

Table of Contents

PART I. AN OVERVIEW OF SECURITY ASSISTANCE

CHAPTER 1. DEVELOPMENT OF SECURITY ASSISTANCE LAW AND POLICY

I. HISTORY OF LEGAL AND POLICY DEVELOPMENT

- § 1:1 Introduction
- § 1:2 Complex evolution of law and policy
- § 1:3 Effect of changing administrations on the security assistance policy climate
 - Carter administration
 - Reagan administration
 - G.H.W. Bush administration
 - Clinton administration
 - —Presidential Decision Directive 34
 - § 1:9 —G.W. Bush administration
 - § 1:10 —Obama administration
 - § 1:11 — —Presidential Policy Directive 27
 - § 1:12 —Trump administration
 - § 1:13 —Biden administration
 - § 1:14 —Second Trump administration
 - § 1:15 Summary

II. STATUTORY, REGULATORY, AND POLICY FRAMEWORK

- § 1:16 Overview
- § 1:17 Statutory framework
- § 1:18 —Authorizing legislation
- § 1:19 — —Foreign Assistance Act
- § 1:20 — —Arms Export Control Act
- § 1:21 — —Amendments
- § 1:22 —Appropriating legislation
- § 1:23 Regulations
- § 1:24 —Security Assistance Management Manual (SAMM)
- § 1:25 —FAR and DFARS
- § 1:26 —DOD Financial Management Regulation
- § 1:27 —International Traffic in Arms Regulation (ITAR)
- § 1:28 Policy restraints on foreign military sales

CHAPTER 2. ROLE OF THE VARIOUS ELEMENTS OF GOVERNMENT

I. THE LEGISLATIVE BRANCH—ROLE OF CONGRESS

- § 2:1 Congressionally legislated policy and general guidelines
- § 2:2 Congressional controls over foreign arms sales
- § 2:3 —Congressional reporting
- § 2:4 —Congressional review of foreign military sales
- § 2:5 —Congressional review of direct commercial sales
- § 2:6 —Effect on U.S. contractors

II. THE JUDICIAL BRANCH

- § 2:7 Role and function
- § 2:8 Effect of judicial action on arms sales

III. THE EXECUTIVE BRANCH

- § 2:9 The President
- § 2:10 The Department of State
- § 2:11 The Department of Defense
 - § 2:12 —Defense Security Cooperation Agency
 - § 2:13 —Under Secretary of Defense (Policy) (USD (P))
 - § 2:14 —Under Secretary of Defense Acquisition and Sustainment (A&S) (USD (A&S))
 - § 2:15 —Under Secretary of Defense (Comptroller) (USD (C))
 - § 2:16 —Military Departments (MILDEPS) and other Implementing Agencies (IAs)
 - § 2:17 —Defense Logistics Agency (DLA)
 - § 2:18 —Defense Contract Management Agency (DCMA)
 - § 2:19 —Defense Contract Audit Agency (DCAA)
 - § 2:20 —Defense Finance and Accounting Service (DFAS)
 - § 2:21 —The Joint Chiefs of Staff (JCS)
 - § 2:22 —Combatant Commands
 - § 2:23 —Defense Security Service

PART II. FOREIGN MILITARY SALES PROGRAM AND PROCESS

CHAPTER 3. FOREIGN MILITARY SALES (FMS) OVERVIEW

I. OVERVIEW

- § 3:1 Relationships
- § 3:2 Process
- § 3:3 Execution

TABLE OF CONTENTS

II. ELIGIBILITY OF CUSTOMERS

- § 3:4 Presidential determination
- § 3:5 Other factors determining eligibility
- § 3:6 Termination or suspension of eligibility

III. ELIGIBILITY OF PRODUCTS AND SERVICES

- § 3:7 Defense articles
- § 3:8 Defense services
- § 3:9 Design and construction
- § 3:10 Ineligible products and services

