign military sales activities, and reflect major requisites which impact on military export sales. Unless otherwise noted, references are to the AECA, as amended.

a. Major Restraints

(1) Sales will be approved only when consistent with U.S. foreign policy interests, foreign aid purposes as embodied in the FAA, the extent and character of the military requirement, the economic and financial capability of the purchases, with particular regard being given, where appropriate, to proper balance among such sales, grant military assistance and economic assistance as well as to the impact of the sales on social and economic development programs and on existing or incipient arms races (Sec. 1).

(2) Sales and credit guaranties (Secs. 21, 22, 23 and 24) shall not be approved to arm military dictators who are denying the growth of fundamental rights or social progress to their people. The President may waive this limitation when he determines it would be important to the security of the United States (Sec. 1).

(3) The Secretary of State shall be responsible for determining whether there shall be a sale to a country and the amount thereof, and whether these shall be delivery or other performance under such sale or export to the end that sales and exports are integrated with other U.S. activities and the foreign policy of the U.S. is best served thereby. (Sec. 2(b)).

(4) The President must determine the eligibility of the prospective purchaser on the basis that sales will strengthen U.S. security and promote world peace (Sec. 3(a) (1)).

(5) The purchaser must agree not to transfer title to, or possession of, any defense article or related training or other defense service without prior U.S. consent; and the President must report to the Congress before such consent is given (Sec. 3(a) (2)).

(6) Sales, credits, and guarantees shall be cut off for 1 year to any country which seizes or takes into custody or fines U.S. fishing vessels for engaging in fishing more than twelve miles from the coast of that country, unless the President waives the cut off as important to U.S. security or receiving reasonable assurances from the country involved that future violations will not occur and promptly so reports to the Congress (Sec. 3(b)).

(7) Sales may be made only for purposes of internal security, legitimate self defense, civic action, or regional or collective arrangements consistent with the United Nations (U.N.) Charter, or requested by the U.N. (Sec. 4).

(8) No FMS credits or guarantees shall be extended to less developed countries—except Greece, Turkey, Iran, Israel, Republic of China, Philippines, and Korea—to buy sophisticated weapons, such as missiles and jet aircraft for military purposes, unless the President determines that such financing is important to the U.S. national security (Sec. 4).

(9) Sales will be made for the FMS credits repaid only with U.S. dollars (Secs. 21, 22 and 23).

(10) FMS credits must be repaid within twelve years after the delivery of the defense articles or the rendering of the defense services (Sec. 23).

(11) Financing of sales of defense articles and defense services by any individual, corporation, partnership or other judicial entity doing business in the United States (excluding U.S. Government agencies other than the Federal Financing Bank) may be guaranteed by the USG. Fees shall be charged for such guarantees. An amount equal to 10% of the principal amount of the contractual liability under guaranty shall be set

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aside as a reserve from funds appropriated under the Act (Sec. 24).

(12) Export-Import Bank financing of sales to economically less developed countries is prohibited (Sec. 32).

(13) A ceiling on grant aid and credit sales combined (excluding training) shall not exceed \$40,000,000 in each fiscal year for African countries. The President may waive this provision when he determines it to be important to the security of the United States (Sec. 33).

(14) FMS credit and guaranty standards and criteria, e.g., interest rates, shall be established by the President in accordance with the foreign, national, security, and financial policies of the U.S. (Sec. 34).

(15) Further sales, credits, and guarantees shall be terminated to any economically less developed country which diverts economic aid, or its own resources to unnecessary military expenditures to a degree which materially interferes with its development (Sec. 35).

(16) The munitions licensing requirement controls the export requirement which controls the export and import of arms, ammunition, and implements of war, including technical data relating thereto remains in effect (Sec. 414, Mutual Security Act of 1954, as amended).

(17) Cash received from FMS and from repayments of FMS credits shall not be used for financing new credits or guarantees (Sec. 37).

(18) Arms control consequences must be taken into consideration when evaluating any FMS sale (Sec. 42(a)(3)).

(19) FMS funds may be used for procurement outside the U.S. only if the President determines that such procurement will not result in adverse effects upon the U.S. economy or the industrial mobilization base (Sec. 42(c)).

(20) Provisions of Atomic Energy Act and 10 USC 7307 (requiring separate legislation for major ship loans and sales) are unaffected by the AECA (Sec. 44).

(21) Consistent with its resources and

the situation prevailing in-country, the MAAG is responsible for supervising and reporting on the utilization by the foreign country of defense articles and services acquired through FMS.

(22) Any foreign country which hereafter uses defense articles or defense services furnished under the AECA, in substantial violation of any provision of that Act or any agreement entered into under that Act, shall be immediately ineligible for further cash sales, credits or guarantees until such time as the President determines that such violation will not recur, and that, if such violation involved the transfer of sophisticated weapons without the consent of the President, such weapons have been returned to the country concerned (Sec. 3c and 3d).

(23) Sale of defense articles, defense services or training to foreign organizations or units, including foreign police forces, will not be made under the Arms Export Control Act unless such organizations or units are a part of the national defense forces under the direction and control of the Ministry responsible for defense matters. Prior approval of DSAA is required for the sale of defense articles, defense services or training to foreign organizations or units that are under the direction and control of the Ministry responsible for defense matters if they are engaged in on-going civilian police functions.

b. Significant Reports to the Congress

(1) Quarterly reports of:

(a) all Letters of Offer to sell any major defense equipment for \$1,000,000 or more under this Act to each foreign country and international organization, by category, if such Letters of Offer have not been accepted or cancelled. (Sec. 36(a)(1)).

(b) all such Letters of Offer that have been accepted during the fiscal year in which such report is submitted, together with the total value of all defense articles and defense services sold to each foreign country and international organization during such fiscal year. (Sec. 36(a)(2)).

(c) the cumulative dollar amounts, by foreign country and international organiza-

tion, of sales credit agreements under Section 23 and guaranty agreements under Section 24 made during the fiscal year in which such report is submitted. (Sec. 36(a)(3)).

(d) projections of the dollar amounts, by foreign country and international organizations, of cash sales expected to be made under Sections 21 and 22, credits to be extended under Section 23, and guaranty agreements to be made under Section 24 in the quarter of the fiscal year immediately following the quarter for which such report is submitted. (Sec. 36(a)(5)).

(e) a projection with respect to all cash sales expected to be made and credits expected to be extended to each country and organization for the remainder of the fiscal year in which such report is transmitted. (Sec. 36(a)(6)).

(f) an estimate of the number of officers and employees of the United States Government and of United States Civilian contract personnel present in each country at the end of that quarter for assignments in implementation of sales and commercial exports under this Act. (Sec. 36(a)(7)).

(g) an analysis and description of the services being performed by officers and employees of the U.S. Government under Section 21(a) of this Act, including the number of personnel so employed. (Sec. 36(a)(8)).

(2) In the case of any Letter of Offer to sell any defense articles or services under this Act for \$25,000,000 or more, or any major defense equipment for \$7,000,000 or

more, a numbered certification of (1) the foreign country or international organization to which the defense article or service is offered or was sold, (2) the dollar amount of the offer to sell or the sale and the number of defense articles offered or sold, (3) a description of the defense article or service offered or sold, and (4) the United States Armed Force or other agency of the United States which is making the offer to sell or the sale, as the case may be; and a description of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such Letter of Offer. See Appendix B, Figure App B-2 for a detailed listing of the information specified to be included in this report. (Sec. 36(b)(1)).

(3) Notification to the Congress before issuance of Letters of Offer in the amount of \$25,000,000 or more or for the sale of major defense equipment in the amount of \$7,000,000 or more. Further, the Arms Export Control Act provides that the Letter of Offer shall not be issued if Congress, within 30 calendar days of receipt of such notification, adopts a concurrent resolution stating in effect that it objects to such proposed sale, unless the President in his notification to Congress states that an emergency exists which requires such sale in the national security interests of the United States (Sec. 36(b)(1)). See Chapter C, paragraph 15 for processing LOAs in the amount of \$25 million or more or for LOAs in the amount of \$7 million for major defense equipment.

major defense equipment sold under a contract in the amount of \$25,000,000 or more to any foreign country which is not a member of the North Atlantic Treaty Organization unless such major defense equipment was sold under this act." For detailed procedures on commercial sales, see Chapter H.

The Defense Department preference, therefore, is to use commercial channels as much as possible. Nevertheless, some two-thirds to three-fourths of all U.S. military exports actually pass through government-to-government channels for one or more of the following reasons:

a. This GFE likewise cannot be sold directly to U.S. prime contractors for incorporation in weapons systems for sale to foreign buyers.

b. For some special situations, the U.S. Government wishes to exercise the control that is more easily achieved with the FMS channel.

c. Classified equipment, which must in any event be delivered through government channels, is often easier to sell through the government channel.

d. Sales made under supply support arrangements and similar logistics sales arrangements are handled through the FMS channel as the only practicable way of permitting the armed forces of friends and allies to "buy into" the procedure as do using U.S. units.

Direct contact between MAAGs and Military Departments is authorized to provide information to host countries concerning technical advice, data on item configuration and availability, cost factors, and other essential technical and supply data.

6. Basic FMS Sales Procedures

Eligible countries and international organizations authorized to procure military equipment and services from the United States are listed in Chapter A. Special approval requirements are prescribed for major

capital end-items, maintenance support items, and where emergency procedures or special instructions apply, as shown in Chapter A, Table A-2.

Following are the prescribed procedures and administrative channels for implementing FMS requests:

a. Normal Sales Channels

(1) Category A countries—*For major end-item or maintenance support items: At the discretion of the requesting country, FMS requests will be submitted either through the country's representatives in the United States, such as the Purchasing Missions, Embassies, or Military Attaches in Washington, or through United States Country Team located in the foreign country, such as the U.S. Embassy, Military Assistance Advisory Group, U.S. Military Mission, or U.S. Defense Attache's Office. Such requests for cash sales will be submitted directly to the cognizant DOD component, with an information copy to DSAA and (except for maintenance support items) to the Department of State.

In all cases where a regional ceiling on FMS has been imposed by statute, information copies of all FMS requests shall be provided to the Department of State.

Category B countries: The preferred channel for FMS requests is through the purchasing country's representatives in the U.S., e.g., purchasing mission or military attache, via the Embassy of the country, to the State Department. Requests received by the U.S. in country should be sent to the Secretary of State/Secretary of Defense.

(2) When a Military Department receives a request for defense articles or services in a manner not specifically authorized as outlined above, or specified in Chapter A, Table A-2, the request should be forwarded

* Some countries are listed as Category A for maintenance support and Category B for major end-items.

Special Conditions: Sale of electronic warfare (EW) equipment to NATO countries will, for the most part, follow normal FMS channels. However, special coordination and review by USEUCOM will be required to assure that the equipment to be purchased by one NATO country is compatible with the overall NATO EW concept.

to the DSAA. The DSAA will, in turn, seek State Department approval. With such approval, the DSAA will return the request to the appropriate Military Department for implementation and will advise the originator of this action as well as the proper channel for similar future requests.

