

## CHAPTER 9

## DISPOSAL OF FOREIGN EXCESS PERSONAL PROPERTY

## A. GENERAL

1. The “Act” requires each Executive agency having FEPP to be responsible for its disposal. On a case by case basis, DRMS will assist the Military Services generators by providing sales services, limited screening, and other disposal support, as maybe required. In all cases, DLA will closely coordinate disposal actions with the appropriate Unified Command and the DoS. The DRMO Contingency Operations mission falls under the DLA Contingency Support Team (DCST), and that it responds only when the Director, DLA responds to a Commander-in-Chiefs Operations Order tasking DCST. FEPP is a distinct category of property not to be **confused** with “excess and surplus”.

2. FEPP, excluding HP, maybe directed/retrograded to the closest DRMO (with prior coordination of the DRMO and receiving DRMO host country). For property located in remote areas without a servicing DRMO, DRMS will determine the type and level of disposal services that can be provided and determine requirements for obtaining contracted disposal services for HW, where **necessary**. Generators will closely coordinate projected property disposal requirements with DRMS.

3. Generators will properly **identify** (by a Material Safety Data Sheet [MSDS]/HW Profile Sheet [HWPS]) FEPP HP generated overseas and turn it in according to Chapter 10, Environmentally Regulated and Hazardous Property. Prior to relinquishing accountability and/or physical custody of HP to a DRMO, overseas generators will comply with the applicable requirements as specified in the Final Governing Standards (FGS) established pursuant to the procedures outlined in the OEBGD and DoDI 4715.5.

4. The Excess Property Unit (EPU) of the U. S. Embassy in the Federal Republic of Germany is authorized to obtain excess equipment after it is determined excess to the DoD, ahead of Security Assistance requirements. This authorization applies to excess vehicles, furniture, office equipment, and related general purpose equipment. Based on a request from the U. S, DoS, this authorization has been extended indefinitely. Accordingly, the EPU may physically screen the aforementioned types such excess property still on the books of US Army Europe (USAREUR) and USAF Europe (US AFE), i.e., but not yet turned-in to a DRMO. However, receipt and issue documentation shall be processed by the servicing DRMO.

5. Disposal actions will be coordinated according to Public Law, Executive Direction, Theater Contingency Operations plans, FGSS promulgated in accordance with procedures established in the DoD OEBGD, and applicable host nation laws and international laws and /or agreements.

6. This chapter applies only to property located outside the United States, Puerto Rico, the Virgin Islands, American **Samoa**, Guam, and the **TTPI**. For property located in Canada, only that portion that prescribes the procedures for the determination of property as foreign excess is applicable. In order to conform to an existing agreement between the United States and **Canada**, the disposition of such property shall be in accordance with that specific agreement.

**B. STATUTORY AUTHORITY.** These instructions are based upon the authority for the disposal of foreign excess property as contained in the Federal Property and Administrative Services Act of 1949, as amended (40 USC511 -5 14), and other pertinent statutes as are referred to here.

### **C. U.S. FOREIGN POLICY**

1, U.S. foreign policy shall govern the disposition of FEPP whether by sale, donation, or **A/D**. In order that the foreign policy of the United States maybe effectively served in foreign countries, foreign excess disposal programs shall be developed and conducted with the coordination and approval of the **U. S**, diplomatic mission in the country concerned. Accordingly, DoD components or their representatives, shall maintain close liaison and cooperate with the U.S. diplomatic representatives and consular offices in the country concerned in order to receive necessary approvals, recommendations, and suggestions from the local U.S. DoS representatives.

2. In conjunction with assigned responsibilities DRMS may deviate from prescribed disposal policy which is in conflict with country-to-country agreements. Proposed deviations shall be reviewed by **DRMS/DLA** before they are accomplished. Copies of overseas command implementations of bilateral agreements shall be provided to **DLA/MMLC**, 8725 John J. **Kingman** Road, Suite 4133, Fort **Belvoir**, VA 22060-6221 and the HQ of the Military Departments concerned.

