

## C9. CHAPTER 9

### FINANCIAL POLICIES AND PROCEDURES

#### C9.1. PURPOSE – FINANCIAL POLICIES AND PROCEDURES

The Department of Defense (DoD) performs two key financial functions during the life cycle of a Foreign Military Sales (FMS) case: it develops pricing estimates for Letter of Offer and Acceptance (LOA) documents; and, it bills and reports Security Assistance costs incurred and collected. This chapter provides an overview of Security Assistance policies and procedures for financial management. See DoD 7000.14-R (reference (o)), Volume 15 for detailed Security Assistance financial guidance (<http://www.dtic.mil/comptroller/fmr/15/index.html>).

#### C9.2. FINANCIAL MANAGEMENT LEGAL PROVISIONS

Table C9.T1. provides a summary of the legal references for financial management of the Security Assistance program.

Table C9.T1. Financial Management Legal References

<b>Legislation</b>	<b>Subject</b>
Arms Export Control Act (AECA), Section 3(c)(1)(A) (reference (c))	Financing Eligibility
AECA, Section 21 (reference (c))	Payment terms for FMS sales from stock
AECA, Section 22 (reference (c))	Payment terms for FMS sales from procurement
AECA, Section 23 (reference (c))	Foreign Military Financing (FMF) credits
AECA, Section 24 (reference (c))	Guaranties (used with old Federal Financing Bank (FFB) credits)
AECA, Section 34 (reference (c)) Executive Order (E.O.) 11958 (reference (e))	Credit Standards and Criteria
AECA, Section 37 (reference (c))	Fiscal Provisions
AECA, Section 42(b) and (c) (reference (c))	Coproduction/Licensed Production Offshore Procurement
Annual Foreign Operations and Related Appropriations Acts	Authority and appropriated amounts for FMF and other FMS-related accounts Restrictions/controls related to the ability to execute FMS sales Congressional Notification

#### C9.3. GENERAL FINANCIAL POLICIES

Chapter 4, section C4.6. provides general financial policies (cost recovery, payment in United States (U.S.) dollars, credits, and financing) that should be considered early in the FMS process. The following policies also apply.

**C9.3.1. LOA Pricing.** When pricing FMS case items, the price depends on the source of supply (e.g., available from stock, ordered from procurement, Working Capital Fund (WCF)), and if the item is to be replaced with a similar or improved item, or involves manpower or training, etc. DoD 7000.14-R (reference (o)), Volume 15, Chapter 7 provides detailed information on how prices are computed.

C9.3.2. Direct and/or Indirect Charges. All FMS program expenses are recovered from the purchaser through direct charges (included in the materiel and/or services cost) or indirect charges and/or surcharges (usually computed as a percentage of costs) on the FMS case. Charges included within the materiel and/or services line may be referred to as “above-the-line” charges. This term is a holdover from the old LOA form (DD Form 1513) where a line divided the direct charges from the accessorial (surcharge) charges. Accessorials and/or surcharges that are not included within a line item value may be referred to as “below-the-line” charges.

C9.3.3. Single Selling Price. DoD policy is to provide a single unit estimated price for articles offered under FMS. If the purchaser desires, a detailed description of the major components of cost included in estimated prices may be provided with the LOA as supplemental information or via separate report.

C9.3.4. Use of Estimated Prices. To assure that all costs are covered, quotations on defense articles/services are cited as estimated prices, with final adjustments established during case execution or after delivery of articles and/or services. The LOA indicates that prices for articles and/or services are estimates. (See DoD 7000.14-R (reference (o)), Volume 15, Chapter 7 for details on those instances when firm prices may be quoted on an LOA.)

C9.3.5. FMS Trust Fund. The FMS Trust Fund is used for payments received from purchasers and disbursements made against implemented FMS cases. This fund is cited directly on contracts for the procurement of defense articles and/or services for the purchaser, or is used to reimburse Military Department (MILDEP) appropriations for deliveries from DoD stocks or services performed by DoD employees. The Defense Security Cooperation Agency (DSCA) manages the FMS Trust Fund and is responsible for the solvency of each purchaser's FMS Trust Fund account. (See paragraph C9.11.1.)

#### C9.4. SPECIFIC LINE ITEM PRICING INFORMATION

C9.4.1. Government-Furnished Engineering Services. The purchaser may request U.S. Government (USG)-furnished engineering services or costs may be incurred when providing these services as part of production. These services are offered on FMS cases and are reported and/or billed the same as other services. Estimated costs to provide engineering services, are included in the estimated unit cost of the purchased item. Such costs also include the pro-rata share of Government-furnished testing and evaluation services. If requested, a break-out of USG cost is provided to the purchaser. USG-furnished engineering services are charged directly to an FMS case as follows.

C9.4.1.1. Performance of the service is necessary for production, configuration control, or reliability of the procured item. The charge is based on the proportionate share of work years needed for the FMS items. The charge is pro-rated based on the ratio of items produced for FMS purchasers to the total items produced in the same time frame.

C9.4.1.2. The services are recurring in nature and are related to a current production run in which the FMS materiel is produced. Nonrecurring costs (NC) are recoverable via policies and procedures included in DoD Directive 2140.2 (reference (bn)) and DoD 7000.14-R (reference (o)), Volume 15, Chapter 7.

C9.4.1.3. The services are allocable to a specific purchaser or purchasers' program rather than performed to benefit the program in general. Some engineering work years may be required for general FMS administration. When the cost of such work years cannot be allocated to FMS case lines, they may be charged to the FMS Administrative Fund (FMS Admin).

C9.4.2. Manpower. It is critical that manpower efforts be properly accounted to verify associated costs. The following policy applies.

C9.4.2.1. Manpower Reporting Requirement. When forwarded to DSCA for countersignature, an LOA Manpower and Travel Data Sheet (MTDS) must accompany all LOAs that contain manpower. An MTDS is also required for Amendments that change the scope (increase or decrease of lines involving manpower), as well as for Modifications that increase the value of lines involving manpower. Figure C9.F1. is the MTDS format for manpower pricing. The MTDS may be provided to purchasers upon request. The following services are exempt from the MTDS requirement: (1) Services provided as a membership in the USG-sponsored groups identified in Row #24 of Table C5.T6; (2) Services provided by the Defense Business Operations Fund (DBOF) or Working Capital Fund (WCF), as long as the services are part of the final material total cost and cannot be separated from the unit price, i.e., organic costs. If only services are being provided by the DBOF/WCF, an MTDS is required; (3) Lines involving blanket order CONUS training, OCONUS Security Assistance Teams, or schoolhouse-provided training where manpower costs are embedded within the course/tuition rates; (4) Contractor Logistics Support using MASL R9A-0761000000CLS, (5) Repair and Return programs; and (6) Refurbishment/Overhaul programs. The MTDS for Amendments and Modifications must reflect the total personnel, travel, and support costs for lines that include manpower, not just the differences between the previous and revised amount. For Amendments, this applies to all lines being revised, whether an increase or decrease in scope. For Modifications, this applies only to lines being revised due to price increases.

Figure C9.F1. LOA Manpower and Travel Data Sheet (MTDS)

A. Personnel							
Position/ Function	Grade/Rank/ Contractor	Organization	Line Item on LOA	Work Years of Effort	Duration (From/To)	Total Cost	Corresponding Table C5.T6. Row #
Total:							
B. Travel							
Purpose of Trip	CONUS or In- Country	Line Item on LOA	Number of Trips	Duration of Each Trip	Number of People Each Trip	Total Cost	Corresponding Table C5.T6. Row #
Total:							
C. Personnel Support Costs (i.e., office space, equipment, furniture, communications, supplies, etc.)							
Type of Support						Total Cost	Corresponding Table C5.T6. Row #
Total:							
D. Narrative Description: (Use this section to describe the life of any services lines and any Program Management Lines (PMLs) in relation to the delivery schedule of the item(s). Provide the number of months of program management support beyond final delivery (not to exceed 6 months) and supporting information. [NOTE: Cases "accepted" on or after 1 Aug 06 will not include new PML requirements. Existing PMLs may continue until fully executed and will continue to be reported using this data sheet.] Clearly define for each of these line items exactly what support beyond the "Standard Level of Service is required. This information must also be included in the LOA line item description notes and must be unique/tailored for each individual case.)							
E. Additional Comments:							
F. Point of Contact for Further Information Regarding Manpower on this Case:							

C9.4.2.2. Manpower Funding Sources. Manpower for FMS case-related programs is funded from one of two sources: the FMS Administrative Surcharge or FMS case line items. See Chapter 5, Table C5.T6. for a description of case manpower functions and how each function should be funded. Requests to deviate from these funding sources must be coordinated with DSCA (Business Operations and Strategy Directorates).

C9.4.2.3. Program Management Services - Tracking Costs. An auditable methodology must be used to document work each individual performs on a program management services line or a Program Management Line (PML). Personnel charges must be identifiable by position number, employee identification number, or other traceable means

C9.4.3. Training. DoD 7000.14-R, Volume 15, Chapter 7 provides detailed guidance for the pricing of training on FMS cases and of IMET. The following paragraphs provide additional policy applicable to the various tuition rates (Rates A – E). (For the International Military Education and Training (IMET) program, see Chapter 10 for information on Travel and Living Allowance (TLA) charges).

C9.4.3.1. Change in Status if IMET-Recipient Country.

C9.4.3.1.1. Under the Arms Export Control Act, section 21(a)(1)(C), countries purchasing education and training via an FMS case and using national funds are to be charged the incremental rate (Rate C) if they are currently in receipt of IMET funds. If a country is not currently in receipt of IMET, it is not eligible for incremental pricing of education and training paid on LOAs accepted/signed after the end of the fiscal year of its IMET funding allocation.

C9.4.3.1.2. The rate to be charged for education and training is established at the time of sale, not at the time that the education and training begins or periods to which it may extend. The rate, whether incremental or full, will continue to apply to all education and training provided under the LOA, or Amendments to it, until the total value of the training line has been obligated. [Note: Incremental pricing and full pricing rates may not be mixed on the same training line.]

C9.4.3.1.2.1. If a country is currently receiving IMET funding at the time an LOA is accepted/signed, then the LOA should be priced using the incremental rate (Rate C) for education and training, as referenced in DoD 7000.14.-R, Volume 15, Chapter 7, paragraph 0710.

C9.4.3.1.2.2. If a country is not in receipt of IMET funding at the time of LOA acceptance/signature, then the full rate for education and training is to be charged.

C9.4.3.1.2.3. If a country is no longer in receipt of IMET yet has an LOA/Amendment that has been accepted/signed using incremental pricing and there is a requirement to increase the dollar value of a training line for an adjustment, e.g., a student's training on that line exceeded the programmed training time by one week to which additional costs were incurred, the incremental pricing applicable to the line when the case was accepted/signed is the appropriate pricing to charge to the line. If, on the other hand, there is a requirement to increase the dollar value of training on the original LOA/Amendment for other than an adjustment, e.g., adding another course or adding additional students (change in scope), a new line will need to be established that prices the new requirement at the full cost (Rate A).

C9.4.3.1.2.4. If an LOA/Amendment has been accepted/signed using full pricing (Rate A) and a country subsequently begins to receive IMET funding during any fiscal year in which training is still to be performed under such an LOA, then that LOA may be amended to delete any unobligated funds from the full-priced education and training line and a new line added on the LOA which may then be priced at the incremental rate (Rate C) for future education and training requirements. There will be no retroactive/backward adjustments for training already started or scheduled (student in the “training track”). Students that began education and training with the full rate cannot retroactively receive the incremental rate when the case is amended. Only those students starting education and training on or after the Amendment is accepted/signed are eligible to receive the incremental rate.

C9.4.3.2. Civilian Unfunded Retirement. The Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) publishes annually the acceleration factor(s) applicable to civilian unfunded retirement. These factors may be found at <http://comptroller.defense.gov/rates/>, Tab D. The acceleration percentage factor is applied to the combined base pay and leave and holiday pay to determine the cost. Civilian unfunded retirement is applicable to full cost tuition rates and not applied to incremental tuition rates.

C9.4.3.3. Military Fringe Benefits. Military personnel services are priced using the applicable DoD Military Personnel Composite Rate plus an acceleration factor that covers medical health care costs of active duty personnel and their dependents. In addition rates include a per capita normal cost for Medicare-Eligible Retiree Health Care (MERHC) accruals. These factors are published annually by OUSD(C) at <http://comptrolle.defense.gov/rates/>, Tab K. Military fringe benefits consist of quarters (family housing), subsistence, medical (hospital), and other personnel support (e.g., commissary and exchanges). The costs are applicable to both direct and indirect military salaries and are computed by applying the acceleration factors for officer and enlisted personnel. These costs are included for all military personnel allocated to the training course. Tuition rates D (formerly FMF) and E (formerly IMET) exclude both direct and indirect military salaries; therefore, military fringe benefits are excluded as well. Military fringe benefits costs, used as part of base operating support (BOS) costs and allocated to training courses, are used as indirect costs in the tuition rates. The costs must not be duplicated in the tuition rates by also being included as direct and indirect costs under Pay and Fringe Benefits.

C9.4.3.4. Maintenance and Repair of Facilities. These costs are part of the normal base operating costs. When training facilities are used for Security Assistance courses, the costs are included as indirect costs in the tuition rates.

C9.4.3.5. Attrition Charges for FMS Training. Attrition charges are included in tuition Rate A (formerly full FMS) for flying and/or non-flying training courses whenever the training or educational course includes the use of training equipment or operational equipment used as training aids. For all other FMS tuition rates (e.g., Rates B (formerly NATO), C (formerly FMS Incremental), and D (formerly FMF), the liability statement, as provided in DoD 7000.14-R, Volume 15, Chapter 7, is applied. Attrition charges are recorded directly into the attrition account. DSCA must approve use of these funds. When equipment is damaged beyond repair due to FMS student error, a report of the loss and request for funding to cover procurement of the replacement items is submitted for DSCA (Business Operations Directorate) approval. After DSCA approval is obtained, the MILDEP forwards a request (with a copy of the DSCA approval) to DFAS Indianapolis to process the payment from the attrition account to the appropriate recipient(s).

#### C9.4.4. Asset Use, Tooling Rental, or Facility Rental

C9.4.4.1. Charges for Use of USG-Owned Facilities. Fair pricing legislation removed the requirement to apply asset use, tooling rental, or facilities rental charges on FMS cases using USG property. Commercial sales of defense articles to any foreign country or international organization include charges for use of USG-owned facilities, plants, and production or research equipment in connection with the production of the defense articles.

C9.4.4.2. Rental Charges for Use of DoD Assets. Commercial sales of defense articles produced in Government-owned facilities or with Government-owned industrial plants and production or research equipment for which a rental charge is assessed in accordance with Part 52.245-9 of the Federal Acquisition Regulation (FAR) (reference (ak)) and Part 245.4 of the Defense Federal Acquisition Regulation Supplement (DFARS) (reference (al)) and must include the rental charge in the price. The rental charge in commercial contracts may be waived on a case-by-case basis (see paragraph C9.6.4.).

