



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

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In reply refer to:
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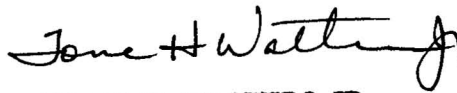
MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Foreign Military Sales (FMS) – Only Determinations (DSCA 04-10)
[SAMM E-Change 5]

The DoD 5105.38-M, "Security Assistance Management Manual (SAMM)," provides information to the Security Cooperation community regarding FMS-Only Determinations. The purpose of this memorandum is to revise the guidance currently in the SAMM. The attached text replaces paragraph C4.5.9 in its entirety.

Guidance in this memorandum is effective immediately and will be included in the SAMM as E-Change 5. If you have any questions regarding this policy, please contact CAPT Chuck Martello, DSCA/P3-Weapons Division, (703) 604-6601, charles.martello@dscamil. Questions regarding the SAMM should be directed to Mr. Steve Harris, DSCA/P3-Policy and Plans Division, (703) 604-6611, steve.harris@dscamil.

Attachment:
As Stated


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SAMM E-Change 5 – Foreign Military Sales (FMS)-Only Determinations

The following replaces Paragraph C4.5.9. in its entirety.

C4.5.9. FMS-Only Determinations. The AECA (reference (c)) gives the President discretion to designate which military end-items must be sold through FMS channels exclusively. This discretion is delegated to the Secretary of Defense and executed by DSCA in close coordination with the Defense Technology Security Administration (DTSA) and the MILDEP or DoD Component responsible for the end-item. The DoS approves or disapproves all sales and is responsible for the continuous supervision and general direction of all sales.

C4.5.9.1. In general, the Department of Defense is neutral as to whether a sale is accomplished via Direct Commercial Sale (DCS) or FMS. However, there are times when the Department of Defense requires that a transaction be accomplished via FMS. Four general criteria are used to determine if a sale is required to proceed through the FMS process. The criteria are: Legislative/Presidential restrictions; DoD/MILDEP policy, directive or regulatory requirement, e.g., the National Disclosure Policy; government-to-government agreement requirements; and interoperability/safety requirements for U.S. Forces.

C4.5.9.2. These criteria, particularly DoD/MILDEP policy, can be further understood by considering four possible elements:

C4.5.9.2.1. U.S. Political/Military Relationship with the End-User. The geopolitical situation and security relationships are taken into account when considering the appropriateness of FMS-Only. The inherent strengths of FMS or DCS licensing methods are also considered in selecting the method that best suits the interests of U.S. and the foreign purchaser within the context of existing world security circumstances.

C4.5.9.2.2. Sale of a New or Complex System or Service. FMS-Only may be recommended:

C4.5.9.2.2.1. To maximize the purchaser's ability to assimilate the technologies and manage its acquisition/logistics.

C4.5.9.2.2.2. For enhanced interoperability and cooperation between U.S. and purchaser's military forces.

C4.5.9.2.2.3. For end-items or services that require complex systems integration with other combat systems.

C4.5.9.2.2.4. For end-items or services that require access to sensitive U.S. government databases, libraries, or software-source code.

C4.5.9.2.2.5. For end-items or services that require EUM or on-site accountability.

C4.5.9.2.3. Diversion and Exploitation of Defense Systems Technologies. Security of sensitive technologies is an area of particular concern that requires greater scrutiny in the

transfer process. Defense systems and munitions that are not particularly complex or sensitive, but still require enhanced control to prevent proliferation to rogue states or terrorist organizations, represent another area where FMS may be more appropriate than DCS.

C4.5.9.2.4. Feasibility of Separating Weapon System Components into FMS/DCS Elements. At times, purchasers may desire all or a portion of a sale to be DCS. It is possible to separate the FMS-Only aspects of a purchase from the portion that can be DCS.

C4.5.9.3. Each MILDEP or DoD Component develops the FMS-Only designation considering the criteria in subparagraphs C4.5.9.1. and C4.5.9.2. The MILDEP or DoD Component forwards FMS-Only systems designations with rationale to DSCA (Policy, Plans, and Programs Directorate/Weapons Division) and DTSA. DTSA enforces the FMS-Only designations within the Department of Defense through the export licensing process. Questions regarding FMS-Only designations should be directed to the MILDEP or DoD Component. Requests for further assistance with FMS-Only designations may be directed to DSCA (Policy, Plans, and Programs Directorate/Weapons Division) for reconciliation or referral to the appropriate DoD element for resolution in accordance with NDP-1, DoD Directive 2040.2 (reference (u)), or DoD Directive 5120.49 (reference (ar)).