(3) Military Departments will submit all Letters of Offer for major end-items and for those items or services of a critical or special nature to the Defense Security Assistance Agency (Attn: Director of Operations) for approval prior to submission to the requesting country. Such Letters of Offer include but are not limited to:

(a) all Letters of Offer to African countries and Iran;

(b) all Letters of Offer for \$1 million or more, and all amendments which increase the value of a case to \$1 million or more, for Bahrain, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, the United Arab Emirates and the Yeman Arab Republic;

(c) all Letters of Offer for the sale of major defense equipment. Special instructions for Letters of Offer for the sale of end items in the amount of \$25 million or more or the sale of major defense equipment in the amount of \$7 million or more are contained in Section 16 of this chapter.

(d) all Letters of Offer for which the terms of payment are credit or guaranteed funds.

(e) all Letters of Offer for items containing a non-recurring surcharge as an element of cost of the items are prescribed in DOD Directive 2140.2;

(f) all Letters of Offer for items or services which are not standard in the DOD inventory and for which Research, Development, Test and Evaluation are included as an element to be procured;

(g) all Letters of Offer involving the sale of Technical Data Packages or similar data which would result in the establishment of a foreign production capability for an item; and,

(h) all Letters of Offer including agent's fees.

b. Price and Increase Notifications

DOD components initiating Letters of Offer will promptly and officially notify purchasers whenever the estimated total costs (block 20, of the DD Form 1513, Letter of Offer and Acceptance) increase more than 10 percent. All notification of price increases will be provided the purchaser on the DD Form 1513-2, Notice of Modification of Offer and Acceptance.

NOTE: This form does not require acceptance by the purchaser, but merely acknowledgement of receipt.

All price increase notifications will be coordinated with DSAA(TS).

7. Furnishing Information on Price, Availability and Condition of Military Equipment to Foreign Governments

a. Importance of Accurate Estimates

The terms and conditions of the DD Form 1513 stipulate that any price and availability data shown on the DD Form 1513 are estimates rather than fixed prices or firm commitments. This point continually must be stressed to foreign governments. Nevertheless unexpected and substantial price increases, delivery delays, or the receipt of equipment in poor condition can lead to a foreign government's disappointment or even disillusionment with the FMS system. It is essential that all DOD elements concerned strive for accuracy in the development of price and availability data; the process must include the identification of contingencies which might cause the "best estimate" of price and availability to fluctuate beyond acceptable bounds. The nature of any such contingency or qualification as to the accuracy of estimates normally should be brought to the attention of the FMS purchaser during the offer and acceptance process, unless this would result in disclosure of classified information, U.S. force planning information, or data which otherwise is sensitive to United States interests.

b. Discussions with Foreign Governments

Economic, production and budget uncer-

tainties all contribute to Military Department and DSA difficulties in making accurate price and availability estimates. The large volume of price and availability estimates which are processed also increase the likelihood of error. It is imperative that the utmost discretion be exercised by members of the country team or other U.S. officials in discussions with foreign government officials of price, availability and equipment condition. Discussions of specifics related to FMS cash or credit sales should be based on current program data. Only specific data provided by the Military Departments, DSA or the Defense Security Assistance Agency (DSAA) should be used. In all discussions, it should be clearly noted that price quotations are estimates only and are subject to change. Final prices charged to purchasers under Foreign Military Sales contracts are governed by United States legal requirements. Purchasers must recognize that prices contained in Letters of Offer are in reality estimates, and by law the United States must finally be reimbursed for the actual costs to the U.S. Government of the equipment and services provided.

c. Importance of Accurate Statements of Condition of Equipment

The condition of used equipment suggested for consideration should be ascertained, and any commitments made must be explicit in order to preclude misunderstandings. If data on equipment condition is not available in adequate detail, the DOD components concerned should obtain and provide specifics before commitments are made.

d. Two Basic Categories of Estimates: "P&B" and "P&A"

Estimates of price and availability information can be grouped into two basic categories. (1) "P&B" estimates which are for planning and/or budgeting purposes only (that is, not at that time meant to trigger the preparation of a DD Form 1513), and (2) "P&A" estimates which are intended for use in the processing of a DD Form 1513 (Letter of Offer and Acceptance). In order to

minimize uncertainty, reduce overall average response time and lighten workload, requests for price and availability estimates shall be treated according to the type they represent.

e. Processing Requests for P&B Estimates

(1) Requests for "Planning and/or Budgetary" purpose shall be known as "P&B" requests; responses to such requests shall be known as "P&B" estimates. These estimates should be sufficiently accurate to serve the planning purposes of the particular case, but normally will not be developed as fully or coordinated as widely as "P&A" estimates (see below). Accordingly the workload and response time associated with responding to P&B requests may be less than that associated with P&A requests.

(2) Generally, P&B estimates are developed on the basis of available information, using standard Military Department configurations and program data, unless more specific country data are provided. Standard Military Department factors may be applied to basic system estimates to derive support data. Normally contractor participation in developing "P&B" data is not desired. P&B estimates are specifically not considered to be valid for purposes of DD Form 1513 preparation.

(3) Channels for submission of requests for P&B data are the same as those used for requests for P&A data and Letters of Offer. Thus purchasing countries should send all requests falling in Category A directly to the cognizant DOD component, with an information copy to DSAA and (except for maintenance support items) to the Department of State. The cognizant DOD component which has designated responsibility for offering DD Form 1513s direct to a foreign customer will process such requests. Purchasing countries should send all requests falling in Category B to the Department of State with an information copy to DSAA. Upon receipt of Department of State approval of the P&B request, DSAA will forward the request to the responsible DOD

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component for processing. The DOD component concerned will then take action to provide the P&B data to the requestor. DOD components will provide an information copy of P&A estimates for both Category A and B countries to DSAA and (except for maintenance support items for Category A) to the Department of Defense.

(4) Responses to P&B requests will state that the data is for planning/budgetary purposes only and is not valid for Letter of Offer (DD Form 1513) purposes. Any potential additional costs which have not been included in the estimates, such as accessorial and transportation changes, spare parts and support equipment and training will be clearly identified. Emphasis shall be placed on timeliness and such estimates should be transmitted to the requestor not later than 30 days after receipt by the Military Department. If this date cannot be met, an interim reply will be sent:

f. Processing Requests for P&A Estimates

Requests which are intended to lead directly to the processing of a DD Form 1513 shall be known as P&A requests; estimates prepared in response to such requests shall be known as P&A estimates. These estimates will be as accurate as possible, and will represent the best estimate of the DOD component concerned, within the limits of timeliness and practicality. If the last contract price of an item is not known to be valid, it will be revalidated before providing a "P&A" estimate. Such estimates shall be provided within 60 days after receipt of the request by the DOD component concerned. If these dates cannot be met, the DOD component will send an interim reply to the requestor. In the event the estimate is being provided separately from a LOA, it will require DSAA coordination under the same guidelines as apply for the submission of actual Category A and B countries, will be provided DSAA.

Should the Military Department receive a request for P&A estimates from a Category B country, that request should be promptly referred to DSAA. Requests from Category A countries for P&A estimates should be

sent directly to the cognizant Military Department with an information copy to DSAA and (except for maintenance support items) to the Department of Defense.

g. Estimates Are Not Commitments

All responses to P&A or P&B requests will include the following note: "The foregoing P&B (or P&A) estimates do not constitute an agreement between the U.S. Government and the Government of (insert the appropriate foreign country), nor a U.S. Government commitment to provide items or services for which these estimates are provided."

h. Need for Clarity and Completeness in Requesting Estimates

In all cases requests for P&B or P&A estimates should be as clear and complete as possible, so that they are understood and can be properly estimated by the DOD components concerned. USG officials who initially accept such requests for transmittal to the DOD components concerned should review them to ensure that (1) they are sufficiently specific to be understood and provide a firm basis for preparing estimates, and (2) requests state specifically whether they are for P&A or P&B data. When requests for estimates are received that do not specify whether they are for P&A or P&B data, the recipient initially receiving the request shall notify the requestor of this requirement and hold action on the request until the information is received. Training requirements included in the requests will be definitized and those requests which do not include training requirements will contain a statement to this effect. Other factors which should be included (as appropriate) are type or model designation, any special extra capabilities or features, concurrent and follow-on spares and components, ancillary support equipment, ancillary construction, number of locations, types of maintenance, special maintenance and technical services anticipated, any training facilities and training aids, and the approximate time-frame for proposed delivery. If a request is incomplete, it may be returned to

the requestor for the additional information required. Also the requestor should be advised at the time estimates are provided of additional costs which are included in an LOA but may not be included in a P&B estimate, such as PCH&T costs, quality assurance and government provided engineering services, insurance if requested by the customer, medical and billeting costs for students, credit charges, contingencies, and the administrative surcharge.

When appropriate to ensure that complete information is provided, as in the case of a major weapons system, the responsible DOD component will provide the requestor with a checklist of planning information. In sum, care should be taken to ensure that requests for estimates are clear and complete, and that there is a mutual understanding concerning

the elements which make up or are associated with the item requests. In turn, the estimates provided should also be clear and complete, and the components thereof fully described so that there is no misunderstanding between the parties.

NOTE: All requests for information falling in Category B, no matter how informal the request, e.g., oral, letter, message, etc., (other than P&A requests intended to lead to the preparation of a Letter of Offer) are considered to be P&B requests and required the same channels of submission outlined in paragraph 7.e(3).

8. Pricing of FMS Transactions

Defense policy outlined in DOD Instruction 2140.1, 17 June 1975, calls for uniform DOD application of pricing and cost criteria.

(1) To the maximum extent possible, allocations of materiel shall be made within the normal priorities structure—the Uniform Military Materiel Issue and Priority Systems (UMMIPS).

(2) Presidentially-directed, or Secretary of Defense-initiated materiel allocations shall be accorded sufficient priority through diversion of assets from other programs to assure accomplishment of the directed allocation within the time period specified.

(3) High priority international requirements (such as FMS requests) may be met by diverting or withdrawing equipment from U.S. active or reserve forces providing the operational readiness posture of these forces is not significantly lowered and payback can be accomplished in a reasonable period of time. Such determination may be made by the Military Departments.

(4) Materiel being procured or stocked specifically for FMS may be diverted to meet higher priority foreign requirements or urgent needs of U.S. Forces with the prior concurrence of the Director, DSAA, who will, as appropriate, obtain policy guidance from the ASD (ISA).

(5) All requests or recommendations for diversions of FMS equipment will be referred to the Director, DSAA. In those instances where agreement cannot be reached with DSAA concerning the use of foreign program assets, or diversion of defense materiel, the matter will be referred to the ASD (I&L) for review of available options and recommended courses of action and for decision by the Secretary of Defense.

11. Insurance

Purchasers will self-insure FMS shipments or obtain commercial insurance without any right of subrogation of any claim against the United States. In extraordinary situations, and upon specific request by the purchaser and receipt of written authorization from the purchaser for the designated departmental procurement activity to act as the agent of the purchaser to obtain pricing quotes and, if necessary, procure the insurance required, insurance may be obtained by the military

department concerned and billed as a separate line item on DD Form 1513. For FMS cases already implemented, authorized insurance coverage can be added by amendment. Whenever a Military Department does provide these services to a purchasing country or organization, it should point out that this is an exceptional arrangement, and should encourage and assist that purchaser to make its own arrangements for insurance for subsequent cases, as feasible.