C9.4.4.3. Use of U.S. Industrial Plant Equipment or Production and Research Property for Foreign Countries or International Organizations. Non-Government use of industrial plant equipment or production and research property requires prior written approval of the contracting officer or Departmental level approval, depending upon the percentage of usage, in accordance with provisions in Parts 245.405 and 245.407 of reference (al). Such approval may be granted only if use does not interfere with U.S. requirements, and the work is in support of FMS or a direct commercial sale approved under the AECA. The rental charges in commercial contracts can be waived on a case-by-case basis (see paragraph C9.6.4.).

C9.4.5. Nonrecurring Cost (NC) Recoupment Charges. DoD 7000.14-R (reference (o)), Volume 15, Chapter 7 and DoD Directive 2140.2 (reference (bn)) provide detailed guidance on establishing NC charges and pricing these costs on LOA documents. These costs do not apply to cases that are fully financed with non-repayable Foreign Military Financing (FMF) or non-repayable Military Assistance Program funds. For questions regarding the NC charges contact DSCA (Strategy Directorate). See Chapter 5, Table C5.T5. for LOA notes relating to NC charges.

C9.4.5.1. NC Approval Process. The DOD Components submit requests to establish an NC to DSCA (Programs Directorate) using the formats and pricing methodology in DoD 7000.14-R (reference (o)), Volume 15, Chapter 7. Detailed worksheets accompanying NC recoupment charge establishment requests will be marked “For Official Use Only (FOUO)” unless circumstances require formal classification. DSCA (Programs Directorate) staffs the package within DSCA, Assistant Secretary of Defense – International Security Affairs (ASD(ISA)), Assistant Secretary of Defense – International Security Policy (ASF(ISP)), Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)), and Under Secretary of Defense – Comptroller (USD(C)). After coordination, the Director, DSCA approves or disapproves the NC charge and the Defense Security Assistance Management System (DSCAMS) NC table is updated.

C9.4.5.2. Estimated NC Charges. There may be instances when an NC charge is being developed at the same time that an LOA is being prepared to sell the item in question. If there is not enough time to complete the NC approval process, an estimated amount for NC should be included in the unit price of the item on the LOA. The LOA should also include a note informing the purchaser that NC charges on the applicable line are estimates only and advising that a modification shall be done to adjust the price once the approved NC value is known. See Chapter 5, Table C5.F5., for exact note wording.

C9.4.5.3. Reporting. NC collections are reported on the DSCA(Q)1112 report prescribed in DoD 7000.14-R (reference (o)), Volume 15, Chapter 7. The report is submitted quarterly by each of the DoD Components, to DSCA (Business Operations Directorate) within 45 days of the end of each quarter.

C9.4.6. Royalties. As a general rule, the FMS purchasers are treated similar to other Federal Agencies when assessing royalties to a purchase.

C9.4.6.1. Royalties for use of intellectual property that is not subject to contractor proprietary rights restrictions normally are not allowed to be collected on FMS cases. If the USG is required to pay a royalty to a contractor for intellectual property that is subject to contractor proprietary rights restrictions, then it is a legitimate charge to the FMS case and included in the end item price. In any situation where a royalty is being considered for collection against an FMS procurement, and the same royalty would not be collected against a U.S. Federal Agency procurement, the Implementing Agency should contact DSCA (Business Operations and Strategy Directorates) for guidance.

C9.4.6.2. FMS cases implemented prior to January 1, 1998, contained charges (referred to as royalty fees) for the use of technical data packages (TDPs) to be used to manufacture or produce items for non-USG use. These charges were reflected on a separate line on the LOA. For those FMS cases, financial accounting processes and reporting continue until case closure. Cases implemented on or after January 1, 1998, do not include royalty fees for use of TDPs that are not subject to contractor proprietary rights restrictions.



C9.4.7. Small Case Management Line (SCML). All cases “accepted” on or after 1 Aug 06 must collect a minimum of \$15,000 in administrative charges. For cases “accepted” on or after 1 Aug 06, if the case value is so small that the Administrative Surcharge amount calculated is less than \$15,000, a separate line item (an SCML) will be added to the case so that the Administrative Surcharge and this new line item combined total \$15,000. [Example: For a case where the calculated Administrative Surcharge is \$500, the SCML value would be \$14,500.]

#### C9.4.7.1. SCML General Information.

C9.4.7.1.1. The value of the SCML line item will be adjusted as necessary to allow for changes in case value when the case is amended or modified. If a case “accepted” on or after 1 Aug 06 does not have an SCML initially but is modified or amended later to decrease the case value such that the Administrative Surcharge collection is anticipated to be reduced below \$15,000 the SCML will be added to the case to make up the difference in value to reach \$15,000 – even if all other lines are being reduced to \$0.

C9.4.7.1.2. Once an SCML has been added to a case, it cannot be deleted. It can be reduced to \$0 if the calculated Administrative Surcharge reaches \$15,000, but the SCML line item will remain on the case.

C9.4.7.1.3. When Administrative Surcharges are waived for a case, the SCML will be considered part of that waiver and will not be charged.

C9.4.7.1.4. The Administrative Surcharge is not assessed against the SCML.

C9.4.7.1.5. A minimum of \$15,000 in administrative charges (combination of the Administrative Surcharge and the SCML) will be retained by the U.S. Government when the case is closed. See paragraph C6.8.4.2. for additional information.

#### C9.4.7.2. SCML Scope.

C9.4.7.2.1. The SCML requirement applies to all cases (both FMS and FMS-like) “accepted” on or after 1 Aug 06 where the case is being financed with any type of funding (e.g., national funds) other than Foreign Military Financing (FMF); or the case is being financed using multiple sources of funding (one of which may be FMF); or the case is being financed wholly using FMF monies and the purchaser received more than \$400,000 in FMF funds in the previous Fiscal Year.

C9.4.7.2.2. The SCML requirement DOES NOT apply to cases where the purchaser is using FMF monies to wholly fund the case and received between \$1 and \$400,000 in FMF funds in the previous Fiscal Year. The minimum charge that would have been included in the SCML will be covered by FMF Administrative monies instead and will not be included on the FMS case. Any exceptions to this policy require the approval of the Director, DSCA.

C9.4.7.2.3. The SCML requirement DOES NOT apply to Excess Defense Articles (EDA) cases that are written solely for the purpose of transferring the grant item. These cases will have \$0 case value. If the EDA case includes support (e.g., transportation or refurbishment services, etc.), the SCML will apply.

C9.4.7.2.4. The SCML requirement DOES NOT apply to all cases established for Presidential Drawdowns using the “S9” country code.

C9.4.7.3. SCML Case-Writing Requirements.

C9.4.7.3.1. The Military Articles and Services List (MASL) line and generic code used for the SCML is: (R6C) SMALLCASESUPT SMALL CASE SUPPORT EXPENSES

C9.4.7.3.2. A “1” month availability for the SCML will be used on the LOA (block (5) SC/MOS/TA). This will ensure that the entire value of the SCML is included in the initial deposit. Source of supply code “S” and Type of Assistance Code “3” must be used for this line. The Delivery Term Code (DTC) and Offer Release Code (ORC) for this line should both be left blank (which will print as a dash on the LOA document).

C9.4.7.3.3. Primary Category Code (PCC) CE1 must be used when pricing this line in DSAMS. No Indirect Pricing Components (IPCs) should be used against this line. DSAMS line type must be entered as CE (case expense).

C9.4.7.3.4. The SCML note must be included on all cases that include an SCML. See Table C5.T5. for specific note wording.”

C9.4.7.4. Case Closure Requirements for SCMLs.

C9.4.7.4.1. Increases in Case Value. Cases with expenditures that exceed the current case value require an Amendment or Modification to increase the case value before the case can be closed (see paragraph C6.7.2.1.2.). These Amendments and Modifications must include an appropriate reduction to an existing SCML. If the net case value is increased above the amount needed to achieve \$15,000 in calculated administrative surcharge value, the SCML value will be reduced to \$0. The SCML will not be deleted as it must remain on the case and in the DIFS system to ensure supporting data for previously billed amounts are available.

C9.4.7.4.2. Reductions in Case Value – SCML Already On the Case. Any case which is proposed to close at a value less than its current value will require an increase to an existing SCML. Increasing an SCML at closure DOES NOT require a case Modification or Amendment. Instead, the case manager must notify the DFAS accountant via e-mail of the required change in the SCML value. The “C1P” closure certificate update cannot be sent to DIFS until the SCML delivery and admin transfer for the increase are recorded in DIFS.

C9.4.7.4.3. Reductions in Case Value – SCML Not On the Case. There may be instances when a case that does not include an SCML (e.g., the calculated administrative surcharge value was \$15,000 or greater) is being reduced such that the new, lower case value now mandates that an SCML be included (e.g., the new calculated administrative surcharge is less than \$15,000). For cases that were accepted on or after 1 August 2006, an SCML must be added to cover the difference between the calculated administrative surcharge and \$15,000 before the case can be closed. A case Modification IS required to add an SCML to the case. For cases that were accepted before 1 August 2006, the SCML will not apply regardless of the reduction in case value.”

C9.5. FMS CHARGES

Table C9.T2. is a list of charges used in FMS pricing. This list is not all-inclusive - DoD 7000.14-R (reference (o)) contains detailed guidance.

Table C9.T2. Table of FMS Charges

Charge	Description	How Priced	Applied by - for billing	References
Acceleration Rates	To recover full cost of providing USG services.	Included in the line item value on the LOA.	Implementing Agency	DoDFMR, Volume 15, Chapter 7, paragraph 0702
Administrative Surcharge	Cost of administering FMS and FMS-like programs	<p>Included as a percentage of applicable line items as a below-the-line charge on the LOA.</p> <p>3.8% for both standard and nonstandard articles/services (for LOA lines implemented on or after 1 August 2006).</p> <p>2.5% for standard articles/services (for LOA lines implemented on or after 1 June 1999 and before 1 August 2006).</p> <p>3% for standard articles/services (for LOA lines implemented before 1 June 1999.)</p> <p>5% for non-standard articles/services (for LOA lines implemented before 1 August 2006).</p> <p>5% for Foreign Military Sales Order (FMSO) I cases</p> <p>The administrative surcharge does not apply to Program Management Lines (PMLs) or to non-contractor provided training lines for NATO countries if the training is provided in the continental U.S. (CONUS).</p> <p>The administrative surcharge does not apply to Small Case Management Lines (SCMLs).</p> <p>For cases signed prior to 1 Oct 1977, the administrative surcharge was 2%. See paragraph C9.4.7. for information on minimum collection requirements for administrative costs.</p>	DFAS Indianapolis	AECA, sections 21(e)(1)(A) and 43(b)DoDFMR, Volume 15, Chapter 7, paragraph 0706

Charge	Description	How Priced	Applied by - for billing	References
Contract Administration Services (CAS) Surcharge	Contract is comprised of three basic elements: (1) quality assurance and inspection; (2) contract management; and (3) contract audit. For cases implemented on or after 1 Oct 2002 that have contracts administered overseas an additional element (OCONUS CAS) applies. For Corps of Engineers contracts, quality assurance and inspections and other contract administrative services costs are included in its supervision and administration costs charged to the case line.	Included in value of procurement line items (Source of Supply (SOS) of "P" or "X") on the LOA. A surcharge applies to each element. May be waived if reciprocal agreements exist. For cases implemented before 1 Oct 2002, a surcharge of .5% applies to each element for a maximum of 1.5% if all elements apply to a given FMS case. For cases implemented on or after 1 Oct 2002, a surcharge of .65% applies to contract administration/ management, .65% to quality assurance and inspection, .20% to contract audits, for a total of 1.5%. For contracts administered overseas an additional .20% (OCONUS CAS) applies to the entire case. For Corps of Engineers (CoE) cases implemented before 1 Oct 2002, a surcharge of .5% for contract audit is applied. For CoE cases implemented on or after 1 Oct 2002, a surcharge of .2% for contract audit is applied. The .2% OCONUS CAS does not apply to CoE contracts administered overseas.	DFAS Indianapolis	AECA, section 21(h) DoDFMR, Volume 15, Chapter 7, paragraph 070405
Logistics Support Charge (LSC)	Cost of logistics support.	Included in the value of logistics line items on the LOA (excludes Working Capital Fund items). 3.1% The specific Military Articles and Services List (MASLs)/ generic codes where LSC applies is maintained by DSCA (Business Operations Directorate) in the DSCA 1200 System. For any items delivery reported on or after 1 April 1987 and prior to 1 October 2007 that qualify. Any deliveries made on or after 1 October 2007 will not be assessed this charge.	DFAS	DoDFMR, Volume 15, Chapter 7, paragraph 0722
Nonrecurring Cost (NC)	Pro rata recovery of Research, Development, Test, and Evaluation (RDT&E) and Production startup costs.	Included in value of applicable Major Defense Equipment (MDE) line items on the LOA. (The requirement to recover NC on non-MDE was eliminated on 26 June 1992.) Estimated value included in value of MDE line items when the NC charge applies but is not yet established or approved. May be waived by DSCA under	Implementing Agency	AECA, section 21(e)(1)(B) DoDFMR, Volume 15, Chapter 7, paragraph 070305 DoD Directive 2140.2

Charge	Description	How Priced	Applied by - for billing	References
		<p>specific circumstances.</p> <p>Per the AECA and Foreign Assistance Act (FAA), LOAs fully financed with Military Assistance Program (MAP) Merger or non-repayable FMF are not assessed an NC charge.</p> <p>NC charges apply only to Government-to-Government sales. (The requirement to recover NC on direct commercial sales was eliminated on 7 October 1992.)</p> <p>May include special recoupments on behalf of other countries.</p>		
Packing, Crating and Handling (PC&H)	Costs incurred for labor, materiel, or services in preparing the materiel for shipment from the storage or distribution point.	<p>Included as a percentage of applicable line items as a below-the-line charge on the LOA.</p> <p>For blanket order lines - 3.5%.</p> <p>For defined order lines - 3.5% for the first \$50,000 in unit cost and 1% for the portion of the unit cost that exceeds \$50,000.</p> <p>When provided as a unique service, these charges may be included as a separate line on the LOA.</p>	DFAS Indianapolis	DoDFMR, Volume 15, Chapter 7, paragraph 070502
Prepositioning	Supply distribution costs incurred by locations outside the United States in anticipation of support to other authorized purchasers.	<p>Included as a separate line item on the LOA.</p> <p>These costs are applicable when shipments are made from overseas storage and distribution points.</p> <p>No positioning costs shall be assessed on "long supply" stocks.</p>	Implementing Agency	
Royalty	Incremental payments for the use of intellectual property.	<p>If required to be collected for intellectual property that is subject to contractor proprietary rights restrictions, include in the pricing of the item.</p> <p>Prior to January 1, 1998, charges for TDP usage were included as a separate line item on the LOA.</p> <p>Discontinued for cases implemented on or after January 1, 1998 for U.S.-owned TDPs that are not subject to contractor proprietary rights restrictions.</p>	Implementing Agency	DoDFMR, Volume 15, Chapter 7, Table 701-1
Staging	Costs for consolidating or prepositioning materiel in U.S. facilities within CONUS	Included as an estimated actual cost above or below the line on the LOA. It is below the line if the appropriate DTC is used. It is above the line if a staging MASL is used.	DFAS Indianapolis	
Storage (FMSO)	Cost of storing on-hand inventory	<p>Included in the line item value on the LOA.</p> <p>1.5% annually on value of stored</p>	Implementing Agency	DoDFMR, Volume 15, Chapter 7,



C9.6.1.2. Waiver of Administrative Surcharges for NATO Maintenance and Supply Agency (NAMSA) FMS Programs. AECA, section 21(e)(3) (reference (c)), allows the waiver of administrative surcharges for NAMSA programs under very specific circumstances. Waiver of administrative surcharges on these cases is not retroactive - only LOAs implemented after 1 October 1988 are eligible for consideration. The waiver value includes the calculated administrative surcharge amount and any Small Case Management Line (SCML) value included on the LOA. Only NAMSA LOAs in support of weapon system partnership agreements or NATO Supreme Headquarters Allied Powers, Europe (SHAPE) projects (i.e., common-funded projects supported by allocated credits from NATO bodies or by host nations with NATO infrastructure funds) qualify for FMS administrative surcharge waivers. Administrative surcharges waived under this program must be reimbursed to the FMS Administrative Account from Major Force Program (MFP) 10 funds controlled by the U.S. Mission to NATO. The following procedures apply.”

