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# PART 25—PREPAYMENT OF FOREIGN MILITARY SALES LOANS MADE BY THE DEFENSE SECURITY ASSISTANCE AGENCY AND FOREIGN MILITARY SALES LOANS MADE BY THE FEDERAL FINANCING BANK AND GUARANTEED BY THE DEFENSE SECURITY ASSISTANCE AGENCY

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AUTHORITY: Title III, Pub. L. 100–202; 31 U.S.C. 321.

SOURCE: 53 FR 25426, July 6, 1988, unless otherwise noted.

## Subpart A—General

### § 25.100 Definitions.

In this part, unless the context indicates otherwise:

(a) *Act* means the provisions entitled "Foreign Military Sales Debt Reform," of Title III, entitled "Military Assistance," of an act entitled "Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988" (Pub. L. 100–202), enacted December 22, 1987.

(b) *AECA* means the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*).

(c) *Borrower* means the obligor on an FMS Advance.

(d) *Closing date* means:

(1) With respect to the prepayment of the amounts permitted by this part to be prepaid of FMS Loans held by DSAA, the date designated by the mutual agreement of both the Borrower and DSAA on which the Guaranty will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, will be prepaid; and

(2) With respect to the prepayment of the amounts permitted by this part to be prepaid of FMS Loans held by the FFB and guaranteed by DSAA, the date designated by the mutual agreement of the Borrower, the FFB, and DSAA on which the Guaranty will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or Portion thereof which the Borrower has selected to prepay, will be prepaid.

(e) *Derivative* means any right, interest, instrument or security issued or traded on the credit of the Private Loan or any Private Loan Portion, including but not limited to:

(1) Any participation share of, or undivided ownership or other equity interest in, the Private Loan or any Private Loan Portion;

(2) Any note, bond or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or secruity interest in, the Private Loan or any Private Loan Portion; or

(3) Any such interest in such an interest or any such instrument secured by such an instrument.

(f) *DSAA* means the Defense Security Assistance Agency, an agency within the Department of Defense.

(g) *Eligible FMS advance* means any FMS Advance which:

(1) Was outstanding on December 22, 1987;

(2) Has principal amounts becoming due and payable after September 30, 1989; and

(3) Bears interest at a rate equal to or greater than 10 percentum per annum.

*Eligible FMS Advance* may include FMS Advances meeting the criteria of Eligible FMS Advance which are made on account of FMS Loans even when such FMS Loans do not, in themselves, meet the criteria of Eligible FMS Loan.

(h) *Eligible FMS loan* means any FMS Loan which:

(1) Was outstanding on December 22, 1987;

(2) Has principal amounts becoming due and payable after September 30, 1989; and

(3) Bears interest pursuant to the terms of the loan agreement relating thereto at a consolidated rate equal to or greater than 10 percentum per annum.

*Eligible FMS Loans* may include FMS Advances which are made on account of FMS Loans meeting the criteria of Eligible FMS Loan even when such FMS Advances do not, in themselves, meet the criteria of Eligible FMS Advance.

(i) *Eligible private lender* means either:

(1) Any of the following entities:

(i) Any banking, savings, or lending institution, or any subsidiary or affiliate thereof, chartered or otherwise lawfully organized under the laws of any State, the District of Columbia, the United States or any territory or possession of the United States, including, but not limited to, any bank, trust company, industrial bank, investment banking company, savings association, savings and loan association, building and loan association, savings bank, credit union, or finance company, which is doing business in the United States;

(ii) Any broker or dealer registered with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934;

(iii) Any company lawfully organized as an insurance company, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or

(iv) Any United States pension fund; or

(2) Any trust or other special purpose financing entity which is funded initially by an entity or entities of the type described in paragraph (i)(1) of this section.

(j) *FFB* means the Federal Financing Bank, and instrumentality and wholly-owned corporation of the United States.

(k) *FMS* means Foreign Military Sales.

(l) *FMA advance* means:

(1) A disbursement of funds made pursuant to a loan agreement between the Borrower and DSAA, which loan agreement provides for making of an FMS Loan; or

(2) A disbursement of funds made pursuant to a loan agreement between the Borrower and the FFB, which loan agreement provides for the making of an FMS Loan.

(m) *FMS loan* means either:

(1) A loan made directly by the Secretary of Defense pursuant to section 23 of AECA; or

(2) A loan made by the FFB and guaranteed by the Secretary of Defense pursuant to section 24 of AECA; and "FMS Loans" mean the aggregate of such loans made to or for the account of a Borrower.

(n) *Guaranteed-amount debt derivative* means any note, bond or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or security interest in, the Private Loan Note or any Private Loan Portion Note or any Derivative, as the case may be, which has an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be.

(o) *Guaranteed-amount equity derivative* means any participation share of, or undivided ownership or other equity interest in, the Private Loan or any Private Loan Portion or any Derivative, as the case may be, which has an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be.

(p) *Guaranteed-amount equivalent* means:

(1) With respect to any Derivative which is equal in principal amount to the Private Loan or any Private Loan Portion, that amount of payment on account of such Derivative which is

equal to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount, as the case may be; or

(2) With respect to any Derivatives which in the aggregate are equal in principal amount to the Private Loan or any Private Loan Portion, that amount of payment on account of such derivatives which is equal to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount, as the case may be.

(q) *Guaranteed loan amount* means that amount of payment on account of the Private Loan which is guaranteed under the terms of the Guaranty.

(r) *Guaranteed loan portion amount* means that amount of payment on account of any Private Loan Portion which is guaranteed under the terms of the Guaranty.

(s) *Guaranty* means either a new guaranty of the United States issued by DSAA or an existing guaranty of the United States transferred by DSAA, in the form of guaranty set forth in §25.405, which guaranty will be attached to a Private Loan Note or Private Loan Portion Note.