12. Source Selection for Procurement for Foreign Governments

a. In keeping with the Department of Defense (DOD) policy, procurements made for FMS customers will be done under our U.S./DOD regulations and procedures. This affords the foreign customer the same benefits and protection that apply to DOD procurement and is one of the principal reasons why nations want to procure through FMS channels.

b. With regard to the source selection process, the FMS customer may request that a defense article and defense service be obtained from a particular prime source. In such cases, Armed Services Procurement Regulation (ASPR) 3-210.2 (xviii) provides authority to negotiate on a sole source basis. Such requests may be honored when the sole source designated is based upon the objective needs of the FMS customer as stated by the customer. The request shall not be honored in any case of patently arbitrary, capricious or discriminatory exclusion of other sources. The FMS customer may also request that a sole source subcontract be placed with a particular firm. The Contracting Officer will honor such a request for subcontract placement on the same basis as indicated above for prime sources.

c. To avoid the additional delay and work load involved in revision of a Letter of Offer and Acceptance (LOA) (DD Form 1513), such requests by an FMS customer for prime or subcontract placement of the LOA (DD Form 1513) for the defense articles or defense services is transmitted to the United

States Government. However, if a request can be honored without excessive delay or undue disruption of the procurement/acquisition processes, it may be made and accepted any time prior to formal acceptance of the DD Form 1513 by the FMS customer.

d. It should be noted that the designation of subcontractors carries a risk which should be brought to the attention of the FMS customer. Clearly, the sole source designation of a component constitutes a warranty by the United States Government to the prime contractor that the designated item will be suitable for its intended purposes. In the event that problems in the performance or integration of the component are subsequently experienced and are attributable to its characteristics, the specification may be held to be defective in that respect and any increased costs incurred by the customer in correcting or attempting to correct the problem may be recovered by the contractor. Since by law such additional costs must be borne by the FMS customer, it should be advised of this potential expense at the time the sole source designation is requested.

e. Subject to the above, Defense components' purchasing activities and prime contractors shall implement FMS requirements using normal procurement and contract management procedures as set forth in ASPR, other directives and pertinent contractual provisions. Representatives of the FMS customer shall not be permitted to review bidders mailing lists or slates of proposed architect engineer firms, nor shall they be permitted to direct the deletion of names of firms from such lists or slates. They may, however, suggest that certain firms be included. The Defense components should fully control the procurement and contracting process and contractual provisions. They shall not accept directions from the FMS customer as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2. of the DD Form 1513), nor shall the FMS customer be permitted to interfere with a prime contractor's placement of his subcontracts. However, to the

extent permitted above, Defense components may honor an FMS customer's request for the designation of a particular prime or subcontract source for defense articles or defense services. Requests by the FMS customer for rejection of any bid or proposal shall not be honored unless such rejection is justified on the basis of reasons which would be sufficient in the case of a procurement made by DOD to meet its own needs.

13. U.S. Response to Requests for "Offset" Procurement

The Defense Department prefers that sales be negotiated without "offset" procurement arrangements wherever possible and that the need for including an "offset" agreement be considered only on a case-by-case basis. If it is decided in any given case that such an agreement should be considered, the principles set forth below should govern.

"Offset" procurement is the term used to cover the offering, on a selective and case-by-case basis to foreign governments, of opportunities to respond to selected DOD procurement requirements. Experience to date with offset arrangements indicates that foreign countries find it difficult to compete effectively for enough U.S. business to achieve the offset procurement targets which are provided under the agreements. DOD has not had the need for a complete weapon system large enough or sophisticated enough to be procured from a foreign country to make such offset procurements sizable and attractive.

There are practical logistical problems involved in considering the procurement of major items or any quantity of sub-systems or components from a foreign source. Most important of these is the need for the U.S. to maintain a viable mobilization base within the U.S., which reduces or effectively eliminates a large quantity of items to be offered for foreign bidding. There also is the undesirability of considering foreign sources as mobilization base producers (other than Canada) for major items, assemblies, and critical components. We also have the problem of assuring proper quality of the defense items.

The administrative process for selecting items for competition has been lengthy and involved, as has been the procedure in waiving the bid differentials as the "Buy American" and the 50 percent gold flow rule. Unsuccessful U.S. producers in such competition also create many political and other pressures in opposition to any waiver of "Buy American" and "gold flow" differentials, especially in times of a declining DOD budget. This is understandable, inasmuch as such companies are not themselves realizing any direct benefits from the sale to a foreign country.

Nonetheless, if it is decided that such offset arrangements should be considered, due to the magnitude of total sales involved or for other specifically justified reasons, the following basic guidelines will be applied:

(1) There must be, as a minimum, a plan for a realistic implementation of the offset agreement.

(2) DOD will urge the contractor to accept all or a major portion of the offset obligation.

(3) The initiative for offset procurement arrangements should be taken by the buying government.

a. DOD Participation in Offset Procurement

In the current highly competitive international market, and in view of the fact that offset procurement arrangements are being used rather widely in the free world sale of military equipment, there is justification for some flexibility in our present practice of discouraging offset procurement arrangements. DOD willingness to be flexible is affected by the levels current and projected net defense expenditures in the potential buying country. DOD participation in such offset procurement should be governed by the following principles, in order of applications:

(1) If an offset is necessary, DOD will, first, consider that it is the responsibility of the U.S. company or companies and their subcontractors involved in producing the equipment who would thereby benefit from the sale to undertake offset procurement from the buying country.

(2) If the DOD is convinced that the company or companies and their subcontractors involved in selling the equipment to the foreign country are not able to provide sufficient procurement to fulfill the offset, then DOD participation will be considered. It will first be limited to any government-furnished equipment (GFE) provided to the U.S. contractors or subcontractors involved in the sale. The Buy American Act and gold-flow differentials will not be applied in evaluation of foreign bids.

(3) If it is not possible to restrict the DOD participation to foreign competition for GFE items involved in the item being sold, an effect will be made to restrict the release of invitations to bid to equipment in the same general industrial category as the item being sold. An alternative is to place some portion with firms that otherwise have received benefits of other Foreign Military Sales.

(4) The next preference is to enter into arrangements on selected items using non-appropriated funds. This, however, has limited potential because of the comparatively small amount of non-appropriated funds available.

(5) The least preferred method of filling the offset procurement arrangement is to permit foreign competition for items not directly related to the equipment being sold.

Except in special circumstances, fulfillment of reciprocal procurement obligations will be subject to two basic conditions:

(1) that the foreign source fully satisfies DOD requirements for performance, quality and delivery; and

(2) that procurement from the foreign source would cost no more than would procurement of comparable U.S. items eligible for contract award. To ensure that DOD reciprocal procurement obligations are effectively and expeditiously handled, arrangements with foreign governments should reflect a general plan for implementation.

Furthermore, DOD reserves unto itself the unilateral right to select items suitable for offset procurement which will be opened for foreign source competition. For such items

that are selected, DOD will assure the foreign source competitors that a waiver of the Buy American Act and the gold-flow differentials will be granted to the foreign source competitor if the procurement conditions noted above have been properly met. Offset proposals and serious queries relating thereto should be referred to the DSAA Directorate of Operations.

b. Interdependent Research and Development

Another area to be considered in possible offset arrangements is in conjunction with Interdependent R&D projects. The Defense Department has been pursuing with its major allies a policy of interdependent R&D aimed at improving mutual planning and acquisition of our respective national R&D programs, in order to decrease possible duplication and to increase effectiveness of the programs. A number of major factors and considerations encourage interdependent R&D programs.

(1) The position of the U.S. Government that our allies must share a large portion of the free world defense burden.

(2) The declining R&D budgets of the U.S., which puts a premium on achieving a greater R&D return per R&D dollar spent. By reducing duplication in R&D programs among our allies, greater use of the technical resources of the free world can be realized. U.S. R&D dollars thereby saved are available for other critical R&D areas.

(3) Significant advances in the technical capability of our allies. Transfer of some of this advanced technology and operational capability to the U.S. can be accomplished on a faster schedule and with less expense than through our own duplicated development.

The Defense Department intends to utilize allied developments only in those instances where it is clearly advantageous for the U.S. to do so. Production of these items, however, will be accomplished in the U.S. except where special circumstances justify overseas production. For example, when immediate hardware availability is required for operational reasons, when the production buy is too small

to be economical for new production line start-up, or if reciprocal procurement obligations (offset arrangements) make it attractive to delay transition from off-the-shelf procurement to domestic production. Even in these circumstances, offshore procurement should be terminated as soon as such reasons are no longer controlling.

c. DOD Procedures in Offset Agreements

In addition to the overall rules and guidelines set forth in a and b above, the following specific rules will apply:

(1) Offset agreements include any agreement by DOD to purchase items from a foreign country in order to offset some specific amount or percentage of the foreign country's expenditures in the U.S. for U.S. defense items. This includes any arrangement whereby the U.S. Government, to include the DOD, agrees to assist a U.S. defense contractor in some offset associated with a direct commercial sale. Such offset agreements are entered into only after approval by the Secretary or a Deputy Secretary of Defense and after approval of the Department of State in accordance with its defined procedures.

(2) Offset agreements, which may or may not contain specific coproduction arrangements, should be negotiated and the basic understanding reached prior to the final acceptance of the DOD Letter of Offer in order to include in this Letter of Offer the impact, if any, that such agreements may have on DOD Price and Availability. This procedure will also allow DOD and its contractors an opportunity to assess, in advance, our ability to fulfill such offset arrangements.

(3) Offset agreements will include guidelines concerning any restrictions of acceptability of competition under the offset from foreign government owned or subsidized companies.

(4) On the sale of a particular item or items where an offset agreement has been reached prior to the signing of the contract(s) the offset will not officially begin until after the contract(s) have been signed.

(5) In the case of offset agreements related to specific weapon system purchases, the U.S. contractors and associated subcontractors which benefit from the sale will assume the primary responsibility for fulfilling the offset.

(6) The foreign firms have the basic responsibility for marketing their products to DOD and to U.S. industry.

(7) In the event that an offset agreement provides for or involves the export from the U.S. of technology or technical data, the licensing provisions of the International Traffic in Arms Regulations (ITAR) will apply.

(8) In the negotiation of offset agreements, ISA/DSAA will be the focal point to coordinate the negotiations with the foreign country. ODDR&E, Office of General Counsel and OASD(I&L) must participate in these negotiations and concur with the final agreement. After negotiation and execution of the offset agreement, OASD(I&L) shall take the lead and responsibility for the implementation of the agreement and fulfillment of the commitment with coordination of OASD (ISA) and DSAA as required.

(9) The basic policy for procurement activities is set forth in the DepSecDef memorandum of 15 November 1976, subject: General Policy on Purchases by DOD from Foreign Sources in Furtherance of Government-to-Government Offset Agreements.

14. Release of Technical Data

a. Approval to Release Technical Data

(1) All requests for Technical Data Packages (TDPs) must be approved by the Director, DSAA. Accordingly, all requests received by the Military Departments will be referred to DSAA for review. TDPs will normally not be released unless it has been determined to be in the U.S. interest to do so and alternative means of meeting the requirement are considered to be less desirable.