C9.6.1.2.1. NAMSA includes a statement in their Letter of Request (LOR) indicating the LOA qualifies for an administrative surcharge waiver under AECA, section 21(e)(3) (reference (c)). NAMSA identifies the specific NATO/SHAPE project supported by the request and includes the following statement:

“This is a joint coordinated request with the U.S. Mission to NATO. The U.S. Mission to NATO certifies intent to reserve and obligate MFP 10 funds for administrative surcharges waived over the life of the LOA. It further certifies that MFP 10 funds have been obligated in the amount of one-half of the administrative surcharges computed based on the dollar value of items or services estimated to be reported as delivered in the first year for all LOAs.”

C9.6.1.2.2. NAMSA provides an information copy of the LOR to the U.S. Mission to NATO when an administrative surcharge waiver is requested. For budgeting purposes, NAMSA provides a yearly estimate of the amount of administrative surcharge waivers to the U.S. Mission to NATO.

C9.6.1.2.3. The Implementing Agency reviews the waiver request to ensure it supports projects cited in the legislation. The Implementing Agency provides a copy of the request to the DSCA (Operations Directorate) and ensures that the U.S. Mission to NATO has agreed to reimburse the Department of Defense. The Implementing Agency includes a statement in the LOA notes indicating the administrative surcharge, to include any SCML value, has been waived (see Chapter 5, Table C5.T5. for the specific wording of this note). The Implementing Agency includes relevant correspondence when the LOA document is sent to DSCA for countersignature.

C9.6.1.2.4. DSCA determines applicability to specific requests and approves waivers during final staffing of the LOA document prior to countersignature.



C9.6.1.2.5. The U.S. Mission to NATO budgets for waived FMS administrative surcharges, advises DSCA of agreements to reimburse the Department of Defense for waived surcharges before the LOA is issued to NAMSA, and develops an understanding with NAMSA concerning programs for which waivers are supported. The U.S. Mission reserves and obligates MFP 10 funds for waived administrative surcharges under this legislation for the life of the FMS case. For cases where the calculated administrative surcharge value is greater than \$30,000, one half of the administrative surcharge is recouped as part of the initial deposit. The remaining half is recouped based on the dollar value of items or services delivered in each year. For cases where the calculated administrative surcharge is \$30,000 or less, the entire administrative surcharge value, as well as any SCML value, is recouped as part of the initial deposit.

C9.6.1.2.6. DFAS Indianapolis maintains a record of NAMSA LOAs that contain administrative surcharge waivers. As approved by DSCA and the U.S. Mission to NATO, DFAS Indianapolis bills and collects funds quarterly for waived surcharges from the U.S. Mission to NATO and reimburses the FMS Administrative Account.

C9.6.2. Waiver of Contract Administration Services (CAS). AECA, section 21(h) (reference (c)) allows the USG to provide quality assurance, inspection, contract administration services, and contract audit defense services without charge to certain foreign Governments who have reciprocal agreements. Tables C9.T3., C9.T4., and C9.T5. list approved CAS waiver agreements. The waiver under each agreement applies only to new FMS LOAs with implementation dates (as recorded in the Defense Integrated Financial System (DIFS)) on or after the effective date of the reciprocal agreement. See Chapter 5, Table C5.T5. for CAS Waiver LOA note wording.

C9.6.2.1. Table C9.T3. provides a listing of approved reciprocal country agreements. USD(AT&L) is responsible for negotiating these agreements. These waivers apply to LOAs as a whole and not to individual LOA lines.

C9.6.2.2. Table C9.T4. provides a listing of approved agreements relating to participating groups, organizations, or projects. Changes to this listing should be submitted to DSCA (Business Operations Directorate).

C9.6.2.3. Table C9.T5. provides a listing of approved NATO CAS reciprocal agreements. Changes to this listing should be submitted to DSCA (Business Operations Directorate).

Table C9.T3. Approved Reciprocal Country Agreement Listing  
(Office of Primary Responsibility (OPR): USD(AT&L))

<b>Country/ Security Assistance Country Code</b>	<b>Effective Date</b>	<b>Cost Waived</b>
Belgium (BE)	April 26, 1983	Quality Assurance and Inspection
Canada (CN)	July 27, 1956	Contract Audit
	April 1, 1984	Quality Assurance and Inspection
Czech Republic (EZ)	May 7, 2004	Quality Assurance and Inspection
Denmark (DE)	April 3, 1985	Quality Assurance and Inspection
France (FR)	July 17, 1981	Contract Audit
	April 23, 1986	Quality Assurance and Inspection
	April 23, 1986	Contract Administration Services
Germany (GY)	December 6, 1983	Quality Assurance and Inspection
	December 6, 1985	Contract Audit
Greece (GR)	September 23, 1992	Quality Assurance and Inspection
Italy (IT)	January 7, 1983	Quality Assurance and Inspection
Israel (IS)	May 7, 2008	Quality Assurance and Inspection
Korea (Seoul) (KS)	December 13, 2011	Quality Assurance and Inspection
Netherlands (NE)	April 9, 1982	Quality Assurance and Inspection
	April 18, 1985	Contract Audit
Norway (NO)	November 23, 1986	Quality Assurance and Inspection
Poland (PL)	June 22, 2007	Quality Assurance and Inspection
Spain (SP)	June 12, 2000	Quality Assurance and Inspection
Turkey (TK)	March 12, 2001	Quality Assurance and Inspection
United Kingdom (UK)	October 30, 1979	Contract Audit
	December 30, 1985	Quality Assurance and Inspection

Table C9.T4. Approved Agreements Relating to Participating Groups, Organizations, or Projects (OPR: DSCA (Business Operations Directorate))

Groups/Organizations/Projects	Effective Date	Cost Waived
European Participating Governments (EPG)*:		
Follow-On Buy Country Codes = F1, F2, F3, F4 (Case Designator = SVI), and F4-SXC	December 19, 1980	Contract Audit Quality Assurance and Inspection
Mid-Life Update. Production Phase Cases and new F-16 LOAs implemented on or after the effective date.		
Country Codes = F1, F2, F3, F4 (Case Designator = NMP)	April 5, 1993	Contract Audit
PT (New F-16 LOAs implemented on or after the effective date)	June 21, 2000	Contract Audit
Polaris Project: United Kingdom Polaris Project (UZ)	USD(C) memo October 27, 1995	Contract Audit
	DoD GC memo October 24, 1995	Quality Assurance and Inspection Contract Administration Services
*The remainder of the F-16 LOAs for BE, DE, NE, and NO get the CAS waivers reflected in Table C9.T3.		

Table C9.T5. NATO Reciprocal CAS Agreements (OPR: DSCA (Business Operations Directorate))

Agreement	Effective Date	Cost Waived
NATO (NATO Command or NATO Agency administered program funded by the NATO Security Investment Program (NSIP) (formerly infrastructure))	September 30, 1981 October 28, 1980	1. Contract Audit 2. Quality Assurance and Inspection
NATO (All other infrastructure programs administered by a host country)	February 10, 1981	1. Quality Assurance and Inspection
NATO E-3A	Program Conception (10 USC 2350e)	Full waiver of all contract administration to include: 1. Contract Audit 2. Quality Assurance and Inspection 3. Contract Administration Services
NATO Integrated Communication System Management Agency (NICSMA)	September 30, 1981 May 6, 1980	1. Contract Audit 2. Quality Assurance and Inspection

### C9.6.3. Waiver of NC Recoupment Charge

C9.6.3.1. Basis for NC Waiver and/or Reduction. NC charges may be waived or reduced as follows.

C9.6.3.1.1. For sales that would significantly advance U.S. interests in NATO standardization, standardization with the armed forces of Australia, Japan, the Republic of Korea, or New Zealand, or foreign procurement in the United States under co-production arrangements.

C9.6.3.1.2. For the sale of MDE also being procured for U.S. Armed Forces and resulting in a cost savings to the United States on the U.S.-procured equipment that substantially offsets the revenue lost as a result of the waiver.

C9.6.3.1.3. For sales when imposition of the charge would likely result in the loss of the sale.

C9.6.3.1.4. For the sale of MDE at a reduced price due to age or condition, the NC is reduced by the same percentage.

C9.6.3.2. NC Waiver Process. Waivers are granted on a case-by-case basis; blanket waivers are not considered. In most cases, the purchaser's request must be submitted to the USG prior to acceptance of the LOA (or Amendment for increased quantities); however, some waiver requests (e.g., NATO interoperability) may be approved after the LOA (or Amendment for increased quantities) is accepted.

C9.6.3.2.1. Purchasers submit NC waiver or reduction requests to the MILDEP (preferably with the LOR). If the MILDEP concurs, it endorses the request and submits it to DSCA (Programs Directorate) for approval. The package must include: a copy of the purchaser's written NC waiver request (including reason and/or justification), MILDEP concurrence (or non concurrence), FMS case identifier, description and quantity of items, NC amounts to be waived (pro rata and total), and any information about cost deviation (i.e., if the proposed pro rata waiver cost does not match the approved pro rata NC charge).

C9.6.3.2.2. Waiver requests based on loss of sale must clearly state that denial of the waiver request will result in the loss of the sale. For loss of sale waivers, the waiver must be approved and NC charges deleted before the purchaser accepts the LOA (or Amendment). The competing item and its cost, if known, should be identified. The purchaser's representative authorized to accept (sign) LOAs should sign the request. Acceptance by the purchaser of the LOA or Amendment negates this basis for a waiver request.

C9.6.3.2.3. Waiver requests based on offsetting USG costs must be validated by the MILDEP to determine if U.S. cost savings would be realized. The savings must substantially offset the revenue given up by the waiver. The MILDEP determination is coordinated with the MILDEP's Comptroller organization and is provided to DSCA (Programs Directorate) prior to submitting the LOA or Amendment for countersignature. This waiver authority does not apply to sales from stock unless the equipment is replaced by current DoD procurement of additional equipment for the U.S. Armed Forces. See C5.6.4. for classification requirements prior to formal notification for waiver requests associated with sales that require notification pursuant to section 36(b) of the AECA.

C9.6.3.2.4. An NC charge may be collected as part of a cooperative project or consortium of which USG is a member. If a waiver of these costs is permitted, a special note is included in the LOA. See Chapter 5, Table C5.T5.

C9.6.4. Waiver of Tooling Rental Charges for Use of DoD Assets. In cases of direct commercial sales to FMS eligible countries, the contractor submits requests for waiver of tooling rental charges to the contracting officer. If the contracting officer approves the request, it is submitted through contracting channels to DSCA (Strategy Directorate) for a decision. Contracting officers should identify any potential interference with U.S. requirements prior to forwarding a waiver request and assure that the request identifies the total amount of charges involved. For more information please refer to the DFARS (reference (al)), Part 245, Government Property.

## C9.7. METHODS OF FINANCING

C9.7.1. National Funds. Purchasers are encouraged to use national funds (cash) for Security Assistance payments. If a purchaser cannot use cash, private financing (without USG guaranty) should be considered.

C9.7.2. Foreign Military Financing (FMF). When the purchase cannot be financed by other means, credit financing can be extended if allowed by U.S. law or if allocated by the Department of State (DoS) within the annual FMF ceiling imposed by U.S. law. FMF is the USG program for financing the procurement of defense articles, defense services, and design and construction services through loans or grants to eligible foreign countries and international organizations. AECA, section 23 (reference (c)), authorizes the President to finance procurement of defense articles and services for foreign countries and international organizations. Loans financed under this authority are direct loans. Direct loans require that funds be appropriated by Congress in an amount equal to the principal loan values.

C9.7.2.1. Authorization and Aggregate Ceiling on FMS Credits. The annual Foreign Operations Appropriations Act imposes the maximum amount of direct credits (AECA, section 23 (reference (c))) and guaranties (AECA, section 24 (reference (c))).

C9.7.2.2. Foreign Military Sales Credit Standards. AECA, section 34 (reference (c)) requires that the President establish standards and criteria for credit and guaranty transactions in accordance with the foreign, national security, and financial policies of the United States. E.O. 11958 (reference (e)) delegates this authority to the Secretary of State with the qualification that to the extent the standards and criteria for credit and guaranty transactions are based upon national security and financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of Treasury, respectively.

C9.7.2.3. Fiscal Provisions Relating to Foreign Military Sales Credits. AECA, section 37 (reference (c)) specifies that cash payments and advances received from direct credits are available solely for payments to suppliers and refunds to purchasers, and are not available for financing credits and guaranties. Amounts received from foreign Governments and international organizations as repayments for credits extended pursuant to AECA, section 23 (reference (c)) (FMF direct loans) are transferred to either account 11X4121 ("Foreign Military Loan Liquidating Account, Funds Appropriated to the President" - for pre-FY1992 loans) or account 11X4122 ("Foreign Military Financing, Direct Loan Financing Account, Funds Appropriated to the President" - for post-FY1991 loans). If Guaranty Reserve (AECA, section 24 (reference (c))) funds have been used for a borrower's overdue payment to the Federal Financing Bank (FFB), subsequent amounts received from the borrower shall be merged with the Reserve and shall be available for any purposes for which funds are normally available.

**C9.7.2.4. Cash Flow Financing.** Section 544 of Public Law 103-87 (the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1994) (reference (bk)) and successor acts require Congressional notification of LOAs, Amendments, and commercial contracts for \$100M or greater that are partially or totally funded with FMF cash flow financing. These notifications (Figure C9.F2.) are developed by DSCA (Operations Directorate) based on data provided for LOA or Amendment countersignature or for review of commercial contracts. Notifications are provided to Congress by DSCA (Legislative and Public Affairs Office). Cash flow financing notifications occur concurrently with formal AECA, section 36(b) notifications and at least 15 days prior to countersignature of LOAs and Amendments or funding clearance for commercial contracts.