IV. SELECT FMS GENERAL AND FINANCIAL POLICIES

- § 3:11 Sales determinations
- § 3:12 Total Package Approach (TPA)
- § 3:13 Marketing
- § 3:14 Neutrality
- § 3:15 FMS-only determinations
- § 3:16 Direct commercial sales (DCS) preference
- § 3:17 Concurrent FMS and commercial negotiations
- § 3:18 Use of FAR and DFARS and sole source denials
- § 3:19 Recovery of cost
- § 3:20 Payment in U.S. dollars

V. AUTHORIZED TYPES OF FMS TRANSACTIONS

- § 3:21 Sales of defense articles
- § 3:22 —FMS stock sales
- § 3:23 —FMS procurement sales
- § 3:24 ——Dependable Undertakings, Risk Assessed Payment Schedules, and Credit Assured Payment Schedules
- § 3:25 ——Deferred payment sales
- § 3:26 Leases of defense articles to foreign customers

VI. AUTHORIZED GOVERNMENT-TO-GOVERNMENT FMS CASES

- § 3:27 Overview
- § 3:28 Defined order case
- § 3:29 Blanket order case
- § 3:30 Cooperative logistics supply support arrangement (CLSSA)

CHAPTER 4. THE FOREIGN MILITARY SALES (FMS) CASE

I. INITIATING THE FMS CASE—LETTER OF REQUEST

- § 4:1 Submitting the Letter of Request (LOR)
- § 4:2 —Significant military equipment (SME)

- § 4:3 —Other FMS sales (non-SME)
- § 4:4 —LORs submitted by electronic mail; LORs funded with Foreign Military Financing (FMF); LORs for items managed by United States Special Operations Command (USSOCOM)
- § 4:5 —DOD components authorized to receive LORs
- § 4:6 —Exceptions
- § 4:7 LOR review and validation—Receipt and Acknowledgement
- § 4:8 LOR review and validation—LOR initiation and evaluation
- § 4:9 —LORs requiring advisory memoranda or unique review
- § 4:10 —DSCA and DOS LOR review
- § 4:11 LORs for FMS to non-MOD units
- § 4:12 Requests for other than full and open competition
- § 4:13 Responses to the LOR
- § 4:14 Responses to the Letter of Request—Negative responses
- § 4:15 —Preliminary data
- § 4:16 —Letter of Offer and Acceptance (LOA)

II. FORMATION OF THE FMS CASE—LETTER OF OFFER AND ACCEPTANCE

- § 4:17 Processing the Letter of Offer and Acceptance (LOA)
- § 4:18 Processing the Letter of Offer and Acceptance—Information required in the LOA
- § 4:19 —Terms and conditions
- § 4:20 —Supplementary documents to accompany LOAs during coordination
- § 4:21 —Restatements and reactivations
- § 4:22 —Preparation, review, coordination and approval of LOAs
- § 4:23 —Congressional notification and review
- § 4:24 —DSCA countersignature
- § 4:25 Duration of offer (offer expiration date (OED))
- § 4:26 Acceptance of offer
- § 4:27 —Changes
- § 4:28 Notification of acceptance or rejection

III. AMENDMENTS AND MODIFICATIONS

- § 4:29 LOA amendments and modifications generally
- § 4:30 —Amendment to LOA
- § 4:31 —Modification of LOA
- § 4:32 Pen and ink changes

CHAPTER 5. PRICING FMS CASES TO THE FOREIGN CUSTOMER

I. GENERAL PRICING AND DISCLOSURE POLICY

- § 5:1 Generally
- § 5:2 Stock sales
- § 5:3 Procurement sales

TABLE OF CONTENTS

- § 5:4 —Contract component of the LOA price
- § 5:5 Use of estimated prices in LOAs
- § 5:6 Disclosure to foreign customer and approval of contingent fees