(2) Requests for TDPs normally fall in one of two categories: a request for data for use in maintaining or operating any items of

U.S. equipment, or a request for data for use in producing an item of U.S. equipment either for the purchaser's own use or for sale to third countries. Referrals of requests to DSAA should include the appropriate information relevant to the intended end use of the TDP as outlined in paragraphs 13b and 13c below. A formal statement in writing from the purchaser as to the intended end-use of the TDP must be obtained in every case.

(3) TDPs furnished to foreign governments under the FMS program will be provided on a reimbursable basis only, by means of a formal LOA (DD Form 1513) which will cover, as a minimum, the full costs for preparation, reproduction and handling of the TDP in accordance with the pricing policies set forth in paragraph XVII A of DOD Directive 2140.1. In addition, if the TDP is intended to be used for production purposes, a charge for royalty fees in accordance with DOD Directive 2140.1, Section XVI will be included as a separate line item on the LOA unless waived by the Director, DSAA under the provisions of paragraph 14c below.

b. Sale of TDPs for Maintenance and Operational Purposes

(1) In the event that a TDP is requested for purposes of maintenance or operation of an item of U.S. equipment, the Military Department having cognizance over the item in question will provide to the Director, DSAA, the following:

(a) a copy of all pertinent correspondence with the purchasing government;

(b) a statement as to whether the requirement would be met by means of pertinent DOD instructions, maintenance or technical manuals, or other similar publications;

(c) in-country inventory of major end-items requiring maintenance support from the requested TDP;

(d) information as to classification of the TDP and as to proprietary rights involved, if any; and,

(e) the Military Department's recommendation concerning the request.

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(2) In the event that release of the TDP is approved, care will be exercised to insure that:

(a) The TDP bears clear identifying markings stating any restriction, such as classification or proprietary rights, which apply.

(b) The LOA and any other transmittal correspondence clearly states that the TDP is released for the purpose stated by the requesting government, and may not be used for production purposes without the prior consent of the U.S. Government.

c. Sale of TDPs for Production Purposes

(1) In the event that a TDP is requested for purposes of producing an item of U.S. defense equipment, either for use of the purchasing government's own forces, or for sale to third countries, the Military Department having cognizance over the item in question will provide to the Director, DSAA, in addition to the information outlined in paragraph 14b(1)(a), (b) and (c) above, the following data:

(a) quantity to be produced;

(b) intended end disposition of item to be produced, to include names of third country purchasers if item is for third country sale;

(c) current status of U.S. production and stock on hand of item(s) involved;

(d) U.S. and foreign production history of item for last 5 years;

(e) future U.S. production plans;

(f) current U.S. source(s) of supply for item;

(g) current cost to U.S. Government of the item, and whether it is produced in-house or under government contract;

(h) security classification of item to be produced;

(i) other countries authorized to produce the item;

(j) impact that sale may have on U.S. Foreign Military Sales, and on other programs or projects; and,

(k) whether intended recipients of production have previously obtained the item

to be produced, and quantities obtained, actual or estimated.

(2) Normally, in all cases where the purchasing country intends to use the TDP for production purposes, a royalty fee will be assessed. This assessment will be done in accordance with the following rules unless the Director, DSAA, determines that special circumstances require a departure therefrom in a specific case:

(a) Where the foreign applicant intends to produce the article for "in-country" consumption only, a royalty fee of 5 percent of the latest or current U.S. unit sale price for each unit produced will be charged.

(b) Where the DOD has specifically approved "in-country" production for third country sale, a royalty fee of 8 percent of the latest or current U.S. unit sale price for each unit produced for third country sale will be charged.

(c) The charge for "in-country" consumption only may be waived when the foreign applicant is a current recipient of grants under the MAP materiel program.

(d) Where the item to be produced is obsolete and no longer being manufactured for United States Military Departments and/or is not available in the Military Departments inventories, the 5 percent royalty fee for "in-country" consumption or the royalty fee of 8 percent where the DOD has specifically approved "in-country" production for third country sale may be reduced. The authorized sale price will be determined by DSAA in collaboration with ODDR&E based on cost of the most similar U.S. items in production.

(e) Where the pricing of the TDP is subject to an international agreement to which the DOD is a party or is otherwise bound, the sale will be determined consistent with the terms of that agreement.

(f) Where the item(s) to be produced is in long supply in a U.S. military department inventory, or if the item is being produced in the United States, requests for foreign production of the item(s) will normally be denied.

(g) In the case of TDPs related solely

to processes, machinery or other items to be used in production, rather than to an end-item itself, and sold separately from a TDP for an end-item, the royalty fee will be based on the production of the end-item using the related TDP. In such cases, the authorized production under the TDP and other terms and conditions will be specified as in the case of TDPs for manufacture of end-items. However, if TDPs for processes, machinery or other items related to production are sold in conjunction with or subsequent to the sale of a TDP for manufacture of a related end-item, only one royalty will be charged based on production of the end-item.

(h) The Military Department shall include on the face of the Letter of Offer and Acceptance (DD Form 1513) which sets out the royalty fee the following notes:

1. "The above stated royalty fee applies to the above quantity only. Any production in excess of the above quantity will be subject to a recalculation of royalty fee and the issuance of a new or amended Letter of Offer and Acceptance."

2. Where the TDP is to be used to manufacture items for in-country use only add: "The items to be manufactured for in-country use only will not be sold or transferred to a third country without the written consent of the U.S. Government and the execution of a new or amended Letter of Offer for an additional royalty fee."

3. Where the TDP is to be used to manufacture items for third country sale add: "The items to be manufactured for third-country sale will not be sold or transferred to third countries other than . . . (here insert country name/names) . . . without the written consent of the U.S. Government."

(i) In all cases, care will be taken to insure that the TDP bears clear identifying markings stating any restrictions, such as classifications, which may apply.

(j) For reporting purposes, the royalty fee line on the LOA will be reported as code R9D in the 1100 system. Technical data packages (TDP's) will be recorded in the 1100 system under generic code M1F pseudo NSN 0208000000 TDP.

d. TDP Monitoring

(1) Copies of all signed LOA's and all subsequent changes will be furnished by the Military Departments to the MAAG/Mission/ODC in the purchasing country and to DSAA (JFMO).

(2) The MAAG/Mission/ODC in country will monitor implementation of the DD 1513 terms of the TDP sale to assure foregoing stipulations of the MASM on a formal and continuing basis. DSAA (JFMO) will be advised of any deviation from the terms of the TDP DD 1513 agreement so that DSAA (JFMO) may question the country to assure that all royalty fees due the U.S. are obtained.

15. Principles Regarding Coproduction Projects

Defense policy, expressed in DOD Directive 2000.9, dated 23 January 1974, states that initiation of coproduction project agreements will be encouraged and supported by all elements of DOD under the following circumstances:

a. When they advance the ability of participating countries to improve their military readiness through expansion of their technical and military support capability, while promoting U.S.-allied standardization of military materiel and equipment thus generating uniform logistics support and multi-national operational capabilities.

b. When they directly benefit the U.S. through increased capability to support the deployment of U.S. forces, strengthen international military operations in times of emergency or hostilities, encourage the unitization of common military materiel, and improve mutual support capability of friendly allied nations.

c. When they supplement and reinforce the U.S. FMS program.

d. When they are in the best interest of the U.S.

A coproduction project may be limited to the assembly of a few end-items with a small

input of local country parts, or it may extend to a major manufacturing effort requiring the build-up of capital industries. Coproduction is a program under the aegis of the U.S. Government, by diplomatic or DOD agreement, either directly through the FMS program or indirectly through specific licensing arrangements by designated commercial firms, which enables an eligible foreign government, international organization, or designated foreign commercial producer to acquire the "know-how" to manufacture or assemble, repair, maintain and operate, in whole or in part, a specific weapon, communication or support system, or an individual military item.

The "know-how" furnished through coproduction programs may include research, development production data and/or manufacturing machinery or tools, raw or finished materiel, components or major sub-assemblies, managerial skills, procurement assistance or quality-control procedures. Third country sales limitations and licensing agreements are also included, as required. Thus coproduction programs may be limited or extensive depending upon the major objectives to be attained.

Coproduction projects may be initiated by DSAA or, subject to prior approval of DSAA, by the Military Departments, the Military Assistance Advisory Groups, and by authorized representatives of foreign governments and international organizations. The cognizant DOD component will ensure appropriate coordination will DSAA and furnish technical and negotiating assistance as required. After such agreements are signed, the appropriate DOD component will perform the necessary managerial and reporting functions.

In all cases, as prerequisite, the restrictions imposed by Section 42(b) of the FMS Act will be complied with, namely: "No credit sale shall be extended and no guarantee shall be issued in any case involving coproduction or licensed, production outside the United States origin unless the Secretary of State shall, in advance of any such transaction, advise the appropriate committees of the Congress and furnish the Speaker of the

House of Representatives and the President of the Senate with full information regarding the proposed transaction, including, but not limited to, a description of the particular defense article or articles which would be produced under license or coproduction, and the probable impact of the proposed transaction on employment and production within the United States."

16. Processing Letters of Offer for \$25 Million or More or for Major Defense Equipment of \$7 Million or More

In compliance with Section 36 of the Arms Export Control Act, Congress must be provided with notification of all Letters of Offer to sell any defense articles or services for \$25 million or more, or any major defense equipment of \$7 million or more, before such Letter of Offer is issued. OSD General Counsel has determined that the term "Letter of Offer" used in the AEC Act pertains to any proposed sale of defense articles or services to any foreign government, whether or not the initial document (or set of documents) to be used to consummate the sale is a DD Form 1513 or a document bearing another name. If a document other than a DD Form 1513 is used for this purpose, a DD Form 1513 shall be subsequently executed to conclude the final details of the agreement unless an exception is authorized by the Director, DSAA. The statutory requirement for reporting, as well as the requirement for advance notification to Congress, extends to any undertaking by the Department of Defense to establish an FMS transaction. This includes but is not limited to FMS transactions embodied in the following:

- (1) Memorandum of Understanding for Coproduction of military items,
- (2) Cooperative Research and Development Agreements, and
- (3) Providing specific items or services under any existing general agreements, such as the Engineering Assistance Agreement entered between the Army Corps of Engineers and the Saudi Arabian Government in 1965.

In order to provide the Congress with sufficient time to review such cases, DSAA has agreed to provide the Congress with 20 days advance notification of such cases prior to the formal submission of the statutory notification. The Arms Export Control Act provides that the Letter of Offer shall not be issued if Congress, within 30 calendar days after receiving the notification, adopts a concurrent resolution stating that it objects to the proposed sale, unless the President, in his notification to Congress, certifies that an emergency exists which requires such sale in the national security interests of the United States. DSAA is responsible for preparing and submitting the reports to the Congress. To minimize delays in processing such notifications, consistent with the legislative and other requirements, the procedures at Appendix B are placed in effect.