Figure C9.F2. Cash Flow Financing Notification Format

<p>[Separately to Senate Appropriations Committee and House Appropriations Committee addresses]</p> <p>Dear Mr. Chairman:</p> <p>Pursuant to section 544 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Public Law 103-87) or current law, we are submitting a notification concerning the request for the Government of [insert Country] to cash flow finance [insert a "Letter of Offer and Acceptance (LOA)," "an amendment to a Letter of Offer and Acceptance," or "a commercial contract with (company)"] for the purchase of [insert concise description of equipment or services].</p> <p>The total estimated amount of the [insert "LOA," "amendment to the LOA", or "direct commercial contract"] is [insert value, must be \$100M or more], of which [insert value] shall be financed on a cash flow basis*. The cash flow amount shall be paid from the Purchaser's national funds in the event that sufficient fiscal year [insert year following current year allocations] Foreign Military Financing (FMF) or later fiscal year FMF funds are not available to cover the anticipated payments.</p> <p>*When applicable, the following sentence should be added here: "The Purchaser expects to finance approximately [insert value] from national funds."</p>
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#### C9.7.2.5. Who May Receive FMF?

**C9.7.2.5.1. Eligibility for FMF.** Foreign Governments and international organizations eligible for FMS are eligible for FMF. The decision to extend credit financing takes into account the suitability of the items, the U.S. military and economic assistance that the country receives, indigenous private financing, U.S. foreign policy interests (including human rights), and other proposed arms purchases by the country. The level of weapons sophistication and the country's ability to maintain and support the items are also considered. FMS credit assistance is not extended solely to consummate a sale.

**C9.7.2.5.2. Changes in FMF Eligibility Status.** Credit financing to purchasers may be suspended or terminated for legal and/or policy reasons. Following are some of the reasons why purchasers may not currently be eligible for FMF.

C9.7.2.5.2.1. Violation of Agreements. AECA, section 3(c)(1)(A) (reference (c)) states that credits (including participation in credits) MAY NOT be issued and guarantees MAY NOT be extended to purchasers that use the defense articles or services in substantial violation of an agreement under AECA, section 4 (reference (c)), transfer the articles or services without the U.S. President's consent, or do not maintain the security of the articles and/or services.

C9.7.2.5.2.2. Terrorism. FAA, section 620A (reference (b)) requires the President to terminate all sales, credits, and guaranties to any Government that aids or abets (by granting sanctuary from prosecution) any individual or group that has committed an act of international terrorism unless the President finds that national security requires otherwise.

C9.7.2.5.2.3. Discrimination. AECA, section 5 (reference (c)) prohibits offering sales, credits, or guaranties to any foreign country that through its laws, regulations, official policies, or Governmental practices prevents U.S. persons from furnishing defense articles or services on the basis of race, religion, national origin, or sex.

C9.7.2.5.2.4. Foreign Intimidation and Harassment of Individuals in the U.S. AECA, section 6 (reference (c)) prohibits offering credits or guaranties to any country determined by the President to be engaged in a consistent pattern of acts of intimidation or harassment directed against individuals in the United States.

C9.7.2.5.2.5. Nationalization of U.S. Property. Assistance shall be suspended for countries that have nationalized, expropriated, or seized U.S. property, or have imposed discriminatory taxes. Assistance shall also be suspended if a country has initiated steps to repudiate or nullify existing agreements with U.S. citizens or entities without taking proper compensatory action. (FAA, section 620(e) (reference (b)))

C9.7.2.5.2.6. Compensation for Nationalized Property. FAA, section 620(g) (reference (b)), states that no monetary assistance shall be provided to any Government, political subdivision, or agency of such Government for use in compensating owners for expropriated or nationalized property.

C9.7.2.5.2.7. Failure to Make Payments. FAA, section 620(q) (reference (b)), states that no assistance shall be provided to any country that is in default of its payments during a period in excess of six calendar months to the United States of principal or interest on any loan made to such country under this act.

C9.7.2.6. Restrictions on the Use of FMF. There are some legal and policy restrictions on the use of FMF monies. Security Cooperation Organizations (SCOs) must ensure that the foreign Government is aware of U.S. policies for use of FMS credit financing. Any requests for exceptions must be fully justified and submitted through the Chief of the U.S. Mission to DSCA for interagency coordination and approval or disapproval.

Table C9.T6. Generally Restricted Items for Purchase with FMF

<b>Defense Articles and Services that should not be Purchased with FMF</b>
<ul style="list-style-type: none"> <li>• Petroleum, oil, lubricants, and fuel, other than for State Department-funded training events or related to the procurement and initial set-up of new equipment.</li> <li>• Resupply of small caliber ammunition (i.e., .50 cal and below), other than for formal State Department-funded training events or initial acquisition with new weapons systems.</li> <li>• Food.</li> <li>• Office supplies.</li> <li>• Routine clothing/uniform items, other than those necessary for coalition or peacekeeping deployments.</li> <li>• Gym equipment (except for rehabilitation purposes).</li> <li>• Care of animals.</li> <li>• Construction and refurbishment projects that are not integral to the provision of a broader package of military articles.</li> <li>• Headquarters support services, including janitorial services, academic research, personal computers, printers, and accessories; generic software and software maintenance.</li> </ul>
<b>Defense Articles and Services that should not be Purchased with FMF</b>
<ul style="list-style-type: none"> <li>• Support for non-U.S.-origin equipment and systems.</li> <li>• National budget support, including salaries.</li> <li>• Lease of defense articles.</li> </ul>

C9.7.2.6.1. Economic Considerations. FMS credit financing may not be used if the transaction would place an undesirable burden on a purchasing country's foreign exchange resources, create excessive claims on future budgets (e.g., induce burdensome expenditures for maintenance, spare parts, replacement, and indirect support and organizational costs), or otherwise materially interfere with its development. Credit financing is not considered unless there is a reasonable expectation of loan repayment.

C9.7.2.6.2. Co-Production and/or Licensed Production. AECA, section 42(b) (reference (c)), states that direct credits and guaranteed loans may not be used to finance co-production or licensed production of any defense article of U.S. origin outside the United States unless the Secretary of State notifies Congress in advance of the proposed transaction's potential impact on employment and production within the United States.

C9.7.2.6.3. Offshore Procurement (OSP). AECA, section 42(c) (reference (c)), prohibits using funds made available under this Act for procurement outside the United States unless the President determines that such procurement does not have an adverse effect on the economy of the United States or the industrial mobilization base. The President's functions under AECA, section 42(c) (reference (c)) have been delegated to the Secretary of Defense by E.O. 11958 (reference (e)). The authority for issuance of OSP Determinations, following concurrence by the DoS and Department of Treasury, has been further delegated to the Director, DSCA. An OSP Determination is an exceptional procedure and should be requested or recommended only when the conditions in Table C9.T7. are met.



Table C9.T7. Offshore Procurement Conditions

Condition Number	Offshore Procurement Determination Mandatory Requirements
1	The project otherwise qualifies for financing from funds made available by the USG.
2	After subtracting from total costs the cost for sand, gravel, cement, cement products, or other items that the FAR or DFARS (references (ak) and (al)) exclude from “buy American” considerations, one-half or more of the dollar value of the contract or the project is of foreign origin; or, if the vendor or prime contractor is a firm not incorporated in (or if a partnership, its principal place of doing business is not located in, or if an individual proprietor, the person is not a permanent resident of) the U.S., its possession, the Northern Marinas or Puerto Rico.
3	The procurement fits mutual U.S. and country interests.
4	The defense article or service must be obtained from foreign sources in order to meet the requirement.
5	A U.S. source item or service cannot be modified to meet the requirement.
6	It is cost prohibitive to procure the item or service in the United States (e.g., a special production run).
7	There is no negative impact on the U.S. industrial mobilization base (e.g., dissolution of a company doing U.S. defense business) or on an area of U.S. labor surplus (e.g., increased unemployment) if the proposed procurement were from foreign sources.
8	There is no negative impact on general U.S. trade patterns or trends if the proposed procurement were from foreign sources.
9	An OSP Determination in this particular instance would not establish a precedent that weakens the USG ability to be even-handed in future requests from the same or other countries.

**C9.7.2.6.3.1. OSP Determination Process.** When submitting an OSP recommendation, the MILDEP provides justification and details to the DSCA (Operations Directorate). DSCA reviews and coordinates the recommendation with the DoS and the Department of Treasury. Following approvals by the DoS and Department of Treasury, a formal Determination is signed as shown in Figure C9.F3. An FMF or MAP merger-funded LOA may be issued, or financing of the FMF-funded direct commercial contract may be approved, after the Determination is signed.

## Figure C9.F3. Offshore Procurement Determination

AECA, Section 42(c) Determination	
Pursuant to Section 42(c) of the Arms Export Control Act and the authority thereunder delegated by Executive Order 11958 to the Secretary of Defense (and successively redelegated on February 12, 1972, and February 24, 1972, to the Director, DSCA, or, in his or her absence, the Deputy Director, DSCA), I hereby determine that procurement outside the United States	
[for the Government of [insert country] under a Letter of Offer and Acceptance]	
[by the Government of [insert country] pursuant to a direct commercial contract]	
of [insert general description of defense articles or services] will not result in adverse effects upon the economy of the United States or the industrial mobilization base, and I therefore authorize the use of Foreign Military Financing funds made available to the Government of [insert country] for such procurement.	
	_____
	Director, DSCA
	Date: _____
Concurrence:	_____
	Department of the Treasury
	_____
	Department of State

**C9.7.2.6.3.2. OSP Cost Increase Notification.** DSCA provides an information notification to the DoS and Department of Treasury when the value of an OSP project exceeds that originally anticipated by 50 percent or \$1,000,000 whichever is greater. The Implementing Agency provides details to the DSCA (Operations Directorate) for processing the increase notification. An informal memorandum of phone conversations with the DoS and the Department of Treasury may document these notifications.

**C9.7.2.6.4. Transporting FMS Credit-Financed Cargoes**

**C9.7.2.6.4.1. Ocean Transportation.** All items purchased with FMS loan funds must be transported by U.S. flag vessels when ocean transportation is used. FMS loan agreement documents contain provisions for certain waivers that, if approved, permit shipment of up to 50 percent of FMS loan financed cargo on vessels of the borrowing country, and in certain instances such cargo may be transported on vessels of a third country. Such waivers are discussed in Chapter 7. FMS loan funds cannot be used to pay the cost of transportation provided by a vessel of non-U.S. registry.

**C9.7.2.6.4.2. Air Transportation.** FMS loan funds may be used to pay air transportation costs only if U.S. flag aircraft are used.

#### C9.7.2.7. Loan Guaranties

C9.7.2.7.1. Defense Export Loan Guarantee (DELG). Section 1321 of Public Law 104-106 (the National Defense Authorization Act for Fiscal Year 1996) (reference (bp)) directed the Secretary of Defense to establish a loan guarantee program. USD(AT&L) administers the DELG program.

C9.7.2.7.2. DoD Loan Guarantee Program. The DoD loan guarantee program with the FFB, established in 1975, was discontinued in 1984. Repayments to the FFB by debtor countries continue until those loans reach maturity.

#### C9.7.2.8. FMF Funding Process

C9.7.2.8.1. Congressional Budget Justification (CBJ). In accordance with AECA, section 25 (reference (c)), no later than February 1st of each year the President transmits to Congress, as part of the annual presentation of Security Assistance programs proposed for the next fiscal year, a report that provides an estimate of the aggregate dollar value and quantity of defense articles and services, military education and training, grant military assistance, and credits and guaranties to be furnished by the United States to each foreign country and international organization in the next fiscal year. ASD(ISA) and ASD(ISP), in concert with DSCA, annually consolidate inputs into the Security Assistance planning process. The programmed loan amounts, by country are based upon information submitted to the DoS by the Country Team and consistent with the Combatant Commander's Theater Security Cooperation Plan. An executive branch position is included in the CBJ recommending FMS credit programs for individual countries.

C9.7.2.8.2. Congressional Authorization and Appropriation. Upon receipt of the executive branch proposed position and the CBJ, Congress conducts hearings on the Security Assistance program - to include FMS credit financing. When the authorization and appropriation acts are enacted, they include a dollar amount ceiling for the FMS credit program with some constraints, specified amounts, or special provision.

C9.7.2.8.3. Determination of FMF Amount. Within Congressional constraints in any fiscal year, the DoS, with input from the Department of Defense and the Department of Treasury, determines the loan amounts that individual countries shall receive. DSCA reprograms as necessary. In this process, the pertinent economic, military, and political factors are considered. The President has delegated to the Secretary of Defense the authority to issue and guarantee loans to eligible recipients in accordance with the AECA. The Secretary of Defense has further delegated this authority to the Director, DSCA.

C9.7.2.8.4. Apportionment. Upon receipt of the DoS's program approval and apportionment request document, the Office of Management and Budget (OMB) issues an apportionment document to DSCA. For FMF direct loans, the apportionment document provides DSCA with an apportionment of appropriated funds equal to the principal amount of the loan. FMF grant funds are obligated upon apportionment. FMF loan funds are obligated when the loan agreement with the borrower (purchaser) is signed.

C9.7.2.8.5. Implementation and Management of Loans. Within DSCA, the DSCA (Business Operations Directorate) implements and manages loans. DSCA (Business Operations Directorate) prepares the loan agreement (Appendix 3) and obtains signatures. DFAS Indianapolis disburses loan funds, bills the borrower, and collects payments.

#### C9.7.2.9. Commitment of FMF Funds

C9.7.2.9.1. DSCA commits FMF funds to each approved purchase. DSCA policy requires the FMF funds to be committed to loans in their order of issuance. This encourages commitments within the normal expiration period of each loan, reduces the volume of loan records that must be maintained in an active status, and permits older loans to be closed out.

C9.7.2.9.2. DSCA records commitments against a specific Fiscal Year loan or grant or MAP program. This information is maintained in DSCA records but does not appear on LOA documents.

C9.7.2.9.3. For new LOAs, DSCA immediately commits credit (or MAP funds) during the countersignature process. DSCA adjusts commitments as required based on Amendments or Modifications or case closures.

#### C9.7.2.10. Disbursement of FMF Funds

C9.7.2.10.1. General Policy. While DSCA records and maintains commitments of FMF funds by specific loan, this commitment by specific loan is used as a planning function and does not mean that the borrowing country must cite that specific loan when disbursement of funds is required.

C9.7.2.10.2. Expiration of Disbursement (FFB Loan Commitment) Period. Section 1.1 of FFB and DoD loan agreements (Appendix 3) define the period through which funds may be disbursed under the loan. In the case of FFB loans, this is called the loan commitment period. The term “commitment period” in this context means the period through which FFB is committed to disburse loan funds. Loan funds remaining undisbursed after the expiration date are lost from the borrower’s use.