II. INDIRECT AND DIRECT CHARGES

- § 5:7 Surcharges
- § 5:8 —Accessorial and administrative surcharges
- § 5:9 —Nonrecurring cost (NC) recoupment charges
- § 5:10 ——Historical background of nonrecurring cost (NC) recoupment charges
- § 5:11 ——Current rule for application of nonrecurring cost (NC) recoupment charges
- § 5:12 —Asset, tooling rental, or facility rental use charges
- § 5:13 —Contract administration services costs
- § 5:14 Termination liability reserve
- § 5:15 Direct charges
- § 5:16 —Program management costs
- § 5:17 —Government furnished engineering services

III. WAIVER OR REDUCTION OF INDIRECT CHARGES

- § 5:18 Waiver or reduction of surcharges
- § 5:19 —Waiver of FMS administrative surcharge
- § 5:20 —Waiver of contract administration services (CAS)
- § 5:21 —Waiver of nonrecurring cost (NC) recoupment charge
- § 5:22 —Waiver of tooling rental charges for use of DOD assets

IV. OFFSETS

- § 5:23 Offset arrangements
- § 5:24 —Direct offsets
- § 5:25 —Indirect offsets
- § 5:26 U.S. policy regarding offsets
- § 5:27 Inclusion of offset costs in LOA pricing
- § 5:28 Disclosure of offsets to purchaser

CHAPTER 6. EXECUTION AND ADMINISTRATION OF THE FMS CASE

I. TERMS OF SALE, PAYMENTS, AND COLLECTION

- § 6:1 Terms of sale
- § 6:2 Regular payment schedule
- § 6:3 Collection of FMS payments
- § 6:4 Trust fund accounts
- § 6:5 Disbursements
- § 6:6 Financial reviews

II. EXECUTION OF FMS REQUIREMENTS

- § 6:7 General

- § 6:8 FMS stock sales
- § 6:9 FMS procurement sales
- § 6:10 —FMS procurement procedure
- § 6:11 —Cost or pricing data
- § 6:12 —DOD control and customer participation in the procurement
- § 6:13 —Procurements using other than full and open competition
- § 6:14 —Pricing FMS procurement contracts
- § 6:15 ——Prior commercial sale to a foreign customer
- § 6:16 ——No prior commercial sale to a foreign customer
- § 6:17 ——Profit
- § 6:18 ——Certain ceiling limitations not applicable
- § 6:19 Notice to contractor of FMS acquisition
- § 6:20 Agents' fees, sales commissions, and political contributions
- § 6:21 —Unallowability of political contributions
- § 6:22 —Allowability of contingent fees
- § 6:23 —Improper influence
- § 6:24 Independent research and development, bid and proposal (IR&D/B&P) costs
- § 6:25 —Historical perspective IR&D / B&P on FMS contracts
- § 6:26 —Current rule on allowability of IR&D / B&P for FMS contracts
- § 6:27 Taxes paid
- § 6:28 Offset arrangements
- § 6:29 —Allowability of offset costs

III. DELIVERY OF FMS MATERIEL

- § 6:30 General delivery responsibility
- § 6:31 Title transfer and risk of loss
- § 6:32 Use of U.S. flag carriers
- § 6:33 Responsibilities of the U.S. Government—Seller
- § 6:34 Responsibilities of the foreign purchaser
- § 6:35 Responsibilities of the freight forwarder—Middleman
- § 6:36 Transportation of small parcel shipments
- § 6:37 Transportation by commercial bill of lading
- § 6:38 Transportation by Government bill of lading
- § 6:39 Transportation by Defense Transportation System
- § 6:40 Responsibility for discrepancies in quality or condition
- § 6:41 Responsibility for filing claims and tracers
- § 6:42 Diversion of requirements

IV. FOLLOW-ON SUPPLY SUPPORT

- § 6:43 General requirement for follow-on supply support
- § 6:44 —Excess defense articles
- § 6:45 —System support buy out

V. CASE CLOSURE

- § 6:46 General

TABLE OF CONTENTS

- § 6:47 Accelerated case closure
- § 6:48 Nonaccelerated case closure
- § 6:49 End Use Monitoring

