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Defense Surplus Equipment Disposal: Background Information

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Summary

The Department of Defense (DOD) through a Defense Logistics Agency (DLA) component called DLA Disposition Services [formerly the Defense Utilization and Marketing Service (DRMS)] has a policy for disposing of government equipment and supplies considered surplus or deemed unnecessary, or excess to the agency's currently designated mission. DLA Disposition Services is responsible for property reuse (including resale), precious metal recovery, recycling, hazardous property disposal, and the demilitarization of military equipment. The effort to dispose of surplus military equipment dates back to the end of World War II when the federal government sought to reduce a massive inventory of surplus military equipment by making such equipment available to civilians. (The disposal of surplus real property, including land, buildings, commercial facilities, and equipment situated thereon, is assigned to the General Services Administration, Office of Property Disposal.)

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Background

On September 12, 1972, the Defense Property Disposal Service (the forerunner to DRMS) was established under the Defense Supply Agency (now DLA). Defense property disposal offices were established worldwide on or near major military installations. DLA Disposition Services is responsible for property reuse (including the disposal and sale of surplus and excess defense equipment and supplies), precious metal recovery, recycling, hazardous property disposal, and the demilitarization of military equipment. During FY2008 over \$2.2 billion of property was reutilized.¹

DLA Disposition Services provides support at major U.S. military installations worldwide. Headquartered in Battle Creek, MI, the DLA Disposition Services personnel serve in 16 foreign countries (including the Middle East and Southwestern Asia), 2 U.S. territories (Guam and Puerto Rico), and 41 states. DLA Disposition Services are provided in field offices in Afghanistan, Iraq, and Kuwait with teams deploying out to forward operating bases to assist combat units. With over 90 field offices, DLA Disposition Services employs about 1,500 people.

The Reutilization/Transfer/Donation Program establishes a process for inventory considered no longer needed by the Department of Defense (DOD) to be redistributed among various groups.² Property disposal means redistributing, transferring, donating, selling, demilitarizing, destroying, or other “end of life cycle” activities. Disposal is the final stage before the property leaves DOD’s control.³ In some cases, the act of demilitarization—destroying the item’s military offensive and defensive capability—accomplishes the intent of disposal.

Property is considered excess when one particular federal agency determines it is not needed for its particular use, while property is considered surplus when it is no longer needed by the federal government. Most property turned in to DLA Disposition Services by the military services is offered for use in other DOD activities and to other federal agencies.

Property considered surplus can be reused, transferred, donated, or sold; potential recipients may include law enforcement agencies, school systems, medical institutions, civic and community organizations, libraries, homeless assistance providers, state and local government agencies, and the public. During FY2008, about 56,000 military organizations and components turned in over 3.5 million items to DLA Disposition Services.⁴ About half of all surplus items are designated for the foreign military sales program, and about half are made available to other government agencies, eligible donees, or sold to the public.⁵

On July 31, 2008, DLA awarded Liquidity Services, Inc. a contract to be the primary manager for the receipt, storage, marketing, and disposition of virtually all usable defense surplus property approved by DOD for sale to the public. The contract had a base term of three years with two

¹ From the DLA Disposition Services website at <http://www.drms.dla.mil/about.shtml>.

² <https://www.dispositionservices.dla.mil/rtd03/faq.shtml>.

³ See the Acquisition Community Connection at the Defense Acquisition University, at <https://acc.dau.mil>.

⁴ From the DLA Disposition Services website at <http://www.drms.dla.mil/about.shtml>.

⁵ For further discussion of excess defense property, and the demilitarization and disposal of surplus military equipment, see CRS Report RL31675, *Arms Sales: Congressional Review Process*, by Paul K. Kerr; CRS Report RS20428, *Excess Defense Articles: Grants and Sales to Allies and Friendly Countries*, by Richard F. Grimmett; and CRS Report RL31686, *Demilitarization of Significant Military Equipment*, by Valerie Bailey Grasso. Another source for information is the Demilitarization and Disposal section of the Acquisition Community Connection at the Defense Acquisition University.

one-year renewal options.⁶ The contract was later extended through February 15, 2013.⁷ On September 13, 2012, Liquidity Services announced that DLA had exercised the second of (potentially) two 12-month extension periods, under its “Surplus Useable Property Sales Contract” to sell DOD surplus property. The surplus contract’s performance period was extended through February 13, 2014.⁸

Major New Developments⁹

On June 30, 2014, DLA notified the Law Enforcement Support Office (LESO) State Coordinators and the U.S. Forestry Service of a decision to temporarily suspend release of all vehicles and equipment with diesel engines, pending resolution of issues with the Environmental Protection Agency (EPA). According to several press reports, DOD announced that DLA would end the sale, donation, and/or transfer of surplus military vehicles to state and local agencies.¹⁰ These vehicles were historically used for law enforcement support and rural firefighting programs.