C9.7.2.10.3. Requests for Disbursement of Loan Funds. All requests for disbursement of FMF funds must be submitted to DFAS Indianapolis by the borrowing country in the letter format set forth in the applicable FMF agreement. Each request for disbursement of FMF funds for amounts due on FMS cases must indicate the FMS case designator(s) and the dollar amount(s) to be disbursed for each case. Procedures for requesting disbursements to commercial suppliers are discussed in paragraph C9.7.4.

C9.7.2.10.4. Expenditure of FMF Funds. Transfers of FMF funds to the FMS Trust Fund account are expenditure transfers. Once transferred, FMF funds are expended and remain available indefinitely for disbursements consistent with the purposes for which they were appropriated, obligated, and expended.

C9.7.2.11. Interest Rates. All loans are repaid with interest unless Congress waives payment.

C9.7.2.11.1. Interest on FMF Direct Loans. Interest charged on direct loans is at a single fixed rate determined by the Department of Treasury. The rate is specified in the FMF loan agreement. Interest rates at less than the cost of money to the USG must be in the national interest and must be accommodated in enabling legislation.

C9.7.2.11.2. Interest on DoD Guaranteed Loans Issued by FFB. The issuance of FFB guarantee loans was discontinued in 1984; however, borrowing countries continue to repay the outstanding balance of those loans. Interest rates on FFB guaranteed loans are based on the cost of money to the USG plus an administrative fee.

#### C9.7.2.12. FMF Loan Repayment Process

C9.7.2.12.1. Repayment Period. The AECA requires that direct loans be repaid over a period not to exceed 12 years unless legislated otherwise by Congress. A 12-year limitation also applies to guaranteed loans except for countries specified by statute. Congress can authorize longer repayment terms for specific countries. Semi-annual interest payments are required on the principal amount of loan funds disbursed during the grace period.

C9.7.2.12.2. Frequency and/or Timing of Payments. Repayments of FMF loans are made in semi-annual installments. Billing statements are sent by DFAS Indianapolis to borrowing countries 30 - 45 days prior to payment due dates. Repayments on FMF loans are due on or before the dates specified in the promissory notes and are repeated in both the FFB and the DFAS Indianapolis billing statements. Repayments falling due on a Saturday, Sunday, holiday, or other day on which the Federal Reserve Bank (FRB) of New York is not open for business, shall be made on the first business day thereafter. This extension is used to compute interest for the affected payment, but excluded from the next interest period.

C9.7.2.12.3. Late Repayments. If the borrower fails to make a repayment when due, the amount payable is the overdue installment of principal or interest, plus interest thereon at the rate specified in the promissory note from the due date to the actual payment date.

C9.7.2.12.4. Brooke Amendment. Repayments that continue in arrears for more than 1 year are subject to Brooke Amendment sanctions. The Brooke Amendment is an annual provision in the Foreign Operations, Export Financing, and Related Programs Appropriations Act. The FY03 Act provides: “No part of any appropriation contained in this Act shall be used to furnish assistance to the Government of any country which is in default during a period in excess of 1 calendar year in payment to the United States of principal or interest on any loan made to the Government of such country by the United States pursuant to a program for which funds are appropriated under this Act...” Although this annual provision specifically states that only USG foreign aid funds that are appropriated are affected, AECA, section 24(c) (reference (c)), makes the Brooke Amendment applicable to FMS guaranteed loans made after 1980. Brooke Amendment sanctions are activated by arrearages of more than 1 year on either United States Agency for International Development (USAID) loans, Export-Import Bank guaranteed loans, and direct guaranteed loans made under the AECA. Once invoked, the restrictions apply to most U.S.-funded foreign aid programs (economic and military). Table C9.T7. summarizes activities that are affected by Brooke Sanctions.

Table C9.T7. Brooke Sanctions

<b>Activities Not Permitted Under Brooke Sanctions</b>
<ul style="list-style-type: none"> <li>• New loan agreements or guaranties cannot be offered or issued.</li> <li>• LOAs financed with FMF (FMS Credit) or MAP Merger funds that are accepted on or after the effective date of the sanction is not implemented.</li> <li>• New or pending FMF or MAP Merger financed LOAs are not countersigned or issued to the country for acceptance.</li> <li>• Direct commercial contracts that require new FMF funds are not approved.</li> <li>• New IMET students may not travel to the U.S. or other locations to start training unless funds have already been obligated. Mobile Training Teams (MTTs) and Language Training Detachments (LTDs) will not commence unless funds have already been obligated.</li> <li>• IMET students already in training before sanctions were enacted, may continue with their training to include follow on training, but no additional sequential courses may be added on or after the effective date of the sanctions. MTTs or LTDs already funded may continue.</li> <li>• IMET funded MTTs and LTDs may not be dispatched or extended beyond their scheduled termination date.</li> <li>• IMET funded training aids may not be issued from supply nor placed on contract by the supplying agency.</li> <li>• For countries that are in default of payment in excess of 1 calendar year, all grant EDA transactions for the affected country are cancelled.</li> </ul>

<b>Activities Still Permitted Despite Brooke Sanctions</b>
<ul style="list-style-type: none"> <li>• Cash FMS purchases are not subject to these restrictions. Cash payments from national funds may be used to sustain existing FMS cases or fund new cases. It is preferred that a country under the Brooke Amendment use its available national funds to eliminate the arrearage rather than undertake new programs. If a purchaser uses national funds to finance a training case after Brooke Sanctions apply, full cost FMS pricing must apply to the entire case in accordance with AECA, section 21(a)(1)(C) provisions.</li> <li>• Pipeline deliveries on materiel blanket open-ended cases implemented prior to the effective date of sanctions are allowed to continue regardless of term.</li> <li>• Requisitions on materiel blanket open-ended cases may be processed.</li> <li>• FMF financed cases accepted prior to effective date of sanctions remain in force and are executed. Modifications or Amendments to existing implemented FMS cases are not allowed if they involve new obligations of funds other than foreign country national funds.</li> <li>• IMET or FMF-financed students whose course of study or training program has begun may complete such courses, including already funded sequential courses.</li> <li>• Sales of EDA continue to be permitted under these sanctions.</li> </ul>

**C9.7.2.12.5. DSCA Role as Guarantor of FFB Loans.** DSCA pays (using the Guaranty Reserve Fund) overdue repayments on FFB (guaranteed) loans that remain unpaid 10 days after the payment due-date. The borrowing country is still obligated to repay the loan and interest continues to accrue on the overdue amount until the repayment is received from the borrowing country.

C9.7.3. Military Assistance Program (MAP) Merger Funds. Prior to FY 1982, defense articles and services provided to allied Governments or international organizations by grant aid were administered through the Military Assistance Program (MAP). There are still open FMS cases that use “MAP” or “MAP Merger” funds. See Chapter 11, section C11.12. for more information.

C9.7.4. Foreign Military Financing Of Direct Commercial Contracts (DCCs). The AECA allows purchasers to use their FMF monies for direct commercial purchases from U.S. contractors. These purchases are approved by DSCA on a case-by-case basis using “Guidelines for Foreign Military Financing of Direct Commercial Contracts” and contractor certification provided at <http://www.dsca.mil/>. The purchaser makes a formal request to DSCA (Direct Commercial Contracts) (Figure C9.F4.) accompanied by a copy of the contract. Upon approval, DSCA (Direct Commercial Contracts) notifies both the purchaser (Figure C9.F5.) and the supplier (Figure C9.F6.). The USG is not obligated to approve specific DCC for FMF funding. USG-financed DCCs are implemented when they benefit U.S. foreign policy or national security interests.

Figure C9.F4. Notification Of Requirements For Direct Acquisition To Be Funded With U.S. FMF Funds

<p>A. Country: _____</p> <p>B. Identification of Requirements:</p> <p>1. U.S. Defense Items or Services: _____</p> <p>2. Quantity: _____</p> <p>3. Estimated Purchase Agreement Value: \$ _____</p> <p>4. Projected date of submission of contract to DSCA for funding approval: _____</p> <p>C. Comments: (Include information regarding firms to receive bid requests and your competitive acquisition process) _____</p> <p>_____</p> <p>_____</p>
---

Figure C9.F5. DSCA Sample Letter To Purchasing Country Approving Use Of FMF For Direct Commercial Purchases

In reply refer to:  
I- \_\_\_\_\_

Dear Sir:

Pursuant to the provisions of section 1.3 of the Loan Agreement between your Government and the U.S. Government, and in response to your recent request for loan financing of a purchase directly from a commercial firm, financing for the following purchase agreement is hereby approved:

Supplier: \_\_\_\_\_

Contract or Proforma Invoice number and date: \_\_\_\_\_

Items to be purchased: \_\_\_\_\_

Case Identifier Assigned to This Purchase	Funds Previously Reserved For This Purchase	Funding Revision	Funds Reserved For This Purchase

Sincerely,



Figure C9.F6. DSCA Sample Letter To Supplier Approving Use Of FMF For Direct Commercial Purchases

	In reply refer to: I-_____
Dear Sir:	
<p>The Defense Security Cooperation Agency (DSCA) has approved financing in the amount, and for the purchase agreement noted below. Funds shall be disbursed to your firm from financing available to the Government of [insert country] through the Foreign Military Financing (FMF) program. The Case Identifier assigned to this Purchase Agreement and the Supplier Code assigned to your firm are also noted below and should be referenced on any questions that you may have regarding this financing. This approval does not constitute an approval for export; your firm is responsible for obtaining export licenses, as required:</p>	
Contract Number:	
Date:	
Supplier Code:	
Case Identifier:	
Financing Approved:	
Purchase of:	
<p>The amount of approved financing shall be available to the Purchaser for payment of this Purchase Agreement unless the Purchaser defaults on any of the provisions of the agreements entered into by the Purchaser with the U.S. Government for such financing. Additionally, although we have set aside FMSF funds in the amount shown above for this purchase, this reservation is for program administration purposes only and should not be construed as a firm and irrevocable commitment to pay. The Purchaser is not obligated to use U.S. Government FMSF funds in payment of this purchase; therefore, the Purchaser could request a reduction of the amount reserved for your Purchase Agreement. In such event, however, we would endeavor to advise you of the Purchaser's request prior to effecting the reduction.</p> <p>Although the U.S. Government is not a party to the Purchase Agreement, DSCA is required to ensure that the Purchaser utilizes loan funds only for the purposes intended by law, and for which the financing is approved. This financing is available only for articles and services (including insurance) of U.S. origin, except where non-U.S. articles and services are specifically authorized by DSCA. Suppliers may be reimbursed shipping costs, but only when shipments are made on U.S. flag carriers. Waivers granted to the Purchaser by DSCA to ship materiel via its own carriers does not authorize reimbursement to your firm of costs for shipping by a non-US flag carrier. In such instances, the Purchaser is responsible to pay for non-U.S. flag carrier freight charges or to reimburse you directly for such charges. Shipping charges for shipments via non-U.S. carriers shall be deducted from Suppliers invoices.</p> <p>To prevent unnecessary delays in the processing of payments to you, your firm must ensure that invoices contain the information specified in the Contractor's Certification and Agreement, show the Case Identifier noted above, and include signed, "rated," "on-board" bills of lading or air waybills. <b>Further, it should be understood that, after receipt of properly documented invoice(s) in DSCA, a period of approximately three (3) weeks shall be required to process the payment by wire transfer and longer if payment is by check.</b></p> <p>Payments shall be made directly to your firm by wire transfer. Therefore, it is imperative that you provide to us your wire transfer address. As quickly as possible, please send us these addresses on a letter signed by an official of your firm. The wire transfer address must include your bank's name, street address, zip code, and the bank's American Banking Association (ABA) routing number, and the name and number of your account. We shall send payments under this purchase agreement only to those addresses officially provided to us, including official notifications of changes. <b>No payments shall be processed to you until we have received your official addresses relative to this purchase agreement.</b></p>	

Figure C9.F6. DSCA Sample Letter To Supplier Approving Use Of FMF For Direct Commercial Purchases (continued)

If your contract provides for a down payment, the down payment amount must be limited as follows, and you are required to include the following certification on your down payment invoice:

[Insert contractor name] certifies that the down payment requested does not exceed cost incurred at time of submission of this invoice plus termination liability to be incurred during the first 90 days, less profit.

DSCA does not require that bank instruments such as Performance Bonds or Letters of Credit be obtained relative to the purchase agreement. However, if such bank instruments are obtained pursuant to your contract provisions, such instruments must be issued and payable by U.S. banking institutions operating within the United States, and copies of such instruments must be submitted to the DSCA for review as prerequisite to disbursements by DSCA. These instruments must be received and deemed satisfactory by the DSCA, relative to payee provisions, prior to the processing of any disbursements to your firm under this Purchase Agreement.

All contractor's invoices must also contain the following certification:

The [insert contractor] acknowledges that U.S. Government funds are being used by the Government of [insert country] to finance this purchase and certifies that the invoice(s) submitted with respect thereto are free from any material false statement or misrepresentation and do not omit any material facts.

Full and final billing on the contract must not be presented to DSCA for payment prior to full and final completion of contract deliveries and performance.

Should refunds to the Purchaser become necessary for any reason, from funds paid by DSCA under this Purchase Agreement, such refunds must be made directly to DSCA rather than to the Purchaser. DSCA shall credit such refunds to the Purchaser's Foreign Military Sales (FMS) Trust Fund Account. Refunds may be made either by check or by wire transfer. Checks should be made payable to the U.S. Treasury, be accompanied by a letter identifying the Purchaser, and DSCA's case identifier, and should be mailed to the following address. Correspondence relating to financial matters should also be mailed to this address.

Defense Finance and Accounting Service-Indianapolis  
Security Assistance Accounting (Credit Sales)  
8899East 56th Street  
Indianapolis, IN 46249-6300

Refunds by wire transfer should be addressed as follows:

United States Treasury  
New York, New York  
021-030-004  
DFAS Indianapolis, Agency Code 3801

Refund from:\_\_(Company Name)\_\_ for purchase made by the  
Government of \_\_\_\_\_ under DSCA Case \_\_(Identifier)\_.

Sincerely,

Copy to:  
Maritime Administration      Embassy of \_\_\_\_\_  
Room 7209 \_\_\_\_\_(Address)\_\_\_\_\_  
400 7th Street, SW      Washington, D.C. 200\_\_\_\_\_  
Washington, D.C. 20590-0001

#### C9.7.4.1. Eligibility for DCC using FMF

C9.7.4.1.1. Countries. Ten countries are eligible to establish DCCs through FMF. They are Israel, Egypt, Jordan, Morocco, Tunisia, Turkey, Portugal, Pakistan, Yemen, and Greece. These countries were justified for assistance under the “Foreign Military Sales Financing Program” in the fiscal year 1989 Congressional Presentation for Security Assistance programs.

C9.7.4.1.2. Minimum Contract Value. Commercial contracts valued at less than \$100,000 are financed with purchaser’s national funds and shall not be considered for FMF.

C9.7.4.1.3. Types of Items. DCCs are intended for the procurement of non-standard items (items that do not have a national stock number (NSN) and cannot be procured by MILDEPs/Defense Agencies). Exceptions may be requested from DSCA with written justification.