17. Sales Commissions and Fees

ASPR 1-505 sets forth the criteria to be used by the contracting officer or head of the procuring activity (HPA) in determining whether an agent(s) is *bona fide*. When an agent(s) has been determined to be *bona fide*, based on ASPR 1-505, the following procedures will be followed with regard to the inclusion of sales commissions and fees in FMS cases:

a. Prior Notification to Purchasing Government

Unless the purchasing government has indicated to the contrary, all sales commissions and fees anticipated to be included in FMS cases shall be made known to the purchaser prior to or in conjunction with the submission of the Letter of Offer and Acceptance (DD Form 1513) to the purchaser. Such advice will include: (a) the name and address of the agent(s); (b) the estimated amount of the proposed fee, and the percentage of the sale price; and (c) a statement indicating one of the following, whichever is applicable: (1) appropriate officials of the U.S. Department of Defense consider the fee to be fair and reasonable; (2) in the event that only a portion of the proposed fee is con-

sidered to be fair and reasonable, a statement to this effect together with the rationale therefor; or (3) the U.S. Government cannot determine the reasonableness of the proposed fee. This statement will normally be included as a "Note" to the Letter of Offer. Such a Note may also include the contractor's explanation and/or justification for the proposed fee, together with any other data requested by the purchasing governments. The Note will also include a statement that acceptance of the Letter of Offer by the purchasing government, with inclusion of the Note, will constitute that governments' approval of the sales commissions and fees involved.

b. Ex-Post Facto Notification to Purchasing Government

When it is not possible to determine prior to presentation of the Letter of Offer whether the price quoted for the articles or services includes sales commissions and fees, the purchasing government will be notified as soon as possible if, in the course of subsequent contract negotiations, it appears that a charge for sales commissions and fees will be claimed by the contractor. This notification will include the information in paragraph a above, along with a statement that, unless contrary advice is received from the purchasing government within 30 days of the data of the notification, the Department of Defense will determine whether or not to accept such a charge as a valid cost in the contract. No sales commissions and fees will be accepted by the contracting officer prior to expiration of the 30 day period.

c. Coordination With DSAA

All Letters of Offer which specify that a sales commission and fee is included in the case will be coordinated with DSAA, regardless of the dollar value in the case, prior to LOA dispatch to the requesting government. Letters of Offer which carry the notation that no sales commissions and fees are included in the case do not require coordination with DSAA except as may be required by other policies and procedures which may be in effect.

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In addition, all ex-post facto notifications will also be coordinated with DSAA prior to dispatch.

In each such instance, the submission of the LOA or notification to DSAA for coordination shall be in writing, shall contain a certification that the agent is *bona fide* in accordance with the criteria set forth in ASPR 1-505, and should provide the rationale for reasonableness or an explanation if the reasonableness of the fee cannot be determined.

d. Disallowance of Agent's Fees

No fee shall be accepted by the contracting officer if disapproved by the purchasing government.

If, in making the determination required by ASPR 1-505, the contracting officer or head of the procuring activity (HPA) determines that an agent is not *bona fide* for reasons other than reasonableness of fee, no Letter of Offer will be tendered pending withdrawal by the prospective contractor of the fee for such agent from his proposal.

e. Exceptions

The procedure contained in paragraph a above will not be followed in case of Australia, Iran, Israel, Japan, Jordan, Kuwait, Pakistan, Saudi Arabia and Turkey. These governments have requested that the following statement be included in all Letters of Offer:

"All U.S. Government contracts resulting from this Offer and Acceptance shall contain one of the following provisions, unless the sale commission and fee have been identified and payment thereof approved in writing by the Government of (_____) before the contract award:

(A) For firm fixed price contracts or fixed price contracts with economic price adjustment: The contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives involved in Foreign Military Sales to the Government of (_____).

(B) For all other types of contracts: Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor sales representatives involved in Foreign Military Sales to the Government of (_____) shall be considered as an unallowable item of cost under this contract."

Accordingly, approval of sales commissions and fees must be sought and obtained prior to contract award unless the contractor certifies that no such fee/commission is included in the cost of the contract.

f. Proprietary Information

Inclusion of a "Note" to the Letter of Offer with respect to sales commissions and fees shall not be deemed, with respect to distribution and availability of Letters of Offer, as altering the proprietary nature, if any, of such data for the purpose of 18 U.S.C. 1905.

g. A report to DSAA shall be made on a quarterly basis, submitted 30 days after the end of each quarter, which lists all FMS cases in which an agent's fee was included. This report should include a copy of the Letter of Offer and Acceptance for each case, including pertinent special notes, which will show the amount of the fee, the name of the agent, and the DOD position as to reasonableness of the fee, together with any correspondence with the purchaser concerning the fee. In addition, a statement should be provided describing the current status of the fee, i.e., accepted by country, rejected by country and still under review with contractor, withdrawn by contractor, or other similar information. Cases for which the question of country acceptance of the fee is still under review shall continue to be reported until the matter is decided, and a final report closing the issue has been made. The number which has been assigned this report in the reports control system is DSAA (Q)1127.

18. Engineering Review of U.S. Provided Foreign Communications Systems

The following guidance applies to all U.S.-provided foreign communications systems.

**a. Projects provided or Financed
Under Security Assistance**

For all foreign communications systems provided or financed under Security Assistance requiring fixed communications facilities, such projects are fully coordinated with the Defense Communications Agency (DCA). DCA should be notified at the earliest stages of planning and kept informed during all

phases of implementation. This coordination specifically includes providing DCA with the results of initial surveys as well as subsequent detailed engineering plans and significant changes thereto. Projects requiring such coordination include those which contain fixed communications elements only as a portion of the overall project. The purpose of this coordination is to determine the extent to which the communications systems involved are compatible with the Defense Communications System (DCS) and if use of the systems by the DCS would be beneficial to the

when applied with the UMMIPS priority designator, provides the mechanism for assuring that the delivery commitment is met.

(3) In the case of items which are in stock and available for release, the DCD should be consistent with UMMIPS processing time standards. If the DCD must be changed to reflect a change of more than 90 days in the previous delivery date, the country will be notified of the new DCD by use of the DD Form 1513-2.

(4) A report should be submitted to DSAA on a quarterly basis, 45 days after the end of each quarter, and should include all cases for which the DCD for any major items on the case has been slipped more than 90 days from that DCD originally quoted on the accepted letter of offer or from that previously reported to DSAA, together with a brief explanation of the slippage. Individual changes meeting the threshold criteria need only be reported once, in the quarter in which they occur. A copy of the 1513-2 required per paragraph 4.c.(3) above will be submitted for each item. The number assigned this report in the reports control system is DSAA (Q)1123. This report will be submitted with the report on price increase notifications required by paragraph 12. The format at Figure F-1 of this chapter should be followed for this report.

d. Delivery Forecast Date (DFD)

(1) The DFD is developed by the NICPs of the Military Departments, and represents the estimated date of delivery of the total quantity of the line item.

(2) There is a mandatory relationship between the DFD and the DCD. In all cases, the DFD is established to meet or occur earlier than the DCD. If the DFD occurs later than the DCD, the latter may be modified as described in paragraph c, above.

(3) The DFD is not a gross lead time estimate such as the MASL leadtime. It is a true estimate by the NICPs of the forecast of deliveries based on procurement/supply studies.

e. Order Quantities

Military Departments and other DOD components should offer to provide customer countries guidance in effective inventory management to conserve resources and to minimize misuse or abuse of the requisitining system. DOD components must assure that proper guidance concerning the use of Economical Order Quantities (EOQ) is developed and made available to the customer countries. MAAGs and others acting in this capacity will advise and assist customer countries to assure understanding and use of EOQs. RCOs and MAAGs, in those cases where they review FMS requisitions, should screen requisitions to confirm utilization of the EOQ concept.

5. Management Review

a. Within 120 days after acceptance of an FMS case, Military Departments will advise the MAAG of the forecast delivery date of each major item. No less frequently than quarterly thereafter, until deliveries are complete, the MAAGs will be advised by the Military Departments of any changes in these forecasts.

b. MAAGs are responsible for review of delivery forecasts and for advising the Military Departments of any cases where forecasted deliveries will cause significant problems, giving full particulars as to the nature of the problem and recommended solutions. Problems unresolved between MAAGs and the Military Departments should be referred to DSAA.

6. Delivery Performance

a. The quality of delivery performance directly reflects the degree to which the U.S. meets its FMS commitments and is therefore a key element of the supplier-customer relationship. The importance of prompt and effective service to the customer country must be continually emphasized to assure overall success in the attainment of FMS program objectives.

b. Every effort must be made to impress upon the customer the importance of reporting discrepancies as soon as possible but no

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longer than one year after shipment or billing, whichever is later. Since this time standard exceeds time standards previously expressed by the Military Departments the time limitation of one year after shipment or billing applies to all shipments made subsequent to the date of this instruction.

c. Wherever significant political or readiness impact is involved, the MAAG will advise the United Command of the problem.

In those instances in which the matter is not satisfactorily and expeditiously resolved, the unified command will immediately notify the Military Department concerned and, in significantly important cases, DSAA.

7. Supply Management

a. Materiel Standards

(1) It is Department of Defense

policy that defense articles offered and sold to foreign governments and international organizations reflect favorably upon the United States. Therefore, defense articles offered and sold under foreign military sales will normally be new or unused, or, as a result of rehabilitation, possess original appearance insofar as possible, and, as a minimum, have serviceability standards prescribed for issue to U.S. forces. If the customer country desires exclusively new equipment, such requirement will be set forth in the Offer and Acceptance (DD Form 1513). If the customer desires to purchase "as is—where is," this will also be clearly stated in the DD Form 1513.

(2) The agencies authorized to make offers will assure that the offer (DD Form 1513) fully describes the condition of the defense materiel and that the agent of the foreign government or international organization who accepts and signs the Offer and Acceptance (DD Form 1513) understands the condition of the defense materiel.

(3) Military Departments and DOD components shall require that FMS materiel conforms to the offering, is serviceable and is complete with regard to repair parts, publications, etc. An exception to this rule is excess property which is sold on an "as is—where is" basis. Such equipment may be sold without initial or follow-on supply support, provided the country clearly understands these conditions and accepts responsibility for providing future support.

(4) The agencies authorized to make offers will assure that a one-year supply of "in-country" concurrent (initial) repair parts, through fourth echelon requirements at US. peacetime usage rates, shall be included with equipments being offered. Such repair parts packages should be identified by category and total value rather than by item. Normally, pricing specific repair parts when requested by a foreign government or international organization is to be avoided.

b. Condition of Aircraft

In the interests of public safety, the following policy is established for the material

condition of U.S. aircraft prior to delivery. Sales agreements will contain the stipulation that delivery will be made only under one of the following conditions:

(1) In the event flight delivery of the aircraft is desired by the purchasing country, the aircraft must be placed in safe operating condition consistent with established standards of the military service of origin or Federal Aviation Administration (FAA). Required maintenance may be done through negotiation with the service of origin or a commercial FAA certified facility, and all costs will be borne by the purchaser. Aircraft will be released for flight only after an inspection by the service of origin has determined that the established military service standards have been met except where the purchaser elects to have maintenance performed in an FAA certified facility, in which case release will be accomplished by an FAA or service of origin inspection, as appropriate; or,

(2) Aircraft not to be restored to the above criteria will be sold with the understanding that they will be delivered to destination by surface transportation only.