PART III. FOREIGN MILITARY FINANCING

CHAPTER 7. FOREIGN MILITARY FINANCING OVERVIEW

I. INTRODUCTION

- § 7:1 General overview
- § 7:2 Background

II. TYPES OF PROCUREMENT FINANCING

- § 7:3 General policy
- § 7:4 Grants and nonrepayable FMF
- § 7:5 Loans
 - § 7:6 —Direct loans
 - § 7:7 —Guaranteed loans—Historical perspective
 - § 7:8 —Guaranteed and direct loans—Current policy

CHAPTER 8. FOREIGN MILITARY FINANCING OF FOREIGN MILITARY SALES

I. ELIGIBILITY FOR FOREIGN MILITARY FINANCING

- § 8:1 Eligibility standards
- § 8:2 —General eligibility
- § 8:3 —Specific eligibility prohibitions
- § 8:4 —Suspension or termination of eligibility
- § 8:5 Credit standards
- § 8:6 Defense items approved for purchase using foreign military financing

II. ANNUAL FMF FUNDING PROCESS

- § 8:7 Congressional Budget Justification (CBJ)
- § 8:8 Congressional authorization and appropriation
- § 8:9 Apportionment

III. ISSUANCE OF FMF CREDITS AND COMMITMENT OF FUNDS

- § 8:10 General implementation
- § 8:11 Commitment
- § 8:12 Interest rates

§ 8:13 FMF funds disbursement

IV. SOURCE OF GOODS AND SERVICES

§ 8:14 Offshore procurement

V. TRANSPORTATION RESTRICTIONS

§ 8:15 General restrictions—U.S. flag vessels and carriers

§ 8:16 Waivers

§ 8:17 —General waiver

§ 8:18 —Nonavailability waiver

§ 8:19 —Security waiver

VI. REPAYMENTS OF FMF LOANS

§ 8:20 Due date and late repayment

§ 8:21 Sanctions for overdue loan repayments—Brooke Amendment

CHAPTER 9. FOREIGN MILITARY FINANCING OF DIRECT COMMERCIAL MILITARY SALES

I. OVERVIEW

§ 9:1 Introduction

II. ELIGIBILITY

§ 9:2 Contractor eligibility

§ 9:3 Item eligibility

§ 9:4 U.S. and non-U.S. content

III. CONTRACTS

§ 9:5 Contract dollar thresholds and changes

§ 9:6 Competition

§ 9:7 Approval processing requirements and timing

§ 9:8 Contract financing limitations

§ 9:9 Required contract provisions

IV. CONTRACTOR DISCLOSURES, CERTIFICATIONS AND AGREEMENTS

§ 9:10 General

§ 9:11 Disclosures

§ 9:12 Certifications and agreements

V. MISCELLANEOUS REQUIREMENTS AND RESTRICTIONS

§ 9:13 Offsets

§ 9:14 Commissions or contingent fees

TABLE OF CONTENTS

- § 9:15 Personnel travel
- § 9:16 Transportation
- § 9:17 Letters of credit and guarantees
- § 9:18 Refunds, penalties, liquidated damages, and draw downs

VI. CONTRACT ADMINISTRATION, AUDIT, AND ACCOUNTING

- § 9:19 Preaward surveys
- § 9:20 Pricing reviews
- § 9:21 Contract administration and audit services
- § 9:22 U.S. Government audits
- § 9:23 Accounting principles
- § 9:24 Dispute resolution

PART IV. INTERNATIONAL TRAFFIC IN ARMS REGULATION, AGENTS' FEES AND COMMISSIONS, AND FOREIGN CORRUPT PRACTICES

CHAPTER 10. SELECTED INTERNATIONAL TRAFFIC IN ARMS REQUIREMENTS

I. INTRODUCTION TO EXPORT CONTROL

- § 10:1 Overview
- § 10:2 Statutory and regulatory framework
- § 10:3 U.S. Munitions List (USML)
- § 10:4 Relation of the ITAR to the regulations of other agencies