However, on July 9, 2014, DLA Disposition Services announced that it would continue to make these military vehicles available to authorized law enforcement and fire-fighting program recipients. DLA Disposition Services posted the following notice on its website:

Following discussions with the EPA, DLA will immediately resume issuing military vehicles and equipment with an associated national security exemption (NSE) to authorized law enforcement agencies and to DOD Fire Fighter Program recipients. EPA has confirmed that equipment transferred to law enforcement and fire-fighting agencies through these programs will continue to be covered by any National Security Exemption (NSE) previously issued by EPA, with the understanding that DLA retains title to the vehicles and appropriate inventory and other management controls remain in effect. We are amending our Memoranda of Understanding to reflect this agreement.¹¹

⁶ <http://www.liquidityservicesinc.com/company/news/press-releases/1183101/>; <http://newsok.com/inhofe-secures-equipment-deal-for-rural-firefighters/article/4987107>

⁷ Clabaugh, Jeff. Liquidity Services Get DOD Extension. *Washington Business Journal*, August 22, 2011, <http://www.bizjournals.com/washington/news/2011/08/22/liquidity-services-gets-dod-extension.html>; also Jamil, Aisha. DOD Extends Liquidity Services Contract for Surplus Usable Property Sales. *Washington Exec*, August 30, 2011, <http://www.washingtonexec.com/2011/08/dod-extends-liquidity-services-inc-contract-for-surplus-useable-property-sales/>.

⁸ Press Release. Liquidity Services, Inc. Receives Contract Extension for Surplus Used Property Sales, September 12, 2012, <http://www.liquidityservicesinc.com/company/news/press-releases/1735034/>. Property is offered for sale through Liquidity Services’ online auction marketplace, at <http://www.govliquidation.com/>. As of July 10, 2014, neither Liquidity Services nor DLA have announced a contract extension.

⁹ This information was provided to CRS via email from DLA Legislative Affairs and the EPA, July 2014.

¹⁰ EPA Forces Loss of Surplus Trucks for Fire Departments. *Citycode Financial*, July 10, 2014, <http://www.citycode.com/2014/07/09/epa-forces-loss-of-surplus-trucks-for-fire-departments/>; Glas, Brittany. EPA Reaches Agreement with Rural Fire Departments. *KSN-TV*, July 8, 2014, <http://ksn.com/2014/07/08/rural-kansas-fire-departments-concerned-over-epa-ruling>; Morgan, Rhett. Feds Reach Pact to Restore Surplus Military Equipment to Aid Rural Firefighters, *Tulsa World*, July 10, 2014, <http://newsok.com/inhofe-secures-equipment-deal-for-rural-firefighters/article/4987107>; and Liquidity Services, Inc. Announces Cessation in Sales for Selected Defense Logistics Agency Surplus Property Items and Preliminary Third-Quarter Fiscal Year 2014 Results, July 10, 2014, *Liquidity Services, Inc.*, <http://www.liquidityservicesinc.com/company/news/press-releases/1946354>.

¹¹ <http://www.dispositionservices.dla.mil/Pages/default.aspx>.

Background

In May 2014, DLA reportedly began investigating the potential transfer and/or sale of soft skinned Humvees. In the process of researching any potential challenges or restrictions, the U.S. Army informed DLA that the engines in these vehicles were not allowed to be “entered into commerce” as they were not specifically approved as meeting Environmental Protection Agency (EPA) Clear Air Act standards. These vehicles were instead granted a National Security Exemption (NSE) by EPA for military tactical use only dating back to 1988. The NSE is founded in both statute and regulation.

DLA Disposition Services was unaware of this arrangement between the Army and the EPA. At the time, DLA was made aware that other vehicles/engines that DLA had previously donated, transferred or entered into law-enforcement and fire-fighter support programs (1033 programs) were also not necessarily Clean Air Act compliant, but had received the NSE. Transfer, donation, and sale could all possibly trigger the statutory prohibition on “entry into commerce” of the NSE vehicles and engines.

On June 30, 2014, DLA notified the Law Enforcement Support Office (LESO) State Coordinators and the U.S. Forestry Service of the decision to temporarily suspend release of all vehicles and equipment with diesel engines pending resolution with EPA. Consequently, release of all vehicles and equipment with diesel engines was temporarily suspended by DLA Disposition based on the statutory and regulatory language. Requisitions for other property and equipment continued to be released.