8. Packaging, Handling and Shipping

a. Preservation and Packaging

Defense articles shall be preserved, packaged, and packed to a minimum of Level B standards, unless known or anticipated shipment and storage conditions require Level A standards or permit Level C standards. These standards are defined in DOD Instruction 4100.14. For economy, and to facilitate receipt processing and certification by the ultimate consignees, consolidation of packages will be effected whenever possible for items applicable to a single FMS order for an individual country.

b. Marking

Packages will be marked as specified in the sales order and in accordance with "Military Standard for Marking, Shipping and Storage (MIL-STD-129D)." In addition to the

structions and issue a billing adjustment. Returned overages will not be charged to the recipient. If an overage is requested to be returned, transportation costs will be at U.S. expense. Should disposition instructions require reshipment to another location, the appropriate RCO will furnish complete instructions. In certain instances military components may authorize local disposal action by an agency of the U.S. Government.

d. Shortages

When the purchaser determines that a shortage exists, he should first ascertain that the carrier has received the proper quantity. If the carrier received an incorrect quantity, the purchaser should claim appropriate credit from the U.S. If the carrier is determined responsible for the shortages, the customer should initiate a claim against the carrier. In instances where the U.S. Government is responsible for transportation, all pertinent details of the short shipment should be referred to the RCO.

e. Erroneous Shipment

Erroneous shipment is defined as property shipped to a destination other than the desired consignee of the purchasing country appearing on the shipping document, or shipment of an item other than listed on the shipping document. The recipient in this case has the responsibility for advising the U.S. of details of the shipment. If the recipient requests retention of the materiel, billing will be pursuant to established procedures. If recipient elects to return the materiel at U.S. expense, the RCO will furnish him shipping instructions and issue a billing adjustment.

f. Damaged or Unserviceable Materiel

In the case of damaged or unserviceable materiel, the purchaser must first ascertain the probable cause. If the damage was inflicted by the carrier, a claim should be made by the purchaser to that carrier. If the damage apparently occurred prior to shipment, or is otherwise indicated to be the fault of the shipping agency, the discrepancy report

should be forwarded to the appropriate service RCO for processing.

g. Complaints Regarding Services

Inquiries and complaints of foreign governments concerning services, such as training or technical representative assistance, should be directed by letter or cable to the activity designated to receive purchase orders, or to the headquarters of the service involved. Concurrently, the country should also notify the U.S. MAAG in the country to assure full coordination in correcting the deficiency. Following the same procedure as that applicable to materiel complaints, the MAAG will advise the Unified Command that the complaint has been filed.

10. Suspensions/Cancellations

In the event the Department of State determines that it is necessary to suspend foreign military sales to any recipient country, DSAA will issue instructions to the Military Departments and the Defense Supply Agency based on the merits of each suspension or cancellation requirement. Any or all of the following specific requirements may be directed or requested:

a. Suspension or cancellation of the issuance of Letters of Offer and Acceptance (DD Form 1513) to the recipient government.

b. Suspension or cancellation of action on all accepted FMS cases for which supply action has not been initiated by the Military Departments.

c. Review of all FMS cases for which delivery has not yet been completed, in order to determine:

(1) Which items, if any, could be cancelled without cost to the U.S. Government.

(2) Which items, if cancelled, would result in cost to the U.S. Government.

d. Identification of the source of each item, and whether the transaction is cash, credit, or dependable undertaking, including the value of monies received with the order, or

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paid in by the purchaser up to the time of suspension.

e. Diversion of the items under order to other purchasers or for other purposes in the event the suspension were to become a can-

cellation.

11. Management Reports

Reports and EAM card submissions integrating supply and financial management of FMS are described in Chapters K and L.

SAMPLE FORMAT

Reporting Period: 1 April-30 June 1977

Report on Price and Delivery Schedule
Changes on FMS Cases

FMS Case	Original Cost \$	Revised Cost Last Report \$	Current Revised Cost \$	Original Delivery Schedule		Revised Delivery Schedule Last Report	Current Revised Delivery Schedule	Date 1513-2 Furnished To Country	Explanatory Remarks
				Item	FY Quarter				
XYZ	10,275,000	—	11,875,000	16 ea. widget M123	2/Qtr beg'g 3rd Qtr FY 78	— same	— 2/Qtr beg'g 1st Qtr FY 79	15 April 77	Delay in contract award due to delayed U.S. requirements approval. Separate contracting action would have been uneconomical.

Change 15, 1 October 1977

Figure F-1

CHAPTER H

FOREIGN MILITARY SALES—COMMERCIAL AVAILABILITY

1. Purpose

This chapter establishes guidelines for sale by the Department of Defense of articles and services which are commercially available. Provisions of this chapter apply to all elements of the Department of Defense.

2. Legislative Provisions

a. The Arms Export Control Act, as amended, states that: "It remains the policy of the United States to facilitate the common defense by entering into international arrangements with friendly countries which further the objective of applying agreed resources of each country to programs and projects of cooperative exchange of data, research, development, production, procurement, and logistic support to achieve specific national defense requirements and objectives of mutual concern," and that "all such sales be approved only when they are consistent with the foreign policy interests of the United States."

b. The Act also states: "No license may be issued under this Act for the export of any major defense equipment sold under a contract in the amount of \$25,000,000 or more to any foreign country which is not a member of the North Atlantic Treaty Organization unless such major defense equipment was sold under this act."

3. Department of Defense Policy

The DOD recognizes that, within the objective and limitation stated in paragraph 2 above, there are cases in which it is advantageous to encourage the use of commercial sources by foreign purchasers.

Responsibility for determining whether, within the context of this chapter, an item or service is to be offered for sale by DOD rests in the first instance with the Military Department processing the foreign government's purchase request. Questions of interpretation should be referred to DSAA for decision.

Nothing in this chapter will be construed as precluding DOD from making any sale, regardless of the defense articles or services involved, that is approved on a case-by-case basis by the Director, DSAA.

4. Guidelines for Determining Commercial Availability

a. It is the responsibility of the commercial source to inform the Department of Defense that items they manufacture are commercially available for sale to foreign countries and that it is their desire that the item not be sold via FMS. DOD components should not solicit such information from commercial sources. After notification by a commercial source that an item is commercially available and provided that such commercial source is fully capable of meeting the foreign countries requirements, the following additional criteria must be met before an item or service will be considered commercially available:

(1) The foreign country has the necessary technical and administrative capability to make a prudent purchase of the item or service directly from U.S. commercial sources. A previous commercial procurement of the same or similar item or service could be one form of evidence of such capability.

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(2) There is no specific government-to-government agreement approved by the Director, DSAA, or higher authority, covering such sale.

b. Special Cases. In addition, provided the above criteria are met, an item or service will be considered to be commercially available under any of the following conditions.

(1) The item or service has been determined previously to be commercially available to other foreign purchases; provided, however, that such previous determination shall not be considered as making the same determination mandatory in any given case.

(2) The Military Department concerned is aware of a previous request by the purchasing country for price and availability data from a U.S. commercial source.

(3) The defense item or service requested is covered by a known exclusive licensing arrangement in the territory where the purchasing government is located.

(4) The items are not directly related to a requirement for support or maintenance of military equipment (e.g., furniture, cement), providing such items are normally traded by and used by civilian enterprises.

c. Coordination Guidelines. The following type of commercial availability transactions must be coordinated with DSAA Operations:

(1) All notifications to a foreign country that an item is commercially available.

(2) If an item is commercially available but a DOD component has information which would justify the sale of that item via FMS.

(3) If a foreign country has been notified that an item is commercially available, but still insists on and provides justification for an FMS transaction, and the DOD component concerned recommends an exception or non-exception to the above Guidelines for determining commercial availability.

5. Guidelines for Sale Through FMS Procedures

In the absence of special circumstances, the following types of cases normally will be sold through FMS procedures if requested by the foreign purchaser:

a. Classified articles and services.

b. Supply Support Arrangements and similar follow-on support sales arrangements.

c. Surplus personal property including MAP disposable property.

d. Department of Defense long supply stocks when, in the judgment of the Military Department concerned, reduction of such stocks is desirable.

e. Repair parts or components normally carried in DOD stocks, and support services, when, in the judgment of the Military Department concerned, such parts, components or services are required for follow-on support of end items previously sold by the Military Department.

f. All ammunition rounds above 20mm in caliber.

g. All aircraft flares which are not procured in complete form from commercial sources.

h. All defense items which contain components as Government-Furnished Equipment (GFE).

i. Any defense item normally procured by the Military Department which the U.S. producer requests be sold through FMS channels provided that such FMS does not infringe on a known exclusive licensing arrangement covering the territory in which the purchasing government is located.

j. Any defense item not normally procured or type-classified by the Military Department, when the FMS is requested by a foreign government and the U.S. producer agrees, provided that such FMS does not infringe upon a known exclusive licensing arrangement covering the territory in which the purchasing government is located.

k. Any defense item or service known to be available from two or more producers

which a foreign government insists on procuring through FMS procedures for which the foreign government designates a sole-source producer. In such cases the foreign government will be requested to negotiate its own price directly with the designated sole-source producer. In the event that the foreign government is unable or unwilling to negotiate directly with the producer, the foreign government will not be quoted an option price except when:

(1) The option clause of the contract with the defense contractor specifically includes add-ons for FMS; or

(2) The original contract included consolidated quantities for FMS; or

(3) The defense contractor, after being informed of an add-on for FMS, agrees to its inclusion at the option price, thereby waiving any claims for reimbursement of promotional expenses, fees and additional profit.

1. Those defense articles which, if provided through commercial channels could adversely affect deliveries to a U.S. Military Department or other FMS customers under existing contracts.

6. Special Exception—Federal Republic of Germany

In accordance with a special agreement with the Federal Republic of Germany, any defense article or service that would otherwise be available for sale to Germany may, on request of the FRG, be sold through FMS even though it may qualify as Commercially Available under the criteria set forth in paragraph 4 above.

7. Procedures for Processing Requests for Sale or for Price and Availability Data

a. The Military Department concerned, upon receipt of a request for sale, or a request for price and availability information, will screen the request against the criteria in paragraphs 4 and 5 above to determine if the article is to be considered commercially available. If it is so determined, the Military Department shall promptly inform

the foreign purchaser of such commercial availability and of DOD policy regarding the sale by DOD of such item or service. Delay in providing this information in the past has led to a justified inference by the foreign purchaser that DOD was prepared to sell the item or service requested. Such notification should be provided within two weeks of receipt of the request for sale of the item or service. An information copy of the notification will be provided to DSAA. In the event that the Military Department considers that there are important factors justifying an exception to policy in a specific case, the matter shall be referred to the Director, DSAA, for decision together with the Military Department's recommendation and reasons therefor. Referral to DSAA of matters requiring a decision shall be made within two weeks of receipt of the request from the foreign purchaser.

b. In cases where a request for price and availability data, or a request for a Letter of Offer, is received from a country falling within the area of a known exclusive U.S. license, the following special procedures will apply:

(1) The prospective buyer will be provided with the name of the foreign firm involved and informed that this firm has exclusive rights in that country relating to the sale of the item or service being sought.