3. FEPP may not be sold directly or indirectly to denied areas (see DoD 4160.2 1-M-1).

### **D. PROCEDURES**

#### 1. Screening

a. DRMS will screen FEPP in the same manner as CONUS excess and surplus personal property,

b. Security Assistance Screening, SAOS or representatives of the country in which FEPP is located may request items under normal security assistance sales or transfers (DoD 5105.38-M). These requests should be approved to the degree they contribute to the effective disposal of

property. Items may be held until released provided any added storage costs are reimbursed to DoD. Use of in-processor implemented Letter of Offer and Acceptance (LOA) may not be available prior to disposal.

c. Screening for Transfer and Donation

(1) GSA and other Federal agency representatives are authorized to screen FEPP on behalf of Federal civil agencies and authorized organizations for return and use in the United States. Property identified by these screeners as having potential use shall be designated for return to the United States. Through on-site representatives, or by other means, GSA or the transferee shall arrange for shipment (including containerized loads). The transferee shall be responsible for the actual costs incurred and billed for PCH & T of FEPP to facilities in the United States unless other arrangements are made by DLA and GSA. In addition, GSA may establish procedures with **DRMOs** having FEPP where GSA on-site representatives are not located to make a determination as to whether property from those locations shall be returned. Such procedures shall be coordinated with DLA. **DRMOs** having FEPP shall release items for return to the United States upon receipt of documentation by the pertinent GSA office approving the return. The SF 122/123 are the most common methods by which the DRMO should anticipate these approvals.

(2) In addition, the GSA or its accredited representative of the National Association of SASPS may screen FEPP on-site for return to the United States for later donation purposes. DEMIL needs and other limitations normally imposed on disposal of FEPP shall not apply to property being returned to the United States for donation purposes, **After** property has been formally selected for return to the United States by an accredited SASP representative, the respective DRMO shall hold the property for a maximum period of 14 days to permit processing of the application and approval by GSA. The SF 123 is the most common method by which the DRMO should anticipate these approvals. Explicit shipping instructions must be provided with each request. All aspects of the shipping arrangements must be made with commercial shippers and shall be monitored by the requesting **SASP**. Packing, handling, and crating arrangements are the responsibility of the recipient. In the event the DRMO can provide these services, the application must include a statement that the SASP agrees to pay for all requested PCH & T, and related incidental costs, even **if**, upon receipt, the property proves unsuitable for the proposed use.

(3) Recipients of property returned to the United States, whether they be for Federal civil agencies, SASPS, or donees, are required to pay the costs for their return to the United States. Therefore, FEPP required for return to the United States for **further** Federal civil agency, SASP, or donee use shall be supplied only through the method described in this paragraph.

2. FMS of FEPP. See Chapter 12, Security Assistance

3. Disposal of FEPP for substantial benefits or the discharge of claims

a. FEPP (excluding real estate; naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines; and records of the DoD) may be transferred by the Secretary of Defense to foreign countries for foreign currencies or credits, substantial benefits, or the discharge of claims resulting from the compromise or settlement of such claims, in accordance with the law, when the Secretary of Defense determines that the transfer is in the interests of the United States. DUSD (L) is authorized to approve disposal of FEPP for substantial benefits or the discharge of claims when it is determined that it is in the interest of the United States.

b. FEPP shall be eligible for disposal for substantial benefits or the discharge of claims after DoD, FMS, and GSA/SASP screening is accomplished as prescribed in this chapter, unless a waiver from DUSD (L) is obtained.

c. Disposal of FEPP for substantial benefits or the discharge of claims shall be accomplished through use of an MOU. The MOU shall incorporate the mandatory restrictions on the ultimate destination, use, and disposition of the FEPP; **identify** the items and the value of the items using the higher of its market value as military hardware, or fair value computed using the fair value rates listed below; and **identify** the tangible **nonmonetary** benefits to be received by the U.S. Government in exchange for the property. Fair value rates are applied to the established **inventory price** as listed below (excerpted from DoD 7000.14-R DoD Financial Management Regulation, Security Assistance Policy and Procedures.).