Controlling Legal Authority

Authority for the disposal of surplus defense property can be found in P.L. 94-519, 10 U.S.C. 381, which amends the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484), P.L. 107-117, and DOD Directive 4140.1, Supply Chain Materiel Management Policy; DOD 4160.21-M Defense Materiel Disposition Manual, and DOD 4160.21-M-1 Defense Demilitarization Manual.¹²

DLA Disposition Services

DLA Disposition Services manages the reutilization, transfer, donation and sale of surplus military property. The Reutilization/Transfer/Donation Program through DLA Disposition Services establishes a process for property considered no longer needed by DOD to be redistributed among various groups. Property considered surplus can be reused, transferred, donated, or sold; potential recipients may include law enforcement agencies, school systems, medical institutions, civic and community organizations, libraries, homeless assistance providers, state and local government agencies, veteran’s organizations, and the public.

Finally, DLA Disposition Services manages the DOD surplus property sales program. Property that is no longer needed by the government may be acquired through public sales, if the property is appropriate and safe for sale to the general public.

¹² http://www.acq.osd.mil/log/sci/mat_disposition.htm.

Past Legislative Activity

P.L. 112-239 (H.R. 4310, 112th Congress) contained at least three provisions that may impact the policy governing the distribution of DOD surplus or excess property.¹³ Section 1051 expanded the Secretary of the Army's authority to loan or donate small firearms, determined to be excess, for use during funerals and other ceremonial purposes;¹⁴ Section 1053 granted the Secretary of Defense the authority to transfer mine-resistant, ambush-protected vehicles and spare parts, to nonprofit U.S. humanitarian, demining organizations for training purposes,¹⁵ and Section 1091 granted DOD the authority to transfer certain aircraft, with exceptions, to the Secretary of Agriculture and the Secretary of Homeland Security for use by the Forest Service and the U.S. Coast Guard.¹⁶

P.L. 112-81 (H.R. 1540, 112th Congress) contained a provision (Section 361) that clarified a previously enacted provision (Section 346 of the Ike Skelton National Defense Authorization Act for FY2011, P.L. 111-383) which made available for sale any small arms ammunition and small ammunition components which were in excess of military requirements. Section 361 amended the conditions that would govern the commercial sale of small arms ammunition components and fired cartridge cases.

H.Rept. 112-329, the conference report that accompanied H.R. 1540, offered the following clarification.

The conferees note that the intent of section 346 of P.L. 111-383, as amended, is to clarify that the only fired cartridge cases (referred to as expended small arms cartridge cases) subject to the provision are intact expended small arms cartridge cases and that the provision does not apply outside the continental United States or overrides established Department of Defense (DOD) trade security controls or explosives safety controls. The conferees note that the DOD would be permitted to demilitarize and recycle expended small arms cartridge cases covered by the provision so long as there is not a significant decrease in intact expended small arms cartridge cases being made available for sale and there is no evidence that commercial demands are not generally being met. The conferees note that based on its current force structure and training requirements, the DOD currently makes approximately 6-8 million pounds of intact (non-demilitarized) expended small arms cartridge cases available each year for commercial sales. The conferees recognize that the amount made available may change as the DOD's force structure or training requirements change. The conferees note that the DOD would be responsible for assessing commercial demands for the purpose of implementing this requirement; the conferees understand that the DOD may choose to conduct market surveys or studies to assess commercial demands for this purpose.¹⁷

In the 111th Congress, the Ike Skelton National Defense Authorization Act for FY2011 (P.L. 111-383, H.R. 6523) contained a provision (Section 1072) that amended Title 10 Section 2576 to broaden the categories of state and local organizations that would be eligible for surplus military equipment to include state and local law enforcement, firefighting, homeland security, and

¹³ P.L. 112-239 (H.R. 4310) was enacted into law on January 2, 2013.

¹⁴ Section 1072. Expansion of Authority of the Secretary of the Army to loan or donate excess small arms for funeral and other ceremonial purposes. H.R. 4310, Subtitle G., Miscellaneous Authorities and Limitations.

¹⁵ Section 1075. Authority to Transfer Surplus Mine-Resistant Ambush-Protected Vehicles and Spare Parts. H.R. 4310, Subtitle G., Miscellaneous Authorities and Limitations.

¹⁶ H.R. 4310, Section 1091. Transfer Excess Aircraft to Other Departments of the Federal Government.

¹⁷ Subtitle G—Other Matters. H.Rept. 112-329, H.R. 1540.

emergency management agencies.¹⁸ Also, the Affordable Reloaded Munitions Supply (ARMS) Act of 2009 (H.R. 2193) was introduced in the House on April 30, 2009. The bill would have prohibited the Secretary of Defense from implementing any policy that prevents or places undue restriction on the sale of “intact spent military small arms ammunition casings” to certain domestic suppliers. The bill had 41 co-sponsors, and was referred to the House Armed Services Committee.

Major Recipients

State and Local Governments

If property cannot be reused or transferred to other federal agencies, it may be donated to state and local government programs. Each state has designated a “State Agency for Surplus Property Program,” a local governing authority to receive and distribute all federal surplus property. The program authorizes “screeners” to handle the logistics, and the state agency may charge a fee for handling the transaction. Eligible recipients include, but are not limited to, organizations that promote public health, safety, education, recreation, conservation, and other public needs, including veterans groups and Native American organizations. Groups that qualify as a “service education activity” may have a slight priority in the screening process.