C9.7.4.1.4. Contractors. The prime contractor must be a U.S. supplier or manufacturer, incorporated or licensed to do business in the United States.

C9.7.4.2. Documents and Statements. Requests for payment of FMS loan funds to U.S. commercial suppliers must be accompanied by certain documents and/or statements as set forth in the Annexes and Attachments to each FMS loan agreement. These supporting documents must be provided to DSCA (Direct Commercial Contracts) by the borrower, and not by the commercial supplier.

C9.7.4.3. Classified Materials. If in the case of direct commercial contracts, the purchaser proposes to take delivery and custody of classified materials in the U.S. and use its own facilities and transportation for forward shipment to its territory, the foreign purchaser must comply with guidance pertaining to FMS shipments.

#### C9.8. LETTERS OF OFFER AND ACCEPTANCE – TERMS OF SALE

Terms of Sale indicate when payments are required and whether the sales agreement is financed with purchaser’s national funds (cash), FMS Credit (repayable or non-repayable), MAP Merger, or other funding. The Implementing Agency enters the term on the first page of the LOA document. Table C9.T9. provides the Terms of Sale for use on LOAs. Chapter 5, Figure C5.F4. provides a list of applicable Type of Assistance codes.

Table C9.T9. Terms of Sale

Term of Sale	Application
Cash with Acceptance	<ul style="list-style-type: none"> <li>• Used when the initial cash deposit equals the amount in the “Estimated Total Costs” line of the LOA.</li> <li>• Also used for FMSO I even though the initial deposit is less than “Estimated Total Costs” (it must equal the FMSO I Part A value).</li> <li>• Used for the procurement of articles and services if the purchaser is not authorized Dependable Undertaking.</li> <li>• Used if the purchaser is not authorized Dependable Undertaking, unless specific DSCA approval is obtained.</li> </ul>
Cash Prior to Delivery	<ul style="list-style-type: none"> <li>• The USG collects cash in advance of delivery of defense articles and rendering of defense services and design and construction services from DoD resources. AECA, sections 21(b) and 29 (reference (c)) apply.</li> </ul>
Dependable Undertaking	<ul style="list-style-type: none"> <li>• The USG collects cash in advance of procurement contract payment requirements. If AECA, section 22(b) (reference (c)) is applicable based on Presidential action (i.e., payment due up to 60 or 120 days after delivery), add “with up to (60 or 120) days payment after delivery.”</li> </ul>
Payment on Delivery	<ul style="list-style-type: none"> <li>• The USG issues bills to the purchaser at the time of delivery of defense articles or rendering of defense services from DoD resources. The first sentence of AECA, section 21(d) (reference (c)) applies. The Implementing Agency may use this term only pursuant to a written statutory determination by the Director, DSCA, who must find it in the national interest to do so. If AECA, section 21(d) (reference (c)) is applicable based on Director or Deputy Director, DSCA action, modify to read “Payment 60 days after Delivery.” If AECA, section 21(d) (reference (c)) is applicable based on Presidential action, modify to read “Payment 120 days after Delivery.”</li> </ul>
FMS Credit	<ul style="list-style-type: none"> <li>• This term applies to an FMS case financed with repayable FMF funds, or partly repayable FMF funds, extended or guaranteed by the Department of Defense under AECA, sections 23 and 24 (reference (c)), or under other legislation.</li> </ul>
MAP Merger	<ul style="list-style-type: none"> <li>• Applies to FMS cases financed with MAP Merger funds (FAA, section 503 (reference (b))).</li> </ul>
FMS Credit (Non-Repayable)	<ul style="list-style-type: none"> <li>• Applies to FMS cases financed with non-repayable FMF funds. If the case is financed wholly with these non-repayable funds, the LOA qualifies for pricing benefits (i.e., exclusion of military salaries and NC of research, development, and production of MDE) as provided in FAA, section 503(a)(3) (reference (b)) and AECA, section 21(e) (reference (c)).</li> </ul>
EDA Grant	<ul style="list-style-type: none"> <li>• Applies to Excess Defense Article – non-reimbursable grant transfers as provided in Section 516 of the FAA of 1961, as amended.</li> </ul>

**C9.8.1. Terms of Sale Breakouts.** If an LOA involves multiple terms, the Implementing Agency cites all of the applicable terms on the LOA and includes a dollar breakout for each credit term used (it is acceptable to state “Balance” for the final term of sale shown on the LOA document). No attempt should be made to breakout the estimated costs of line items by Terms of Sale; the dollar breakout is shown only at the case level.

#### **C9.8.2. Terms of Sale Revisions.**

**C9.8.2.1.** Changes to Terms of Sale on LOA documents are generally made in accordance with the procedures for Pen and Ink changes, Modifications, and Amendments. (See Chapters 5 and 6.)

**C9.8.2.2.** The purchaser may choose to supplement available MAP Merger and/or FMF with its own national funds. If additional FMF and/or MAP Merger funds later become available, the purchaser may request DSCA approval to amend and/or modify the LOA to convert the cash portion of the case to FMF and/or MAP Merger.

C9.8.2.3. A purchaser may accept an LOA using its national funds as the method of payment and later determine available national funds are inadequate. The purchaser may request DSCA approval to use FMF and/or MAP Merger funds, if available, to finance the remaining payments. If approved, a Modification and/or Amendment are processed.

C9.8.2.4. Changes to Terms of Sale on implemented cases are based on the purchaser's (someone who has LOA signature authority) written request. The DSCA (Business Operations Directorate) can initiate Terms of Sale revisions via message. For those cases containing a mixture of cash, FMF and/or MAP Merger, excess funds are determined by first releasing the cash portion, followed by FMF and lastly by MAP Merger. Exceptions as desired by the purchaser for a specific FMS case must be approved by the DSCA (Business Operations Directorate).

C9.8.2.5. A change to an LOA's Term(s) of Sale from fully funded FMF and/or MAP Merger to mixed funding impacts the cost of the case. Any Amendment or Modification that reduces non-repayable FMF or MAP Merger funding below 100 percent requires repricing to add military pay, entitlements, and NC to the entire case. See DoD 7000.14-R (reference (o)), Volume 15, Chapter 7 for more details.

### C9.8.3. Dependable Undertaking Status.

C9.8.3.1. In accordance with AECA Sections 22(a) and 29, Dependable Undertaking is used as a term of sale. Dependable Undertaking represents a firm commitment by the purchaser to pay the full amount of the contract which assures the USG against any loss on the contract. The purchaser agrees to make funds available in advance to meet payments required by the contract as well as any damages and costs that may accrue from cancellation. The determination to authorize Dependable Undertaking terms of sale for a country is based on the country's Interagency Country Risk Assessment System (ICRAS) rating. For countries and international organizations without an ICRAS rating, DSCA will determine eligibility using the DSCA Dependable Undertaking Assessment Tool. A country with an ICRAS rating of "C" or better at the time of receipt of the Letter of Request (LOR) is presumed to be eligible to use the Dependable Undertaking term of sale unless other factors override that eligibility determination. ICRAS ratings themselves are sensitive and are not releasable.

C9.8.3.2. DSCA (Business Operations Directorate) will provide a list of countries and international organization with their eligibility for Dependable Undertaking to the Implementing Agencies on a tri-annual basis (January/February, May/June, August/September). DSCA will include countries and international organizations on the eligibility list based on DSCA's analysis of ICRAS ratings and other factors. (See paragraph C9.8.3.4. for additional information applicable when Dependable Undertaking cases for eligible countries might not be appropriate.) Prior to publication of the tri-annual list, DSCA will notify the Department of State of any changes being contemplated to a country's Dependable Undertaking status.

C9.8.3.2.1. Countries and international organizations included on table C4.T2. who were listed as eligible for Dependable Undertaking prior to this policy memorandum, will be included on the new listing as follows:

C9.8.3.2.1.1. Countries and international organizations that were eligible and executed cases using the Dependable Undertaking term of sale as of the date of DSCA 09-07 will be marked on the new list as still eligible regardless of their current ICRAS rating for a period not to exceed 7 years from the implementation date of policy memo (DSCA 09-07) unless other factors undermine creditworthiness. Those countries whose ICRAS rating is below “C” will be marked with a “hash” (#) on the tri-annual list. After the 7-year “grace period,” these countries will be included as eligible only if their ICRAS rating is “C” or better. Should these countries have problems making payments before the 7-year period has expired or other factors undermine creditworthiness, their status may be changed to ineligible and their inclusion under the “grace period” may end.

C9.8.3.2.1.2. Countries and international organizations that were eligible and have not used the Dependable Undertaking term of sale will be included on the new list as eligible only if their ICRAS rating is “C” or better.

C9.8.3.2.2. Countries and international organizations that were not eligible for Dependable Undertaking on Table C4.T2. will be marked as eligible/not eligible in the new list based on their ICRAS rating. If their ICRAS rating is “C” or better they will be marked eligible. If their ICRAS rating is “C-“ or below they will be marked as ineligible until such time they attain a “C” rating.

C9.8.3.2.3. Countries and international organizations that are not currently listed in Table C4.T2. will be added to the Dependable Undertaking list when paperwork is approved to add them to Table C4.T2.. Their current ICRAS rating will be used to determine their eligibility for Dependable Undertaking.

C9.8.3.2.4. Countries and international organizations currently listed as eligible and are executing cases that do not have an ICRAS rating will remain eligible for a period not to exceed 7 years from the implementation date of policy memo (DSCA 09-07) unless other factors undermine creditworthiness. After the 7-year “grace period” these countries and international organizations will have eligibility determined by DSCA based on an assessment using the DSCA Dependable Undertaking Tool.

C9.8.3.3. The Implementing Agency may request in writing an exception to offer a particular case (or Amendment) with the Dependable Undertaking term of sale to a country or international organization not otherwise eligible for Dependable Undertaking. DSCA approval of an exception will be based on the results of a second-tier structured analysis which includes factors such as previous FMS experience, Country Information Paper recommendations, Country Team Assessments, and supporting documentation provided by the requesting organization. The Director, DSCA will make the decision upon IA request, but this determination will not be reflected in the next issuance of the tri-annual list. Exceptions granted apply only to the specific case or Amendment scope being developed and do not give the country or international organization blanket eligibility for Dependable Undertaking status. DSCA will notify the Department of State prior to authorizing a Dependable Undertaking for any country or international organization not otherwise eligible under the standard criteria.

C9.8.3.4. A country or international organization may not be offered the Dependable Undertaking term of sale even if a country or international organization is presumed to be eligible if other factors and circumstances indicate that another term of sale is advisable for a particular case. Information that may affect a country's or international organization's eligibility for the Dependable Undertaking term of sale should be communicated to DSCA as soon as possible so that the eligibility determination may be reviewed.

## C9.9. PAYMENT SCHEDULES

Payment schedules provide forecasted financial requirements for an FMS case and project the timing and/or amounts of purchaser deposits needed to meet the requirements. Payment schedules for LOA documents are prepared by DSCA (Operations Directorate, Case Writing Division (CWD)) during the case development process."

### C9.9.1. Payment Schedule Preparation

C9.9.1.1. Payment Schedule Requirement. A payment schedule is developed for each case unless the Term of Sale is "Cash With Acceptance," or the case is fully funded with FMS Credit (Non-Repayable) and/or MAP Merger, the total case value is less than \$5M, and the country is not authorized cash flow financing. In these instances, the Initial Deposit covers the entire case value. The following paragraphs provide criteria for developing payment schedules.

C9.9.1.2. Line Level. Payment schedules are built using DSAMS at the line level (or sub-line or delivery set level) and rolled-up to a case-level schedule.

C9.9.1.3. Information Needed to Prepare the Payment Schedule. Payment schedules are prepared using pricing estimates and estimated dates for when: purchasers accept the LOA; the LOA is implemented; requisitions are initiated; contracts are awarded; payments are made to contractors; deliveries occur; and, personnel costs are incurred. Other information required to prepare the payment schedule include: contractor termination schedules (used in the termination liability worksheet); lead times and/or availability; periods of performance; and disbursement histories for like-item cases or lines already implemented. This information is needed at the line-level and must be provided by the Implementing Agency to DSCA (Operations Directorate, CWD) for payment schedule preparation.

C9.9.1.4. Timing of Payments. Typically, the payment schedule projects quarterly payments due by the 15th day of March, June, September, and December. Exceptions to these dates must be approved by the DSCA (Business Operations Directorate). Table C9.T10. shows how payment schedule dates should be determined.

Table C9.T10. Payment Schedule Dates

<b>Offer Expiration/ Acceptance Dates of LOAs</b>	<b>Earliest Payment Date on the Payment Schedule</b>	<b>For Period Covering</b>
11 Sep -- 10 Dec	15 Mar	Apr-Jun
11 Dec -- 10 Mar	15 Jun	Jul-Sep
11 Mar -- 10 Jun	15 Sep	Oct-Dec
11 Jun -- 10 Sep	15 Dec	Jan-Mar

C9.9.1.5. Payment Distribution. Each deposit amount covers all costs to be incurred on the purchaser's behalf during the next quarter, plus a reserve to cover Termination Liability (for sales from procurement).

C9.9.1.5.1. Initial Deposit. Each LOA includes an initial deposit to cover the outlays and/or deliveries anticipated until the first quarterly payment is received. The term of sale, type of case, projected date of delivery or performance of services, anticipated date of LOA acceptance, and source of supply impact the Initial Deposit. The purchaser forwards the Initial Deposit to DFAS Indianapolis by wire transfer (the preferred method of payment) or by check. The purchaser may use excess FMS Trust Fund Holding Account funds to pay the Initial Deposit. Amendments use the term "Due with Amendment Acceptance" vice Initial Deposit. The amount of the Initial Deposit is determined as shown in Table C9.T11.

Table C9.T11. Initial Deposit Requirements

Condition	Initial Deposit Amount*
Delivery of the defense article or service is within 90 days of LOA acceptance. The Term of Sale is "Cash With Acceptance."	Full case value
Total performance is anticipated to be completed before DFAS Indianapolis can bill and collect additional payments. The Term of Sale is "Cash With Acceptance."	Full case value
Cash sale from procurement when the purchaser is not authorized Dependable Undertaking.	Full case value
Case is financed wholly with "FMS Credit (Non-Repayable)" or "MAP Merger" and Case value is less than \$5,000,000, and Country is not authorized cash flow financing.	Full case value
Delivery of the defense article or service is longer than 90 days after LOA acceptance.	Any Small Case Management Line (SCML) value; plus dollar value associated with performance until a quarterly payment can be made; plus half of the total Administrative Surcharge. If the calculated Administrative Surcharge value is \$30,000 or less, the entire Administrative Surcharge value must be included in the initial deposit.
No performance scheduled on the case and no contractual actions occur during the period prior to the first quarterly payment.	Any SCML value; plus half of the total Administrative Surcharge. If the calculated Administrative Surcharge value is \$30,000 or less, the entire Administrative Surcharge value must be included in the initial deposit.
When items are placed on contract before the first quarterly payment and no SBLC applies	Any SCML value; plus half of the total Administrative Surcharge; plus that portion of TL required if the contract is terminated during the period covered by the Initial Deposit; plus contractor holdback. If the calculated Administrative Surcharge value is \$30,000 or less, the entire Administrative Surcharge value must be included in the initial deposit.
*If the case is partially funded by FMS Credit (Non-Repayable) and/or MAP Merger Funds, and not authorized for cash flow financing, the initial deposit must include all FMS Credit (Non-Repayable) and/or MAP Merger Funds up to \$5M regardless of the case value.	