(2) In the event the prospective buyer insists that it wishes an FMS transaction, it should be advised that the request should be set forth in a letter from the Minister of Defense or the Deputy Minister of Defense (or his equivalent) outlining the reasons for the desire to purchase by means of an FMS transaction rather than from the foreign licensee.

(3) On receipt of such written request containing justification, the Director, DSAA, will advise the foreign firm involved (or its designated representative in the United States) in writing of such request, provide the foreign firm with a copy of the written request, if unclassified, and of other unclassified records pertinent and material to the

transaction, and give the foreign firm an opportunity to provide data pertinent to the request, including a statement as to the amount of financial return to the U.S. economy should such a sale be made by the foreign firm.

(4) In the event it is determined that price and availability data is to be provided, or that a Letter of Offer and Acceptance (DD Form 1513) is to be issued to the requesting government, the Director, DSAA, will so advise the foreign firm, and will provide upon its request relevant unclassified and non-proprietary pricing and availability data. The foreign firm shall be advised of all renewals, modifications or extensions of such Letter or Offer and Acceptance prior to acceptance by the purchasing country.

c. In implementing these procedures each DOD element or agency involved in processing purchase requests will, to the extent such activities are known, keep the Director, DSAA, the Military Department, and MAAGs or other appropriate in-country DOD representatives informed of significant commercial sales activities.

8. Documents Rescinded

Secretary of Defense memorandum dated 6 August 1970 and Assistant Secretary of Defense memorandum I-12902/69, concerning sale of commercially available items by DOD are hereby rescinded.

CHAPTER J

FOREIGN MILITARY SALES TRAINING (FMST)

1. Purpose and Scope

a. This chapter provides guidance and instructions for providing military training to eligible nations as authorized under the Arms Export Control Act.

b. Basic guidelines applicable to FMST are similar to those prescribed for the IMETP in Chapter E, Part II. Therefore, this chapter addresses those training matters unique to FMST or requiring elaboration/deviation from IMET procedures.

c. Unless otherwise specified in this chapter, FMST is subject to all rules and limitations applicable to FMS generally.

2. General Guidance

a. The Arms Export Control Act (AECA) authorizes the sale of defense articles and defense services to eligible foreign purchasers. The AECA states that defense services include training for FMS purposes.

(1) Training includes both formal and informal instruction of foreign students in the United States or overseas by officers or employees of the United States, contract technicians, or contractors (including instruction at civilian insitutions), or by correspondence courses, technical, educational, or information publications and media of all kinds, training aids, orientation, training exercises, and military advice to foreign military units and forces.

(2) Section 21(c) of the Arms Export Control Act prohibits the performance by personnel performing FMS defense services (including FMS training) of any duties of a combatant nature (including those related to training, advising or otherwise providing

assistance regarding combat activities) outside the United States in connection with the performance of those defense services. This prohibition is applicable only during hostilities involving the country in which the defense services are being performed.

(3) The full cost to the USG of furnishing defense services to a foreign purchaser must be paid for by the foreign purchaser. Payment must be cash on acceptance unless a Presidential Determination is made that it is in the national interest that payment be made prior to performance of the defense service (training). For billing purposes, formal training of less than 90 days duration is considered performed the date the student enters the course, or in the case of Mobile Training Teams (MTTs) or Field Training Services (FTS) when the team member departs home station. For formal training of more than 90 days, an advance covering the 1st 90 days will be made when the student enters the course with quarterly billings for the remainder of the course. At all times, there must be cash available in advance of performance of the training.

(4) Bilateral, combined, or multilateral exercises conducted to test and evaluate mutual capabilities do not require authorization or funding under the Arms Export Control Act. Costs of foreign participation in such exercises may not be directly paid or reimbursed from DOD funds, including O&M funds. DOD funds are to bear only costs of U.S. Armed Forces participation, which would have been incurred in absence of foreign participation in the exercise. The costs of any U.S. support provided to the participating countries or international organizations for training exercises must be reimbursed under an FMS case.

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(5) Outside the context of an exercise, USG costs of providing training for foreign military or paramilitary personnel must be borne by the foreign government or international organization under an FSM case unless there is separate and specific statutory authorization for such training, as in the case of the senior ROTC program or U.S. service academies. Existing authority and regulations do not permit formal and informal training (to include orientation, observation, or familiarization, as opposed to short informal visits) on a non-reimbursable or quid-pro-quo basis.

b. FMST Initiation and Programming Sequence

(1) Although not constrained by country U.S. dollar ceilings as in IMET, the same general initiation and annual programming process applies to FMST. Eligible foreign purchasers may initiate training requests through several channels: designated U.S. defense organizations in-country, responsible for security assistance functions; foreign embassy, purchasing mission or other representative in the U.S. Category "A" countries (Table A-2, Part III, Chapter A) may submit training requests directly to the Military Departments (with information to DSAA and Department of State). Requests from category "B" countries require submission to and approval of the Departments of State and Defense prior to action within the Military Departments (MilDeps). Foreign purchasers, with the assistance of DOD security assistance organizations in-country, are encouraged to develop annual FMS training programs.

(2) A 25 percent deposit is normally required for annual training cases using open-end LOAs in excess of \$25,000. Full payment in advance is required on cases less than \$25,000 or 90 days duration. Countries having both IMET and FMST programs should assure that the programs complement each other.

(3) Unprogrammed training requirements, not included in the annual program,

are handled on an exception basis. Unscheduled requirements often have an adverse impact on the total training effort, particularly in training courses where quota availability is a major constraint, or those involving short notice assignment of MTT personnel from operational units for specialized requirements and preparation of tailored curricula. In addition, unprogrammed training requirements distort planning and make forecasting ineffective. Annual training programs should, therefore, be adhered to as initially developed and reviewed at workshops with add-ons during the program year being discouraged.

(4) Upon determination of capability, the MilDeps will assign an FMS case identifier number, prepare the LOA and submit it to the appropriate country representative for acceptance and deposit of funds as required. The MilDep will implement (authorize issuance of ITOs or travel orders) only after the case has been accepted and funded, and obligation authority has been granted by the Security Assistance Accounting Center (SAAC). Any exception to this must be approved by DSAA, Comptroller.

(5) After implementation, increases in the scope of definitive training requirements must be made using DD Form 1513-1 (Amendment to Offer and Acceptance). Customer requested changes for addition/deletion of programmed students or courses for a signed FMS case are not considered a change of scope if the same general area of training and the number of students are not substantially changed as stated in the DD Form 1513 and formal amendments. However, all changes which reflect an increase in price of \$50,000 must be coordinated with DSAA. For deletions and for changes not affecting scope, the DD Form 1513-2 (Notice of Modification of Offer and Acceptance) should be used. (See para 12, Chapter F, Part III).

(6) Changes in requirements within the dollar ceiling of annual open-end training cases do not require the use of DD Form 1513-1 or DD Form 1513-2. Such changes to these cases may be made administratively.

c. Training Requirements Related to the Purchase of Major Equipments

(1) Training is an essential and often key element in the successful introduction of a new end item or weapons system. The time required to conduct adequate training should be given careful consideration when requesting delivery dates of equipment. In developing a training plan for a particular end item of equipment or weapons system, the needs of each country must be considered individually. While general training requirements can be determined for any item, the exact composition and duration of the training program will vary based on the individual requirements and capabilities of the country.

(2) Training programs must be planned realistically, taking into account the skills that must be developed, the background and experience of the individuals selected for the training, and the time required to plan, implement, and complete the program. In the final analysis, the success of any training program will depend upon student capability and potential for success. The individual and collective performance of the students will set the pace and measure the true progress of a program.

(3) Training in support of FMS equipment purchases should normally be programmed and accomplished as separate FMS training cases; however, when more appropriate, training may be included as part of the overall equipment sales case. Training under the IMETP will not be employed to support equipment purchases. Requests for exceptions to this policy should be referred to DSAA with appropriate justification for consideration on a case-by-case basis.

3. English Language Training

It is the responsibility of the foreign country to assure that trainees meet the English comprehension level (ECL) required for direct entry into the DOD school system. In-country English language training programs (ELTP) should be used. Countries

without an adequate ELTP should be encouraged to develop a program to qualify trainees for direct course entry or as a minimum for entry into the Defense Language Institute English Language Center (DLIELC). Minimum ECL score for entry into DLIELC is 55. Conditional entry is authorized for students with an ECL of 45-55 when authorized by U.S. representatives in-country. Where clearly justified, on a case-by-case basis, exceptions to these requirements may be approved by the cognizant Military Department.

4. FMST Course Costs

a. Pricing of FMST tuition rates will be in accordance with DODI 2140.1. Certain costs, such as students' meals, custodial fees for quarters, medical care and transportation are not included in tuition rates but are paid through the LOA, or other means, by the purchaser.

b. The extracurricular activities related to the Information Program (IP) are considered an integral part of the foreign training effort and therefore costs thereof will be included as part of the tuition rate. Funds for FMS students are generated by including appropriate expenses in the course tuition rate and are made available to the training activities through reimbursement from the FMS case.

c. An asset use charge of 2 percent will be applied to the total of all tuition rates (other than flying courses for which 4 percent will be applied). The asset use charge is reimbursement for the use of installed U.S. facilities and equipment, and will be computed after all other direct and indirect costs have been determined. Asset use charge must be deposited into Miscellaneous Receipts and legally may not be used to reimburse specific Service appropriations. (DOD Instruction 2140.1)

5. Cancellation of Training—Penalty Charge

a. Purchasers must submit rescheduling

or cancellation requests at least 60 days in advance of the scheduled course start date. In the event cancellation or rescheduling is requested less than 60 days prior to the scheduled student report date, the FMS case will be billed for 50 percent of the cost of the course(s) which commence within that 60 day period. The date the request is received from the country by the duly appointed and recognized United States representative will constitute the official notification date. The cancellation penalty will not be applied when (1) cancellation is due to the fault of the U.S. (deletion of classes, rescheduling, etc.), (2) when the cancellation is due to unavoidable circumstances within country, such as national disaster, or (3) cancellation entails no loss to the U.S. in terms of cost or training capability. The 60-day penalty provisions will be effective upon the date the LOA is signed by the country.

b. FMS countries will be charged a proportionate share, but not less than 50 percent of the course cost for trainees not completing a course of instruction.

6. Training at Civilian Institutions

Although Section 47 of the Arms Export Control Act authorized foreign students to attend civilian institutions under FMS, normally this type of training requirement is more appropriately handled by direct negotiation between the civilian institution and the purchasing country. Training at civilian institutions, therefore, generally will not be accomplished under FMS. Requests for exceptions to this policy should be addressed to DSAA, Comptroller.

7. Transportation and Travel

a. The purchasing country is responsible for all transportation and travel costs for FMS students. These costs are not included in the LOA.

b. Although any desired mode of travel or carrier can be used, use of U.S. civilian car-

riers is encouraged. Trainees are authorized to travel by Military Airlift Command (MAC) aircraft if so stated in their ITO. Reimbursement for MAC travel will be on a direct billing basis at the non-government rate.

c. Since baggage shipping costs are paid by the purchasing country, no limitation is established; however, students are encouraged to limit baggage and instructional material to a minimum. Cost of baggage is not included in the FMS case.

