

## DEFENSE ARTICLES LEASE INFORMATION PAPER

**SUBJECT:** Defense Articles Lease Programs and Process

### **BACKGROUND:**

- Definition and Purpose. Under the Arms Export Control Act (AECA), section 61, the President may lease DoD defense articles to eligible foreign countries or international organizations for a period not to exceed five years (plus a specified period of time required to complete major refurbishment work prior to delivery). The President has delegated this authority to the Department of Defense. Leases may provide defense articles for testing purposes, to assist countries in determining whether to procure the article, to allow the USG to respond to an urgent foreign requirement, or to provide for other purposes as approved by DSCA (OPR Programs Directorate). C11.10, DoD 5105.38M, Security Assistance Management Manual (SAMM) details lease process and procedures.
- Who Can Lease Defense Articles? Defense articles may be leased to any country or international organization that is eligible for FMS purchases.
- What Can Be Leased? The President may lease defense articles from DoD stock to eligible foreign countries or international organizations if: there are compelling foreign policy and national security reasons for providing such articles on a lease basis rather than a sale; the articles are not needed for public use (for the period of the lease); and the effects of the lease on the national technology and industrial base are considered. See C11.10.3 in the SAMM.

Ship Leases. Ship leases are authorized under separate, specific legislation as required by 10 U.S.C. 7307 reference (co). AECA, Chapter 6 (reference (c)) requirements also apply to ship leases unless the separate legislation expressly provides otherwise.

Counternarcotics Aircraft to Andean Countries. The International Narcotics Control Act of 1990 (Section 3(g) of Public Law No. 101-623 (reference (cw))) authorizes leases of aircraft to Andean countries for counternarcotics purposes.

Prohibition on Leasing Under 10 U.S.C. 2667. DoD defense articles may not be leased to foreign countries or international organizations under the authority of 10 U.S.C. 2667 (reference (cv)).

- Lease Preparation and Format. All unclassified leases are prepared using the Defense Security Assistance Management System (DSAMS). Certain organizations are authorized to prepare leases. These organizations, known as Implementing Agencies, are responsible for preparing leases in accordance with the SAMM. Classified leases are prepared outside of DSAMS using the same format.
- Lease Duration. Leases may be written for a maximum of five years, plus a specified period of time required to complete major refurbishment work prior to delivery. The shortest lease period is one month and the longest lease period is 60 months. Leases shall provide that, at any time during the lease period, the USG may terminate the lease and require the immediate return of the defense article(s). Leases of less than five years may be extended via an Amendment but the total period under a specific lease may not exceed five years plus the time needed for refurbishment. Subject to receipt of any initial deposit required, the lease period begins on the date shown at the beginning of the lease, unless the period is otherwise specified within the terms and conditions.

- Lease Pricing.

Rental Payment. The lessee must agree to pay in U.S. dollars all costs incurred by the USG in leasing articles, including reimbursement for depreciation (rent) of articles while leased. The rental payment is calculated in accordance with DoD 7000.14-R (reference (o)), Volume 15, Chapter 7. Rental payments do not include an administrative charge.

Replacement of Lost and/or Damaged Items. The lessee must agree to pay the costs of restoration or replacement if the articles are lost, damaged, or destroyed while leased. In this case, the customer is charged the replacement cost (less any depreciation) if the United States intends to replace the articles or the actual article value (less any depreciation) if the United States does not intend to replace the articles. These charges are recouped under an FMS transaction via the LOA.

Payment Schedules. Schedule A of each lease identifies the replacement costs of the item(s) being leased and the schedule for rental payment due to the USG. The payment schedule is established on a quarterly billing cycle, compatible with the FMS billing cycle. If the quarterly cycle does not provide for payment prior to the effective date of the lease, an initial deposit is required to assure that payment is received in advance of the month in which rental is incurred. See C11.10.5.3 in the SAMM for payment schedule details.

Use of FMF or Military Assistance Program (MAP) Merger Funds. FMF or MAP funds cannot be used for lease rental payments. FMF or MAP Merger funds may be used, when authorized by DSCA, for LOAs for services associated with a lease. FMF funds may also be used for leases of aircraft to Andean countries for counternarcotics purposes under the International Narcotics Control Act of 1990. Questions regarding proper sources of funding for leases should be directed to DSCA (Programs and Business Operations/Comptroller Directorates).

Exceptions to the Payment of Depreciation Costs. The following types of leases may be considered for no-rent (rental cost waived) leasing. DSCA must authorize the exception prior to the Implementing Agency notifying a potential lessee that a lease under these terms is available.

- Leases for purposes of cooperative research or development, military exercises, or communications or electronics interface projects may be written at no-rent.
- The President may waive reimbursement of depreciation for any defense article(s) that has passed three-quarters of its normal service life if he or she determines that to do so is important to the national security interests of the United States. This waiver authority has been delegated to the Secretary of Defense. Information required to be provided by Implementing Agencies when requesting this waiver is found in SAMM C11.10.5.5.2.
- Leases made in exchange with the lessee for a lease on substantially reciprocal terms of defense articles for the Department of Defense may be leased at no-rent. In these cases, the President submits a detailed notification for each lease to the Committee on Foreign Affairs (Committee on International Relations) and the Committee on Appropriations of the House of Representatives; and the Committee on Foreign Relations and the Committee on Appropriations of the Senate. See SAMM C11.10.5.5.3 for additional details regarding this waiver.

- Congressional Notification Requirements. AECA, section 62 (reference (c)) requires written certification from the President to the Speaker of the House of Representatives, the Chairman of the Committee on Foreign Relations of the Senate, and the Chairman of the Committee on Armed Services of the Senate before entering into or renewing a lease agreement for a period of 1 year or longer. The certification must be transmitted not less than 15-calendar days before agreements with NATO, NATO member countries, Australia, Japan, New Zealand, or Korea and not less than 30-calendar days before agreements with all other countries or organizations. SAMM C11.10.6 provides details of the Congressional Notification requirements.
- Title of Leased Items. Title does not transfer for leased items.
- Lease Process. Table C11.T18 in the SAMM summarizes the lease process.
- Lease Renewal. Leases may be renewed using the same procedures as for a new lease.
- Lease Terminations. Any proposals to terminate a lease before its expiration date must be coordinated with DSCA (Programs Directorate).
- Lease Amendments. Lease Amendments may be used to extend or change existing leases. Such changes include variations to payment schedules, Schedule A items, or periods of performance. Each Amendment includes the original lease designator and undergoes the same staffing process as the original lease. SAMM C11.10.11 addresses lease amendment requirements.
- Lease Reporting Requirements. Each Implementing Agency is responsible for updating the status of each lease under its cognizance via DSAMS. Additionally, the Implementing Agency must verify the accuracy of payments and notify DFAS of any financial issues when updating their leases in DSAMS. The Implementing Agency electronically notifies DSCA (Programs Directorate) that their leases have been updated not later than 30 days after the end of each quarter. See C11.10.12 in the SAMM for additional details.
- LOAs for Services Associated With a Lease. LOAs are not used for the lease of defense articles. However, an LOA can be used for costs incurred by the USG incident to the lease including but not limited to: restoration and/or replacement as a result of damage, loss or destruction; packing, crating, handling, and transportation (PCH&T); and the sale of associated articles and services, including refurbishment of the defense article(s) required prior to, during, or after the lease period. These costs are not to be included in the lease and the lease shall not remain open (valid) past the associated LOA expiration date. The associated LOA designator is included in General Provision 12 and Schedule A of the lease.

### LEASE PROCESS