C9.9.1.5.2. Payment Schedule Curves. Payment schedule curves (most of which are in DSAMS) profile the expenditure patterns for types of cases and/or weapon systems. They are used to estimate how payments for each line should be distributed in the payment schedule. The Implementing Agency may recommend adding new curves. The Implementing Agency validates the need for a new curve and verifies how it should be constructed. After its review is complete, the Implementing Agency sends the proposed new curve package to DSCA (Business Operations Directorate) for review and approval.

C9.9.1.5.2.1. Materiel from Stock. Payment schedule distributions for materiel sold from stock are based on estimated deliveries during each 90-day period following the quarterly payment. Historical delivery information of specific generic codes and other materiel categories may be used.

C9.9.1.5.2.2. Materiel from Procurement. Payment schedule distributions for procured materiel requiring progress payments to contractors are based on progress payment schedules or historical cost curves. Payment schedules should include estimated disbursements to contractors, an appropriate contract hold-back percentage, and Termination Liability (if no Standby Letter of Credit (SBLC) exists).

C9.9.1.5.2.3. Concurrent Spare Parts. Payment schedule distributions for concurrent spare parts are based on estimated dollar deliveries consistent with the delivery of the supported end items.

C9.9.1.5.2.4. Purchaser-Initiated Requisitions. Payment schedule distributions for case lines involving purchaser-initiated requisitions are based on equal quarterly payments unless the USG is aware of a varying requisition activity schedule. See Chapter 5, Table C5.T5. for exact note wording.

C9.9.1.5.2.5. Services. Payment schedule distributions for services are based on the scheduled dates and elements of cost of the provided services.

C9.9.1.5.2.6. Training. Payment schedule distributions for defined order training are based on estimated entry into the training courses. Payment schedule distributions for blanket order training require an Initial Deposit of 25 percent when the case exceeds \$25,000. If no other information is available regarding course schedules, blanket order training payment schedules should reflect equal payments for the estimated period (just like any other blanket order case).

C9.9.1.5.2.7. Royalties or Non-Recurring Costs. Payment schedule distributions for royalties or NCs are based on production schedules of the applicable end item.

C9.9.1.5.2.8. Administrative and Accessorial Charges. Payment schedule distributions for administrative and accessorial costs are based on estimated delivery of the primary items or services. Half of the administrative surcharge is included in the Initial Deposit. If the calculated Administrative Surcharge value is \$30,000 or less, the entire Administrative Surcharge value is included in the Initial Deposit. Any exceptions to this policy must be approved by DSCA (Business Operations Directorate).

C9.9.1.5.3. Termination Liability (TL). TL is the potential cost that the USG would be liable for if a particular FMS case is terminated prior to completion. It applies to any FMS case that has procurement contracts. Contractor termination schedules are used to calculate the TL that would apply for a specific FMS case. If these schedules are not available, the TL component of the payment schedule curve is used. If no other curve is available, the “DoD Standard Curve” shown in DoD 7000.14-R (reference (o)), Volume 15, Chapter 7 is used. A Termination Liability Worksheet (TLW) to show the amount of TL included in quarterly payments is prepared (using DSAMS). A TLW must be prepared whenever a case contains a Pricing Element Code (PEC) of “CC.” TLWs are maintained in the case file (they are not submitted to DSCA when the case package is forwarded for electronic countersignature). If a specific case or line contains more than one PEC, pro-rate the “CC” component when computing the TL.

C9.9.1.5.4. Standby Letter of Credit (SBLC). A SBLC may be used instead of TL to guarantee termination payments. FMF programs are not eligible to participate.

C9.9.1.5.4.1. The purchaser may request participation in the SBLC program. These requests must be sent to the DSCA (Business Operations Directorate) in writing and signed by an official authorized to accept the SBLC documents on behalf of the purchaser’s Government and/or organization. The purchaser must specify the bank(s) it wishes to use. The purchaser is responsible for paying all fees associated with the SBLC to the issuing bank. No fees can be capitalized or included in the dollar amount specified in the SBLC documents. The purchaser must sign the agreement specifying the terms and conditions in order for the associated SBLC to be implemented. The purchaser must notify DSCA in writing if they wish to terminate the agreement with the bank(s).

C9.9.1.5.4.2. DSCA (Business Operations Directorate) is the beneficiary stated on the SBLC. DSCA (Business Operations Directorate) is the focal point for SBLC issues and engages DSCA (Office of the General Counsel), USD(C), DFAS Indianapolis, and the Implementing Agencies, as appropriate, to ensure effective SBLC execution.

C9.9.1.5.4.3. DSCA (Business Operations Directorate) notifies the Implementing Agency and the Case Writing Division when an SBLC is implemented. The notification includes a list of cases (or indicates that it applies to all cases) governed by the SBLC. DSCA (Operations Directorate, CWD) and the Implementing Agency ensure the TL is not included in the payment schedules for any of these cases. If an SBLC is terminated the payment schedule is revised to include TL as appropriate. DSCA (Business Operations Directorate) also notifies DFAS and the purchaser.

C9.9.1.5.4.4. Drawdowns (sight drafts) from the SBLC are a demand for payment from the SBLC bank. A sight draft may be completed by DSCA (Business Operations Directorate), coordinated and approved by the Director or Deputy Director, DSCA, and sent to the bank for any of the following reasons.

C9.9.1.5.4.4.1. The FMS purchaser notifies the USG in writing that it is terminating all or a portion of an FMS case.

C9.9.1.5.4.4.2. The USG notifies the FMS purchaser in writing that it is terminating an FMS case(s) or contracts relating to an FMS case.

C9.9.1.5.4.4.3. The USG is aware the SBLC is being either terminated or not extended beyond its expiration date.

C9.9.1.5.4.4.4. A contractor presents a bill to the USG for termination charges associated with an FMS case(s).

C9.9.1.5.4.4.5. The issuing and/or confirming bank falls below DSCA's acceptable eligibility thresholds.

C9.9.1.5.4.5. The payment is remitted to the account specified on the sight draft. Upon receipt, DFAS ensures the payment is credited to the FMS case(s) as directed on the wire transfer. DFAS Indianapolis notifies DSCA (Business Operations Directorate) of the deposit date and the FMS case(s) is credited within 3 business days of demand payment receipt.

C9.9.2. Purchaser-Requested Schedules. The purchaser may request a specific payment schedule for a given case. This schedule may be based on its internal budget allocation, other constraints, or a desire to accelerate payments.

C9.9.2.1. Purchaser requests for specific payment schedules are reviewed by the Implementing Agency prior to submission of the LOA package to DSCA (Operations Directorate, CWD) for case preparation. A copy of the purchaser's request is included in the case preparation request. The Implementing Agency will approve the schedule as part of the LOA document coordination/countersignature process.

C9.9.2.2. DSCA (Operations Directorate, CWD) constructs the standard payment schedule (to include any contract termination costs) and compares it to the purchaser's requested schedule. DSCA (Operations Directorate, CWD) analyzes the purchaser's proposed schedule to determine if it provides sufficient funds to meet projected requirements identified on the standard payment schedule. If the purchaser's requested schedule is sufficient to cover the USG's forecasted requirements, DSCA (Operations Directorate, CWD) will proceed with the request. If DSCA (Operations Directorate, CWD) determines that the purchaser's requested schedule will not meet forecasted requirements, DSCA (Operations Directorate, CWD) will notify the Implementing Agency (with an information copy to DSCA (Business Operations Directorate, Country Finance Director (CFD))) and return the case document to the Implementing Agency for further action. The Implementing Agency may consult with the DSCA (Business Operations Directorate, CFD) to deny the purchaser's request or may work with the purchaser to re-define the requirements. Part of the payment schedule comparison and analysis includes developing the Termination Liability Worksheet (TLW). The TLW should first be based on the USG-developed payment schedule (to include contractor termination costs); the TLW should then be recalculated using the purchaser-requested schedule, if approved.

C9.9.2.3. When a purchaser-requested schedule is approved and used on the LOA, a note is included beneath the payment schedule. See Chapter 5, Table C5.T5. for exact note wording. The USG-developed payment schedule does not appear on the LOA but is maintained in the case file and in DSAMS.

**C9.9.3. Payment Schedule Revisions.** Payment schedules updates are necessary to reflect revisions to delivery schedules, scope changes, pricing updates, actual contract award dates, contractor payment milestone revisions, etc. To determine if an update is needed, payment schedule reviews occur at least annually as part of the case review and reconciliation process. Payment schedules are evaluated for possible changes when a Modification or Amendment is processed. If the contract award date slips, the payment schedule is adjusted by a Modification within 30 days of contract award. A new payment schedule should be furnished whenever there is a substantive change in payment requirements.

**C9.9.3.1. Payment Schedule Revision Format for Amendments.** Amendments use the payment schedule format in Table C9.T12. When either the Term of Sale is “Cash With Acceptance,” or the case is fully funded with FMS Credit (Non-Repayable) and/or MAP Merger, the total case value is less than \$5M, and cash flow financing is not authorized, the Amount Due with Amendment Acceptance shall equal the increase in case value.

Table C9.T12. Payment Schedule Revision Format for Amendments

<b>Payment Date</b>	<b>Quarterly</b>	<b>Cumulative</b>
Previous Payments Scheduled (DD MMM 20YY)	N/A	\$
Current USG Financial Requirements		\$
Amount received from Purchaser		\$
Due with Amendment Acceptance	\$	\$
DD MMM 20YY	\$	\$
DD MMM 20YY	\$	\$

**C9.9.3.2. Payment Schedule Revision Format for Modifications.** Modifications use the payment schedule format in Table C9.T13. When either the Term of Sales is “Cash With Acceptance,” or the case is fully funded with FMS Credit (Non-Repayable) and/or MAP Merger, the total case value is less than \$5M, and cash flow financing is not authorized, the next quarterly payment due shall equal the increase in case value.

Table C9.T13. Payment Schedule Revision Format for Modifications

<b>Payment Date</b>	<b>Quarterly</b>	<b>Cumulative</b>
Previous Payments Scheduled (DD MMM 20YY)	N/A	\$
Current USG Financial Requirements		\$
Amount received from Purchaser		\$
Revised Payments Scheduled (DD MMM 20YY)	\$	\$
DD MMM 20YY	\$	\$
DD MMM 20YY	\$	\$

**C9.9.3.3. Showing Collections on Payment Schedules.** In addition to showing quarterly payments, payment schedules on Amendments and Modifications also show the amount already paid by the FMS purchaser. The revised payment schedule is based on the forecasted requirements remaining on the case. Once these requirements are computed, the collections already received from the purchaser are considered.

C9.9.3.4. Purchaser Requests For Payment Schedule Review. Purchasers who wish a review or revision of a specific case payment schedule should forward a request to the appropriate Implementing Agency.

## C9.10. BILLING

DFAS Indianapolis bills purchasers. Table C9.T14. shows the FMS case billing timeline.

Table C9.T14. FMS Billing Timeline

Period Ended on FMS Billing Statement	Approximate Date of FMS Billing Statements	Payment Due at DFAS Indianapolis	For Period Covering
December 31 <sup>st</sup>	January 15 <sup>th</sup>	March 15 <sup>th</sup>	April-June
March 31 <sup>st</sup>	April 15 <sup>th</sup>	June 15 <sup>th</sup>	July-September
June 30 <sup>th</sup>	July 15 <sup>th</sup>	September 15 <sup>th</sup>	October-December
September 30 <sup>th</sup>	October 15 <sup>th</sup>	December 15 <sup>th</sup>	January-March

C9.10.1. Billing Procedures. Payments into the FMS Trust Fund other than Initial Deposits are based on bills (FMS Billing Statement, DD Form 645 or Special Billing Arrangement (SBA)). DFAS Indianapolis sends the DD Form 645. Under DSCA's oversight, DFAS Indianapolis assures that sufficient cash is available from the purchaser to cover accrued expenditures, costs to be incurred during the remainder of the current quarter, and costs to be incurred during the next quarter (e.g., contractor progress payments, contractor holdbacks, potential termination charges, and deliveries from DoD inventories). DD Form 645-based billings are the amount shown on the current case payment schedule or the quarterly forecast of the financial requirements accompanying the DD Form 645 bill, whichever is greater. The billing, not the payment schedule, contains the required payment amount. Implementing Agencies refer billing problems and questions to DFAS Indianapolis.

C9.10.2. Special Billing Arrangements (SBAs). If a purchaser has an SBA, total expenditures for the forthcoming billing period are subtracted from total available cash resources to determine the billing amount. SBAs override Column 14 of the DD Form 645. SBAs are issued by either DSCA (Business Operations Directorate) or DFAS Indianapolis and are managed at the country level unless an exception has been granted by DSCA (Business Operations Directorate).

## C9.11. FMS PAYMENTS FROM PURCHASERS

The AECA normally requires FMS monies to be collected in advance of delivery, service performance, or contractual progress payments. Accumulation of large balances in purchaser Trust Fund accounts for substantial periods should be avoided, except for contract holdbacks and other accrued or potential liabilities, or when the purchaser requests an accelerated payment schedule.

C9.11.1. Trust Fund Accounts. DFAS Indianapolis performs accounting for Foreign Military Sales, account 11X8242, by executing against subsidiary accounts: 978242, (Deposits, Advances, Foreign Military Sales, Defense) – receipt of payments and 97-11X8242, (Advances, Foreign Military Sales, Executive, Defense) – disbursements to suppliers. The purchaser makes payments to DFAS Indianapolis for deposit into the FMS Trust Fund (unless the purchaser has an interest bearing account with the FRB New York – see paragraph C9.11.2). FMS Trust Fund Wire Transfer and Check Mailing Information is found on the Letter of Offer and Acceptance Information attached to each LOA (see Chapter 5, Figure C5.F4.). Payments must identify the case designator and reason for the payment. Implementing Agencies refer collection problems and questions to DFAS Indianapolis.

C9.11.2. FRB New York Accounts. Some countries may establish an account with the FRB New York, for their FMS deposits. An agreement between the FMS purchaser's defense organization, the purchaser's central bank (or an acceptable equivalent), FRB New York and DSCA identifies the terms, conditions, and mechanics of the account's operation. FMS purchasers should contact the FRB New York or DSCA (Business Operations Directorate) regarding these accounts. Except as authorized by law and/or DSCA policy, the FRB New York accounts do not include FMF funds.

C9.11.3. Commercial Banking Account. Some countries may establish an account with a commercial bank for their FMS deposits. Two agreements are required: an agreement between the FMS purchaser and the participating commercial bank, and a separate agreement between the FMS purchaser and DSCA. FMS purchasers should contact the DSCA (Business Operations Directorate) regarding these accounts. Commercial accounts do not include FMF funds.