8. Living Allowances/Privileges

a. **Living allowances** of FMS students are defrayed by the student or by his government. The purchasing country should assure that students receive sufficient allowances to meet all mandatory living costs and personal expenses. Allowance costs are not included in tuition course costs, nor are they included in the FMS case.

b. **Subsistence.** Officers and enlisted personnel will pay for meals taken in government dining facilities at the rate prescribed by the Military Departments.

c. **Quarters.** All FMST students who occupy military quarters must personally pay the service charge or custodial fee as established by the installation commander.

d. **Privileges.** Foreign military personnel involved in security assistance training, on competent orders (ITOs) authorized by the Military Departments, and *bona fide* dependents, will be extended commissary, exchange and similar privileges ordinarily available to military personnel of the U.S. Armed Forces of similar rank. Equivalent rank assigned in the ITO must be based on U.S. Armed Forces grade structure, reflecting time in service, experience and age—not the rank title of the foreign country.

e. **Medical care.** Foreign personnel (involved in security assistance training, on competent orders (ITOs) authorized by the Military Departments, and *bona fide* depend-

ents are eligible for care in DOD medical (to include dental) facilities.

(1) Foreign Military trainees of non-NATO nations and all related civilian trainees will be provided medical care on a space-available, reimbursable basis at rates established by DOD.

(2) Foreign military trainees from NATO countries will be furnished medical care in the same scope and same costs as for U.S. military personnel and their dependents.

9. Training of Civilians Under FMS

a. Foreign civilian personnel may receive training provided they are Ministry of Defense (MOD) employees of eligible FMS countries. Civilians must meet the normal course requirements, including proper security clearance when necessary.

b. Civilians are generally afforded the same protocol status as their equivalent military counterparts as shown in the ITO.

10. FMS Orientation Training Courses and Visits

a. Orientation training and visits as described in Chapter E, Part II are available to FMS purchasers on a full reimbursable basis to include expenses for a U.S. escort officer(s), CONUS travel of tour participants, local project officers, extraordinary expense and asset use charges. U.S. organizations in-country responsible for security assistance will plan orientation visits far enough in advance to permit adequate planning, and during the negotiation phase, will specify any unusual tour requirements.

b. Each orientation tour will be covered by a separate FMS case except when an open-end FMS training case exists against which, with the consent of the country, the cost of the tour is to be applied.

11. Mobile Training Teams (MTTs), and Field Training Services (FTS)

MTT and FTS as described in Chapter E,

Part II are available to FMS purchasers on a fully reimbursable basis in accordance with DODI 2140.1, to include those costing factors for IMET as well as full pay and allowances of team's member. Planning and funding are as indicated for tours in paragraph 10, above. MTT and FTS should be included as a separate training item.

12. Training Relations

DOD organizations in foreign countries responsible for managing security assistance activities have the same responsibilities for FMST as for IMET, where practical, the foreign governments will be encouraged to the maximum in supervising and administering their training programs (e.g., language testing, preparation of ITOs, pre-departure briefing, etc.).

13. Restrictions on Transfer of Training

Purchasing governments may not transfer training related to the use of U.S. materiel or services to other countries or organizations, or to anyone not an officer, employee, or agent of the purchasing government, nor use or permit the use of such training for purposes other than those for which furnished, without the consent of the USG. Therefore, technical skills and information acquired through U.S. training may not be used by the purchasing country to train personnel from a third country unless approved in advance. Countries should submit, via diplomatic note to the Department of State, requests for USG consent to transfer of training to third parties. If such requests are received by the Military Departments, they should be referred to DSAA, Comptroller for forwarding to the Department of State.

a. DOD policy on the sale of police training is as stated in para 3a(23), Chapter B, Part III based upon the restrictions placed on such training under IMET by Section 660 of the Foreign Assistance Act of 1961, as amended. (See Chapters C and E, Part II). Training on a sales basis must be in support of military missions, including internal

security, and not related to civilian law enforcement. Any request for training of units or individuals engaged in on-going civilian police functions will be reviewed by DSAA, Comptroller on its own merits. Major consideration is given to the type of training requested, purpose of training, functions the individual or unit will perform and organizational structure of the unit. Generally, the organization or individual must be under the control of the Ministry of Defense and not be engaged in on-going civilian police functions. (See para 3a(23), Chapter B, Part III).

14. Intelligence Training

Military intelligence training is a component of professional command staff training programs. The scope of military intelligence training normally available under FMST is limited to that which is directly related to combat or operational intelligence. All training requirements will be reviewed carefully by the Military Department and, wherever determined to be potentially sensitive, prior approval of DSAA will be obtained.

APPENDIX C

MAJOR DEFENSE EQUIPMENT LIST

CATEGORY I—FIREARMS

Rifle, 5.56MM, M-16

CATEGORY II—ARTILLERY AND PROJECTORS

Gun, 20MM

Gun, GAU-8, 30MM

CATEGORY III—AMMUNITION

Cannon Launched Guided Projectile
(CLGP)

Cartridge, 20MM

Cartridge, 30MM

Cartridge, 40MM (HE)

Cartridge, 60MM

Cartridge, 81MM

Cartridge, 105MM

Cartridge, 4.2 inch

Projectile, 5"/38 Cal

Projectile, 5"/54 Cal

Projectile, 155MM (HE)

Projectile, 175MM

Projectile, 8 inch

CATEGORY IV—LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS AND MINES

ASROC (Anti-Submarine Rocket)

Bomb, MK-82, 500#, General Purpose

Bomb, MK-83, 1,000#, General Purpose

Bomb, MK-84, 2,000#, General Purpose

Bomb, M-117, 750#, General Purpose

Launcher, TOW

Light Anti-Tank Weapon 66MM (LAW)

Mine, Naval Warfare

(QUICKSTRIKE—MK 62 Mod O,
MK 63 Mods O and 1, MK 64 Mods O
and 1, MK 65 Mods O and 1)

Mine, Naval Warfare, MK-68, Mod O
(PRAM)

Missile, AIM-4, Falcon

Missile, AIM-7, Sparrow

Missile, AIM-9, Sidewinder

Missile, AGM-12, Bullpup

Missile, AGM-45, Shrike

Missile, AGM-65A, E/O, Maverick

Missile, Chaparral

Missile, Cruise

Missile, Dragon

Missile, Harm

Missile, Harpoon

Missile, Hawk

Missile, Improved Hawk

Missile, Lance

Missile, Pershing

Missile, Phoenix

Missile, Redeye

Missile, Rockeye

Missile, Walleye

Missile, Nike Hercules

Missile, Roland

Missile, Standard Arm

Missile, Standard ER RIM-67A

Missile, Standard MR RIM-65A

Missile, Tartar

Missile, Terrier

Missile, Tomahawk

Missile, TOW

Missile, M-65 Airborne TOW

Rocket, 2.75 inch

Torpedo, MK-46

Torpedo, MK-48

CATEGORY V—PROPELLANTS, EXPLOSIVES AND INCENDIARY AGENTS

Items in this category which meet the dollar criteria for major defense equipment are not significant combat equipment as defined in the U.S. Munitions List.

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CATEGORY VI—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

CC—Guided Missile Cruiser
DD—963—Destroyer (SPRUANCE Class)
DD—Destroyer
DDG—Guided Missile Destroyer
FFG—Guided Missile Frigate
LCM/LCU/LCVP—Amphibious Landing Craft
LPD—Amphibious Transport Dock
LSD—Dock Landing Ship
LST—Tank Landing Ship
LKA—Amphibious Cargo Ship
LPA—General Purpose Amphibious Assault Ship
MSO—Minesweeper, Ocean (Non-Magnetic)
PHM—Patrol Combatant Missile (Hydrofoil)
SS—Submarine (Conventionally Powered)

CATEGORY VII—TANKS AND MILITARY VEHICLES

Armored Reconnaissance Airborne Assault Vehicle, M-551
Carrier, Armored Personnel, M-113
Carrier, Command Post, M-577
Carrier, Cargo, M-548
Combat Engineering Vehicle, M-728
Gun, Self-Propelled, 175MM, M-107
Howitzer, Self-Propelled, 8-inch, M-110
Howitzer, Self-Propelled, 155MM, M-109
Mechanized Infantry Combat Vehicle, XM-723
Tank, M-48 Series
Tank, M-60 Series
Tank, XM-1
Vehicle, Recovery, M-88A1
Vehicle, Amphibious, LVTP
Vulcan Air Defense System

CATEGORY VIII—AIRCRAFT, SPACECRAFT, AND ASSOCIATED EQUIPMENT

A-4
A-6

A-7
A-10
A-37
AH-1
AH-1H
AMST
C-5
C-130
C-141
CH-47
E-2C
E-3A
E-4
EA-6
F-4
F-5
F-8
F-14
F-15
F-16
F-18
F-100
F-101
F-102
F-104
F-106
F-111
H-3
H-46
H-53
H-65
Lamps Mark III
OV-1
OV-10
P-3
S-2
S-3
S-65
T-2
T-33
T-37
UH-1
UH-1N
YUH-60/61 (UTTAS)

Engines

F-100
F-401

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F-404
J-47
J-52
J-57
J-79
J-85
P-100
TF-30
TF-34
TF-39
TF-41
T-53
T-55
T-56
T-58
T-64
T-700

CATEGORY IX—MILITARY TRAINING EQUIPMENT

No items in this category are defined in the U.S. Munitions List as significant combat equipment.

CATEGORY X—PROTECTIVE PERSONNEL EQUIPMENT

No items in this category are defined in the U.S. Munitions List as significant combat equipment.

CATEGORY XI—MILITARY AND SPACE ELECTRONICS

Air Weapons Control System, 412L
AN/TTC-39
Backup Interceptor Control, 416M
BEACON, AN/TRN-26
Combat Operations Center, 425L
Combat Operations Center, 427L

DOD AIMS, 499L
ECM, ALQ-94
ECM, ALQ-119
Radar, AM-389-FPS
Radar, AN/MPS-11
Radar, AN/TPS-43
Radio, AN/ARA-54
Radio, AN/VRC-12
Single Channel Ground and Airborne System (SINGARS)
TACAN, AN/TRN-26
Tactical Air Control System, 417L
Tactical Air Control System, 485L

CATEGORY XII—FIRE CONTROL, RANGE FINDER, OPTICAL AND GUIDANCE AND CONTROL EQUIPMENT

Computer, Fire Control MK1A
Director, Fire Control, MK 51-2
Goggles, Night Vision, AN/PVS-5
Gunsight, MK-14
Gunsight, MK-15
Radar, AN/TPQ-36
Radar, AN/TPQ-37
Radar, APG-63
Radar, Fire Control, MK-25
System, Fire Control, MK-68
System, Fire Control, MK-86
System, Fire Control, MK-105
System, Missile Fire Control, MK-76
System, Fire Direction, AN/GSS-10(V)
System, Gun Fire Control, MK-56 & 63
Tactical Operations System (TOS)
Target Designator AN/AVQ-26
TSEC/KY57

CATEGORY XIII—AUXILIARY MILITARY EQUIPMENT

No items in this category are defined in the U.S. Munitions List as significant combat equipment.