Law Enforcement Support Office (LESO)

LESO administers 10 U.S.C. Section 2576a, which transfers excess DOD equipment to federal and state law enforcement agencies through the 1033 Program.¹⁹ DLA estimates that since 1990, more than \$4.2 billion worth of property has been transferred; in FY2011 alone, a record \$502 million worth of property was transferred.²⁰

In addition, the 1122 Program (FY1994 National Defense Authorization Act) authorizes state and local governments to purchase law enforcement equipment for counter-drug activities.²¹ Each state appoints a point of contact (POC) for this program. The POC may purchase items from any of the four inventory control points managed by DLA. To order items, applicants are to contact their State Agency for Surplus Property Program.

Firefighting Support Program

Title 10 U.S.C. 2576b authorizes the U.S. Department of Agriculture’s Forest Service to manage the DOD firefighting property transfers. An interagency agreement between DOD and the Forest Service is under the authority of the Economy Act, 31 U.S.C. 1535. The Federal Excess Personal Property (FEPP) Program, administered through the Forest Service, provides equipment to state and territorial forestry programs for wild land and rural firefighting.²²

¹⁸ Title 10 U.S.C. 2576, Surplus Military Equipment: Sale to State and Local Law Enforcement, Firefighting, Homeland Security, and Emergency Management Agencies and Firefighter Agencies.

¹⁹ <https://www.dispositionservices.dla.mil/rtd03/leso/>.

²⁰ See LESO website at <https://www.dispositionservices.dla.mil/rtd03/leso/>.

²¹ <http://www.dla.mil/logisticsoperations/DHS/Pages/DLA1122.aspx>.

²² <http://www.fs.fed.us/fire/partners/fepp/>.

Humanitarian Assistance Program

Title 10 U.S.C. 2557 authorizes DOD to provide excess property for humanitarian relief, domestic emergency assistance, and homeless veterans' assistance, as coordinated through the Defense Security Cooperation Agency, Office of Humanitarian and Refugee Affairs.²³

Public Sales

Property not reused, transferred, or donated can be sold to the general public through public auctions and sealed bidding. Munitions, explosives, and strategic items are not sold.

Veteran Groups

There are at least two ways that veteran groups can qualify for eligibility for DOD surplus property.

If property cannot be reused or transferred to other federal agencies, it may be donated to state and local government programs. Each state has designated a State Agency for Surplus Property Program, a local governing authority to receive and distribute all federal surplus property. The program authorizes “screeners” to handle the logistics, and the state agency may charge a fee for handling the transaction. Eligible recipients include, but are not limited to, organizations that promote public health, safety, education, recreation, conservation, and other public needs, including veteran’s groups and Native American organizations. Groups that qualify as a “service education activity” may have a slight priority in the screening process.²⁴

Property can also be acquired in accordance with Public Law 80-421, which authorizes the Secretaries of the Military Departments to donate or loan certain types of surplus military equipment to recognized, selected recipients.²⁵ The DLA Disposition Services website lists the following organizations as authorized to acquire, through donation or loan, obsolete or condemned combat material, books, manuscripts, works of art, drawings, plans and models for historical, ceremonial, and display purposes:

- Veteran organizations;
- Soldiers Monument Associations;
- State Museums;
- Incorporated Museums;
- Municipal Museums, and
- Sons of Veterans Reserves.²⁶

²³ See <https://www.dispositionservices.dla.mil/rtd03/miscprograms.shtml>; also, <http://www.state.gov/t/pm/iso/c21542.htm>.

²⁴ <https://www.dispositionservices.dla.mil/rtd03/index.shtml>.

²⁵ See 10 U.S.C. 2572, Documents, Historical Artifacts, and Condemned or Obsolete Combat Materiel: Loan, Gift or Exchange, at <http://www.law.cornell.edu/uscode/text/10/2572>.

²⁶ <https://www.dispositionservices.dla.mil/rtd03/veterans.shtml>.

Other Programs

There are other programs which may assist organizations which may fail to qualify for DLA Disposition Services property as a DOD, federal, or donation customer. Such programs include (but are not limited to) museums, educational institutions, National Guard and Senior Reserve Officer Training Corps units, and the Civil Air Patrol.²⁷

For Additional Information

The DLA Customer Contact Center is open 24 hours a day, 7 days a week, at (877) 352-2255, or at DLAContactCenter@dla.mil. For more information about DLA Disposition Services, see <http://www.dispositionservices.dla.mil/index.shtml>.

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²⁷ For further information, see <https://www.dispositionservices.dla.mil/rtd03/index.shtml>.