<u>Federal Condition Code</u>	<u>Percent of Inventory Price of Materiel</u>
A-1 (Serviceable, unused-good)	50
A-4 (Serviceable, used-good)	40
A-2, A-5, B-1, C-1, D-1, B-4, C-4, D-4 (Serviceable with qualification; materiel is either unused in fair condition or used in good condition)	30
B-2, C-2, D-2, B-5, C-5, D-5, D-7, E-7, F-7, G-7 (Serviceable with qualification; if unused in fair condition; if used in good condition.) (Also includes unserviceable items which are in good condition but require minor repairs.)	20

A-3, B-3, C-3, D-3, A-6, B-6, C-6, D-6, H-7, F-8  
(Serviceable, in poor condition; unserviceable, in  
poor condition; or, unserviceable because item requires  
minor repairs,)

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D-8, H-8, D-9, H-9, F-9, F-X, G-X, H-X  
(Unserviceable, requiring major repairs.)

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d. DUSD (L) shall coordinate with the **ASD(ISP)** and the General Counsel, DoD, in the review and approval of any proposed MOUS relative to this procedure.

e. DoD Military Departments shall:

(1) Determine, in **full** coordination with the appropriate Chief of the U.S. Diplomatic Mission, based on local conditions, whether it is in the interests of the United States to dispose of DoD FEPP for substantial benefits or the discharge of claims.

(2) Report FEPP at the earliest possible date for DoD reutilization screening, and request expedited screening or waivers of screening when pertinent.

**(3)** Develop the U.S. Government position and, in coordination with the DoS, conduct disposal negotiations with the recipient country.

**(4)** Submit proposed MOUS with justification and supporting documentation to the DUSD (L) for review and approval.

f. The Director, **DLA**, shall:

(1) Provide on-site assistance within reasonable limits of existing resources, to include accepting accountability of FEPP received in-place, and accomplishing transfer of title to the recipient country.

(2) Ensure that all requests for expedited screening or waivers of screening are promptly handled.

#### E. LIAISON WITH U. S. DoS

1. The “Act” requires that disposition of FEPP conform to the foreign policy of the United States. To prevent delays of proposed sales and to accord appropriate DoS representatives ample opportunity for consideration of possible foreign policy aspects, sales plans or programs should be developed as far in advance of scheduled sale as possible and processed for coordination and approval. To fulfill this requirement, the following procedures for processing sales of FEPP have been coordinated with the DoS.

2. The U. S. diplomatic mission of each country where property for a sale solicitation is located shall be provided a copy of that sale solicitation expeditiously. The U. S. diplomatic mission shall be advised of **MLI** and **MAP** excess property that are included in a sale solicitation. U.S. mission personnel for this purpose means American diplomatic or consular representatives in the country whose government wishes to negotiate the purchase of **MLIs** as designated in the DoS'S International Traffic in Arms Regulations. This requirement also applies to **MLI** scrap regardless of the purchaser.

3. Prior to award, **DRMS** shall arrange for the appropriate American Embassy or **TSC** office to conduct **I&R** checks on successful bidders of **MLI/SLI** property, including named purchaser(s) and **subreceiver(s)**.

## F. TYPES OF SALES

### 1. General

a. It is DoD policy to sell **FEPP** by competitive bid type sale to the maximum extent practicable. However, in some instances, the country-to-country agreement may require host government right of first **refusal** on **FEPP** generated in the country. Normally, an agreement made between the U.S. Government and the foreign government concerned shall provide the conditions under which United States generated **FEPP** maybe disposed. The DoS or the U.S. diplomatic mission is responsible for making or amending these agreements

b. Since governmental agreements may not be identical, it is essential that DoD components be thoroughly cognizant of existing agreements applicable to the host government to permit expeditious disposition of **FEPP** under conditions prescribed in the agreement. Sales shall be conducted in accordance with policy and procedures prescribed in Chapter 7, **Sales/RRRP**, and any requirements as may imposed by the host country.

**2.** Sales of U.S. Military Mission Property. Whenever U. S. Government owned property which has been assigned to U.S. Armed Forces Attaches at Military Missions becomes foreign excess, it normally shall be reported to the nearest **DRMO** for disposition. Where the volume is small and the Army, Naval, or Air Force Attache Post is located at a point quite distant from any **DRMO**, the Administrative Officer of the diplomatic mission maybe requested to conduct or assist in accomplishing the sale. These sales shall be in accordance with **TSC** procedures and this manual.

G. ABANDONMENT OR DESTRUCTION (see chapter 8, paragraph D).