(t) *Interest rate difference* means the difference between:

(1) The cost of funds to the Borrower for the Private Loan (expressed in terms of the true rate of interest applicable to the Private Loan) if paragraph (a) of §25.404 applies to the Private Loan; and

(2) The cost of funds to the Borrower for the Private Loan (expressed in terms of the true rate of interest applicable to the Private Loan) if paragraph (a) of §25.404 does not apply to the Private Loan.

(u) *Non-registered obligation* means a bearer obligation which does not comply with all of the registration requirements of the Internal Revenue Code.

(v) *Permitted arrears prepayment amount* means the sum of all arrears, if any, on all FMS Loans, which arrears are outstanding on the Closing Date.

(w) *Permitted guaranty holder* means:

(1) An individual domiciled in the United States;

(2) A corporation incorporated, chartered or otherwise organized in the United States; or

(3) A partnership or other juridical entity doing business in the United States.

(x) *Permitted P&I prepayment amount* means, with respect to each Eligible FMS Loan or Eligible FMS Advance, as the case may be, the sum of:

(1) All principal amounts which become due and payable after September 30, 1989, on the respective Eligible FMS Loan or Eligible FMS Advance; and

(2) All unpaid interest, if any, on the respective Eligible FMS Loan or Eligible FMS Advance accrued as of the Closing Date.

(y) *Private loan* means, collectively, the loan or loans that is or are obtained by the Borrower from an Eligible Private Lender to prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay.

(z) *Private loan note* means, collectively, the note or notes executed and delivered by the Borrower to evidence the Private Loan.

(aa) *Private loan portion* means any portion of the Private Loan.

(bb) *Private loan portion note* means any note executed and delivered by the Borrower to evidence a Private Loan Portion.

(cc) *Total permitted prepayment amount* means the sum of:

(1) The aggregate of the respective Permitted P&I Prepayment amount for all Eligible FMS Loans and all Eligible FMS Advances on account of FMS Loans which FMS Loans do not, in themselves, meet the criteria of Eligible FMS Loans; and

(2) The Permitted Arrears Prepayment Amount.

(dd) *Unguaranteed-amount equivalent* means all amounts of payment on account of any Derivative other than the respective Guaranteed-Amount Equivalent.

(ee) *Unguaranteed loan amount* means all amounts of payment on account of the Private Loan other than the Guaranteed Amount.

(ff) *Unguaranteed loan portion amount* means all amounts of payment on account of any Private Loan Portion other than the respective Guaranteed Loan Portion Amount.

**§ 25.101 OMB control number.**

The reporting requirements in this part have been approved under the Office of Management and Budget control number 1505–0109.

## Subpart B—Qualifications for Prepayment

**§ 25.200 General rules.**

(a) To qualify for a loan prepayment at par pursuant to subsection (a) of the Act, a Borrower must have an Eligible FMS Loan or an Eligible FMS Advance.

(b) A Borrower may prepay the Total Permitted Prepayment Amount in portions using more than one closing; however, all prepayments of the Total Permitted Prepayment Amount must have a Closing Date that is not later than September 30, 1991.

(c) A Borrower may prepay all or a portion of the Total Permitted Prepayment Amount; however, if a Borrower selects to prepay any Permitted P&I Prepayment Amount of an FMS Advance, the Borrower must prepay the entire Permitted P&I Prepayment Amount of such FMS Advance.

(d) If the payment billings of an FMS Loan have been consolidated in accordance with the terms of the respective loan agreement, and if any principal payments have been made on account of the FMS Loan, then the outstanding principal balances of any Eligible FMS Advances shall be determined in accordance with the principal of "first disbursed, first repaid," that is, advances on account of the FMS Loan shall be deemed to have been repaid in the chronological order in which they were disbursed.

## Subpart C—Procedures

**§ 25.300 Application procedure.**

(a) Each Borrower that wishes to prepay at par the Total Permitted Prepayment Amount, or any portion thereof, must submit a written prepayment application. To be considered complete, a prepayment application must contain the following information and materials:

(1) Part I of the prepayment application shall be the identification of each Eligible FMS Loan or Eligible FMS Advance, as the case may be, with respect to which the Borrower has selected to prepay the amount thereof permitted by this part to be prepaid, setting forth with respect to each such Eligible FMS Loan or Eligible FMS Advance:

(i) The date on which the Eligible FMS Advance was made or the date on which the Eligible FMS Loan was signed;

(ii) The original amount of the Eligible FMS Loan or Eligible FMS Advance;

(iii) The principal and interest payment schedule of the Eligible FMS Loan or Eligible FMS Advance; and

(iv) The maturity of the Eligible FMS Loan or Eligible FMS Advance.

(2) Part II of the prepayment application shall be the Borrower's estimate of the Permitted Arrears Prepayment Amount calculated as of the date of the application;

(3) Part III of the prepayment application shall be a description of each Private Loan, 90 percent of which the Borrower seeks to have guaranteed, setting forth with respect to each Private Loan:

(i) The total amount of the Private Loan,

(ii) The proposed principal and interest payment schedule of the Private Loan,

(iii) The proposed maturity of the Private Loan, and

(iv) The identity of each Eligible FMS Loan or Eligible FMS Advance with respect to which amount thereof permitted by this part to be prepaid is to be prepaid with the proceeds of the Private Loan;

(4) Part IV of the prepayment application shall be all material transaction documents, in substantially final form, relating to the prepayment of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, with the proceeds of the Private Loan; and

(5) Part V of the prepayment application shall be the name, address, and telephone number of the Borrower's contact person with whom the FFB or DSAA will communicate to arrange for prepayment and closing.

(b) Each prepayment application shall be submitted in triplicate to