C9.11.4. Payment Identification. Each deposit made into the FMS Trust Fund is recorded to the appropriate FMS case. If the payment cannot be identified to a specific case, it is deposited in the FMS purchaser's Holding Account pending identification.

C9.11.5. Excess Funds. Payments received for an FMS case may exceed the final case value or the highest financial requirement. Upon closure, excess funds are retained in the purchaser's Holding Account pending further instructions. Excess case collections can be applied only to another case at the purchaser's request. Payments in excess of the value of a particular case may be transferred into the purchaser's Holding Accounts under the following conditions.

C9.11.5.1. Excess Funds – National Funds. Excess national funds are transferred to a cash Holding Account upon case closure, case cancellation, or purchaser's request. At the purchaser's written request, deposits in cash Holding Accounts may be applied to other FMS cases or refunded if: the purchaser is not on the current quarter Arrearage Report; there are no collection delinquencies on other FMS cases; and, there is sufficient cash reserve to meet financial requirements (including TL if no SBLC applies) for the next quarter. Cash refunds must be approved by DSCA (Business Operations Directorate).

C9.11.5.2. Excess Funds - FMS Credits. DFAS Indianapolis transfers excess credit funds from closed or cancelled cases to the credit Holding Account. Prior to each billing cycle, DFAS Indianapolis moves excess funds in the credit Holding Account to other FMS credit-financed cases (not to exceed the total credits committed to each case). DFAS Indianapolis applies the funds first to credit cases with overdue payments, and then to credit cases with payments due in the next billing cycle. If there are no remaining candidate cases, funds remain in the credit Holding Account. Prior to transferring credits to or from cases at case closure, DFAS Indianapolis requests (via e-mail or facsimile) approval from DSCA (Business Operations Directorate) and credit commitment records are adjusted to reflect the final case value.

C9.11.5.3. Excess Funds - MAP Merger. DFAS Indianapolis transfers excess MAP Merger funds from closed or cancelled cases to the MAP Merger Holding Account. Prior to transferring MAP Merger funds to or from cases at case closure, DFAS Indianapolis requests (via e-mail or facsimile) approval from DSCA (Business Operations Directorate) and MAP Merger commitment records are adjusted to reflect the final case value.

C9.11.5.4. Excess Funds - Other Funding. Upon reduction or cancellation of FMS cases financed with funds other than those above, DFAS Indianapolis, with DSCA (Business Operations Directorate) coordination, transfers excess funds to the applicable holding account.

C9.11.6. Movement of Purchaser Funds. DFAS Indianapolis moves national funds to and from Holding Accounts or between cases only when such requests are channeled through the FMS purchaser's designated representative. The use of notes or other references in LOA documents (Basic, Amendment, or Modification) concerning transfers or refunds of FMS purchaser funds is not authorized. Implementing Agencies do not enter any remarks on LOA documents transferring purchaser funds from one case to another, except for concurrent documents (see Chapter 6, subparagraph C6.7.2.3). Such remarks can be misleading, contradictory to instructions provided to DFAS Indianapolis by the Purchaser, and not effective if cross leveling is required.

C9.11.7. Initial Deposit Follow-Up. If DFAS Indianapolis receives a signed LOA or Amendment without the required Initial Deposit, they shall follow-up within 10 working days.

C9.11.7.1. Follow-Up Process. DFAS Indianapolis notifies the SCO, the purchaser's paying office, and the Implementing Agency that the Initial Deposit has not been received. This notification states that implementation of the LOA or Amendment is held pending receipt of the Initial Deposit. The Implementing Agency determines whether to extend the offer expiration date (OED) pending receipt of the Initial Deposit. The Implementing Agency issues a letter or message either extending the OED or notifying the customer, DFAS Indianapolis, the SCO, and DSCA that the offer cannot be extended. If the OED cannot be extended or expires without receipt of the Initial Deposit, the Implementing Agency in coordination with DFAS Indianapolis and DSCA (Business Operations Directorate) cancels the LOA or Amendment. A new LOA or Amendment is required if the purchaser's requirement is still valid. A cancelled LOA or Amendment cannot be re-instated. These procedures do not apply to offers where DFAS Indianapolis has been notified that the Initial Deposit is with another USG agency, that funds have been wire transferred (with transaction number), or where the LOA or Amendment is financed by MAP or FMS credit funds.

C9.11.7.2. FMS Credit (Non-Repayable) or MAP Merger Initial Deposits. If the Terms of Sale are FMS Credit (Non-Repayable) or MAP Merger, DFAS Indianapolis uses funds from the appropriate Holding Account to pay the Initial Deposit.

C9.11.8. Delinquent Accounts. Details on arrearages, indebtedness, delinquent debt reporting formats and frequencies are contained in DoD 7000.14-R (reference (o)), Volume 6A, Chapter 12 and Volume 15, Chapter 5. Most collection problems are caused by late payment, rather than default on payments. It generally takes 45-75 days after the billing statement mailing to receive collection.

C9.11.8.1. Interest on Delinquent Accounts. The AECA requires DoD to assess interest on delinquent FMS program debts. DFAS Indianapolis assesses this interest. Interest is based on the net arrearage owed by a purchaser taking into account cumulative financial requirements and cumulative payments received on each FMS case. The DD Form 645, Quarterly Billing Statement, reflects the amount of interest charged to each applicable case.

C9.11.8.2. Delinquent Accounts Procedures. DFAS Indianapolis is responsible for assessing interest and collecting overdue debts to FMS cash sales. This is accomplished by: formal and informal contacts with purchaser representatives; requests for collection assistance from the SCO and DSCA; and contacts with the DoS to determine additional collection actions. When all collection means have been exhausted, DFAS Indianapolis refers the delinquent account to DSCA (Business Operations Directorate), and provides the following supporting data: the debt history including prior collection efforts; a description of disputes between the purchaser and the United States; a statement that resolution through the normal military channel, with responsible foreign officials on behalf of the collection, has failed; and an assessment of any adverse impact on the purchaser if the issue is raised to the diplomatic level. DSCA (Business Operations Directorate) recommends further action by OSD or refers the debt to the DoS for diplomatic assistance. DFAS Indianapolis carries delinquent accounts on the accounting records even after primary collection responsibility is passed to DSCA and the DoS.

## C9.12. DISBURSEMENT FOR FMS AGREEMENTS

C9.12.1. Level of Accounting. FMS monies reimburse U.S. appropriations or are cited directly on payments to U.S. contractors. In accordance with the LOA, cash deposits may be disbursed for the financial requirements of any of that purchaser's implemented cases. Accounting for FMS transactions is at least at the case level (many accounting transactions are recorded at the line level).

C9.12.2. Expenditure Authority. The total DoD available cash for each FMS purchaser is equal to the amount of undisbursed and/or unreserved monies on deposit for the purchaser in the FMS Trust Fund. The available cash is reduced by all reservations of funds (e.g., termination liability, expenditure authority, etc.). Based on the amount of a disbursement request and available funds, DFAS Indianapolis advises the expenditure authority requestor whether the expenditure authority is approved and the disbursement can occur. If a country does not have enough available cash, expenditure authority is not approved and the disbursement is placed on hold. The Implementing Agency ensures the disbursement limit is not exceeded when paying contractors or reimbursing U.S. appropriations.



C9.12.3. Segregating and Accounting for FMS Costs. AECA, sections 22 and 29 (reference (c)) require accurate and prompt segregation and accounting of incremental costs to ensure that DoD appropriations are not adversely impacted by contractual payments on behalf of FMS orders. DoD policy requires contractors to request separate progress payments when more than one purchaser's (including the United States) requirements are included in the same contract. Payments to contractors are reported by the proponent activity (e.g., Implementing Agency) to DFAS Indianapolis to ensure that billings reflect the disbursement rate. If scheduled payments are not adequate, the Implementing Agency modifies the payment schedule using an Amendment or Modification to the FMS case.

### C9.13. PERFORMANCE REPORTING

#### C9.13.1. Reporting Performance of FMS Orders

C9.13.1.1. FMS Integrated Control System (FICS). After an FMS case is implemented, the Implementing Agency executes the program. The Implementing Agency reports the nature and financial value of transactions to DFAS Indianapolis. The Implementing Agency reports accrued expenditures, also referred to as "work-in-process" (e.g., progress payments made to contractors, GFM and/or GFE provided to contractors, NCs, etc.), and physical deliveries within 30 days of the date of shipment or performance. The FICS Delivery Transaction is submitted bi-monthly in accordance with the schedule established by DFAS Indianapolis. The format and instructions for completing the delivery transaction are prescribed in DoD 7000.14-R (reference (o)), Volume 15, Chapter 8. Purchasers direct delivery problems and questions to the Implementing Agency.

C9.13.1.2. FMS Physical (Constructive) Delivery Reporting. The Implementing Agency submits FMS physical (constructive) delivery data for all major end items that have a unit of issue of "EA" for the generic codes shown in Table C9.T15. Items are considered delivered when title passes to the purchaser. Implementing Agencies report, within 30 days, all constructive deliveries for selected materiel lines to DFAS Indianapolis by the 20th of each month in the C1 delivery transaction format (Table C9.T16.), RCS DSCA(M)1141. DFAS Indianapolis, in turn, submits this data to DSCA (Business Operations Directorate) for inclusion in the DSCA 1200 System. These transactions are not a part of the formal FMS billing system. This information is used to prepare AECA required reports and to respond to inquiries.

Table C9.T15. Constructive Delivery Reporting Generic Codes

Generic Code	Description
A1_ - A5_, A9B	Aircraft
B1_ - B4_ (Complete Missile Lines Only)	Missiles
C_ _	Ships
D_ _	Combat Vehicles
E3_	Tactical and Support Vehicles
F2_, F3_, F4_	Weapons
G2_, G4_, G5_ (Less M and Y), G6A	Ammunition
H4_	Communications Equipment

Table C9.T16. C1 Delivery Transaction Format

Column	Data Element
1-2	C1
3-4	Country Code (CC)
5	Implementing Agency
6-8	Case Designator
9-11	Record Serial Number (RSN)
12-15	Blank
16-21	Cumulative Quantity to Date
22-72	Blank
73-78	Reporting Date (YYMMDD)
79	Blank
80	Originator (must always be "A")

C9.13.2. Delivery Reporting Timelines. Timely reporting of delivery information to the FMS purchaser is critical. Estimated price codes may be used to report deliveries of major end items if an actual price is not available within 30 days of the shipment date. Estimated price codes **MUST** be used to report deliveries of major end items if an actual price is not available within 90 days of the shipment date. All estimated billings must be converted to actual billings prior to closure.

## C9.14. FINANCIAL REVIEWS

DSCA reviews the current and forecasted financial posture of an FMS purchaser's program and holds a Financial Management Review with the FMS purchaser to: reconcile financial records, review the financial status of FMS cases, ensure continued solvency of the FMS purchaser accounts, improve cycle times, identify cases requiring intensive financial management, and formulate financing strategies for existing and prospective FMS purchases. DSCA works with the Implementing Agencies, SCOs, DFAS, and the FMS purchaser in planning and executing Financial Management Reviews. Figure C9.F7. provides a mandatory format for preparing for a Financial Management Review. Minor adjustments to this standard format must be authorized by the DSCA Country Finance Director. See Chapter 6 for information on other types of case reviews.

Figure C9.F7. Financial Management Review - Case Financial Status Reporting Format

<b>U.S. - (Country) (Year) Financial Management Review - Case Financial Status Report</b> <b>Data as of: DD MMM YYYY (unless specified otherwise)</b>		
<b>Item</b>	<b>Data/Value</b>	<b>Source(s)/Definition</b>
Case Summary		
Case Designator		Implementing Agency System/LOA documents
Case Description		Implementing Agency System/LOA documents
Year LOA Signed		Implementing Agency System/LOA documents
Total Number of Lines		Implementing Agency System/LOA documents
Supply Summary		
Total Delivered Value		Implementing Agency System/LOA documents; do NOT use DIFS as its delivered value reflects shipments already billed. Definition: Articles/ Services deliveries plus delivered admin and delivered accessories.
Total Number of Open Requisitions		Implementing Agency System. Note: For those systems that do not/cannot track open requisitions, furnish a definition for the data being provided in this field (e.g., PDLIs outstanding).
Total Open Requisition Value		Implementing Agency System
List item, requisition value, and estimated delivery date for each open requisition on a separate line. Note: Optional based on Financial Management Review		Implementing Agency System
Estimated/Actual Case Supply/Services Completion Date		Implementing Agency Case Manager. Enter in MM/YY format
SDR Summary		
Total Number of Open SDRs		Implementing Agency System
Total Open SDR Value		Implementing Agency System
Closure Summary		
Estimated Case Closure Date		Implementing Agency Case Manager, in coordination with primary closure POC. Enter in MM/YY format.
Case Financial Summary		
(1) Total LOA Value		Implementing Agency System/LOA documents
(2) Total Net LOA Value		Implementing Agency System/LOA documents
(3) Highest Financial Requirement		Implementing Agency System/LOA documents. Definition: All financial commitments billed to date PLUS all financial commitments not yet billed (e.g.,

<b>U.S. - (Country) (Year) Financial Management Review - Case Financial Status Report</b>		
<b>Data as of: DD MMM YYYY (unless specified otherwise)</b>		
<b>Item</b>	<b>Data/Value</b>	<b>Source(s)/Definition</b>
		contracts awarded but not delivered). Restated, total value of all programmed requirements. Must include below-the-line surcharges.
(4) Total Collected (current)		DSCA (Business Operations Directorate/Financial Policy and Support) report via e-mail
(5) Excess LOA Value Unprogrammed to Date [(1) - (3)]		
(6) Collections in Excess of Case Value [(4) - (1)]		
(7) Collections in Excess of Highest Financial Requirement [(4)-(3)]		
Note sections (8) and (9) are optional based on individual Financial Management Review. Item (8A) can be a stand-alone item (optional).		
(8) Forecasted Activity (Note: Applies predominantly to cases not yet supply complete.)		
(8A) Disbursements through DD/MMM/20YY		DSCA (Business Operations Directorate/Financial Policy and Support) report via e-mail
(8B) Projected Expenditures:		Implementing Agency Case Manager
(8B1) August-September 20YY		
(8B2) October - December 20YY		
Subtotal, August-December 20YY		
(8B3) January - March 20YY		
(8B4) April - June 20YY		
(8B5) July - September 20YY		
(8B6) October - December 20YY		
Subtotal, January - December 20YY		
(8B7) January - March 20YY		
(8B8) April - June 20YY		
(8B9) July - September 20YY		
(8B10) October - December 20YY		
Subtotal, January - December 20YY		
(8C) Total Projected Expenditures through 31 December 20YY		
(9) Terms of Financing FMS Credit FMS Credit (non-repayable) MAP Merger NADR EIPC Cash (National Funds) Other (Specify)		Latest LOA document (Basic LOA, Amendment, Modification)
Remarks/Comments		Implementing Agency Case Manager

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