II. DEFINITION OF SIGNIFICANT EXPORT CONTROL TERMS

- § 10:5 Overview
- § 10:6 Defense article
- § 10:7 Defense service
- § 10:8 Technical data
- § 10:9 Export
- § 10:10 U.S. person
- § 10:11 Foreign person
- § 10:12 Public release data
- § 10:13 Re-exports, retransfers and temporary imports

III. PROHIBITED EXPORTS (EMBARGOED DESTINATIONS)

- § 10:14 ITAR proscribed destinations
- § 10:15 United Nations embargoes

§ 10:16 U.S. policy implementation by Department of State

IV. GENERAL PROCEDURAL MATTERS UNDER THE ITAR

- § 10:17 Registration
- § 10:18 Commodity jurisdiction procedure
- § 10:19 Advisory opinions and related authorizations

V. LICENSING AND APPROVAL REQUIREMENTS

- § 10:20 General
- § 10:21 Types of licenses and forms
 - Temporary export license
 - Temporary import license
 - Permanent export license
 - Classified defense articles and technical data
- § 10:26 Defense articles
 - Process and procedure
 - Certification letter
 - Country of destination
 - Import certificate and delivery verification
 - Filing licenses and shipping documents
 - Significant military equipment
 - Non-transfer and use certificates
 - Congressional notification
 - Proposals and presentations relating to significant military equipment
- § 10:36 Defense services agreements and other authorizations
- § 10:37 Manufacturing license agreements and technical assistance agreements
 - Approval procedure
 - Other authorizations for defense services
 - Major project authorization
 - Major program authorization
 - Global project authorization
 - Acquisition, teaming arrangement, merger, joint venture authorization
 - Offshore procurement
- § 10:45 Technical data
 - Controlled technical data
 - Uncontrolled information
 - Material in the public domain
 - Public release data
 - General scientific principles
 - Activities constituting an export
 - Licensing requirements for technical data
 - Classified information
 - Unclassified technical data

TABLE OF CONTENTS

- § 10:55 Authority of the Directorate of Defense Trade Controls (DDTC)
- § 10:56 Involvement of other agencies
- § 10:57 Special licensing regime for COMSAT and associated technical data
- § 10:58 Denial of a license
- § 10:59 —Reconsideration

VI. EXPORTS EXEMPT FROM LICENSING

- § 10:60 General
- § 10:61 Exports under the FMS program
- § 10:62 —Transfers by a U.S. Government department or agency
- § 10:63 —FMS shipments on foreign military aircraft and naval vessels
- § 10:64 —FMS shipments by foreign country representatives or freight forwarders
- § 10:65 Exports by a person on behalf of a U.S. Government department or agency
- § 10:66 Canadian exemption and Treaties with Australia and United Kingdom
- § 10:67 Selected hardware exemptions
- § 10:68 —General hardware exemptions
- § 10:69 —In-transit exemption
- § 10:70 —Personal protective gear exemption
- § 10:71 —DOE, NRC controlled exemptions
- § 10:72 —U.S. locations exemption
- § 10:73 Defense Services exemptions
- § 10:74 —Training in basic operations and maintenance
- § 10:75 —Service as a member of regular military force
- § 10:76 —Maintenance and maintenance training to NATO, Japan, Australia, and Sweden
- § 10:77 Technical data exemptions
- § 10:78 —Canadian exemption for technical data
- § 10:79 —U.S. Government exemptions for technical data
- § 10:80 —Plant visit exemptions
- § 10:81 —General technical data exemptions
- § 10:82 Certification, marking, and record retention for use of export exemptions

VII. ENFORCEMENT UNDER THE ITAR

- § 10:83 Criminal and civil penalties and selected examples of export control enforcement
- § 10:84 Enforcement of reporting requirements

CHAPTER 11. AGENTS' FEES AND COMMISSIONS AND POLITICAL CONTRIBUTIONS UNDER THE AECA, FAR, DFARS, AND ITAR

I. INTRODUCTION

- § 11:1 General
- § 11:2 Government contract rules

II. STATUTES AND REGULATIONS ADDRESSING AGENTS' FEES AND POLITICAL CONTRIBUTIONS IN THE ARMS SALES CONTEXT

- § 11:3 Allowability of agents' fees and commissions and political contributions
- § 11:4 —Political contributions
- § 11:5 —Contingent fees
- § 11:6 —Agents' fees and commissions in FMF funded direct commercial sales
- § 11:7 —Allowability restrictions imposed by customer countries
- § 11:8 Awareness of Foreign Corrupt Practices Act provisions

III. REPORTING REQUIREMENTS FOR POLITICAL CONTRIBUTIONS AND AGENT'S FEES AND COMMISSIONS UNDER THE ITAR

- § 11:9 General
- § 11:10 Reporting of agents' fees and political contributions
- § 11:11 Information required to be reported
- § 11:12 Time for submission of report and supplementation
- § 11:13 Who must report
- § 11:14 Payments subject to the reporting requirements
- § 11:15 —Political contributions
- § 11:16 —Fees or commissions
- § 11:17 Information from vendors and recipients of fees and commissions
- § 11:18 —Timeliness of reporting by vendors
- § 11:19 Confidential business information
- § 11:20 Record-keeping

CHAPTER 12. THE FOREIGN CORRUPT PRACTICES ACT

I. BACKGROUND

- § 12:1 Legislative history of the Foreign Corrupt Practices Act (FCPA)

TABLE OF CONTENTS

II. ANTI-BRIBERY PROVISION OF THE FCPA

- § 12:2 Statutory prohibition of corrupt payments, promises, offers, or gifts
- § 12:3 —Corrupt payments, promises, offers, or gifts to foreign officials
- § 12:4 —Corrupt payments, promises, offers, or gifts to foreign political parties, party officials, and candidates
- § 12:5 —Corrupt payments, promises, offers, or gifts knowingly through an intermediary
- § 12:6 Elements of a violation
- § 12:7 —Instrumentality of interstate commerce in furtherance of offer, payment, promise, or authorization of payment or gift to foreign official, party, or candidate
- § 12:8 —Corruptly
- § 12:9 —Obtain or retain business or direct business to any person
- § 12:10 Entities and individuals subject to the statute
- § 12:11 Foreign official, party, party official, or candidate
- § 12:12 Knowing
- § 12:13 Exceptions and defenses
- § 12:14 —Facilitating or expediting routine government action exception
- § 12:15 —Extortion payments exception
- § 12:16 —Affirmative defenses

III. THE ACCOUNTING, BOOKS, AND RECORDS PROVISIONS

- § 12:17 Accounting, books, and records requirements
- § 12:18 —Liability standards and penalties
- § 12:19 —SEC Rules 13b2-1 and 13b2-2
- § 12:20 —National security exemption
- § 12:21 —Reporting by subsidiaries and affiliates

IV. JURISDICTIONAL SCOPE OF THE ACT

- § 12:22 General scope
- § 12:23 Corporate liability for payments by foreign subsidiary or affiliate

V. ENFORCEMENT UNDER THE FCPA

- § 12:24 General enforcement
- § 12:25 Penalties
- § 12:26 SEC enforcement
- § 12:27 —Injunctive relief
- § 12:28 —Disciplinary proceedings against professionals
- § 12:29 —Administrative and civil proceedings against issuers and reporting companies
- § 12:30 Compliance with internal accounting control requirements
- § 12:31 Department of Justice enforcement

FOREIGN MILITARY SALES HANDBOOK

- § 12:32 —DOJ prosecution efforts
- § 12:33 The DOJ business opinion procedure
- § 12:34 —Submitting a request under the business opinion procedure
- § 12:35 —DOJ responses to business opinion procedure requests
- § 12:36 Private right of action under the FCPA

Table of Laws and Rules

Table of Cases

Index