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EMERGING THREATS: ASSESSING DOD CONTROL OF SURPLUS CHEMICAL AND BIOLOGICAL EQUIPMENT AND MATERIAL

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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EMERGING THREATS: ASSESSING DOD CONTROL OF SURPLUS CHEMICAL AND BIOLOGICAL EQUIPMENT AND MATERIAL

TUESDAY, OCTOBER 7, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Turner, Janklow, Ruppersberger, and Bell.

Staff present: Lawrence Halloran, staff director and counsel; J. Vincent Chase, chief investigator; R. Nicholas Palarino, senior policy analyst; Thomas Costa, professional staff member; Joseph McGowan, detailee; Christopher Skaluba, Presidential management intern, Robert Briggs, clerk/professional staff member; David Rapallo, minority counsel; Karen Lightfoot, minority communications director/senior policy analyst; and Jean Gosa, minority assistant clerk.

Mr. SHAYS. A quorum being present, the Subcommittee on National Security, Emerging Threats and International Relations hearing entitled, "Emerging Threats, Assessing DOD Control of Surplus CB Equipment and Material," is called to order.

Since the anthrax attacks of October 2001, much has been done to strengthen national defenses against biological warfare. Millions have been spent amassing pharmaceutical stockpiles, developing new antidotes and modernizing public health surveillance and response capacities.

The Department of Homeland Security has begun monitoring imports and exports of items like these in this hearing room sought by terrorists, but the increased threat of bioterrorism here at home has not yet affected the way the Department of Defense [DOD] handles the disposition of surplus lab equipment and protective gear that could be of use to would be bioterrorists.

Lax controls may mean DOD may be selling critical components of the bio weapons manufacturing process to persons or nations who wish us harm. Poor inventory controls mean protective suits and masks could end up shielding terrorists while defective suits are given to America's local first responders.

In June of last year, the subcommittee heard testimony from the General Accounting Office [GAO] that new protective gear was being sold cheaply on the Internet as surplus while military units were trying to purchase the same equipment for an obviously far higher price. So we asked GAO to look more closely at what was being sold from the Pentagon's bargain basement.

GAO audited sales of several items that might appear on a bioterrorist's shopping list. Between October 1, 1999 and March 31st of this year, DOD sold more than 600 pieces of lab equipment and more than a quarter of a million protective suits. The equipment found its way to Canada, the Philippines and even the Middle East. To demonstrate how easily and cheaply these potentially sensitive items can be acquired, GAO actually purchased lab equipment and protective gear. The material you see here, and more, originally cost DOD $46,900. It was purchased online for about $4,100, 10 cents on the dollar.

After our earlier hearings, DOD said all defective chem/bio suits could be found and taken out of active circulation and that other surplus suits would no longer be available for public sale. The GAO was able to acquire hundreds of the older battle dress overgarments, some of which were from the defective lots GAO has been trying to cull from the supply chain for more than 3 years. Incredibly, some of those bad suits had been given to a local first responder unit. GAO concludes almost 5,000 of the defective suits may have been issued to State and local law enforcement agencies and others. Vague recall notices by the Defense Logistics Agency mean some first responders may still be relying on protective gear that won't work.

Why raise this subject publicly? We're certainly not trying to give terrorists any ideas. The fact is they already know it. Someone has obviously already thought through the process of making and mailing deadly anthrax, and we're not trying to stop legitimate military surplus vendors. They provide a valuable service to DOD and the public, but the risk of biological terrorism has to be confronted openly and aggressively. Business as usual will not neutralize the potentially lethal combination of lax inventory management, nonexistent end use controls and weak accountability over the germs terrorists want to weaponize.

Yes, much of this equipment can be acquired elsewhere. That may point to a much larger problem. But that portion of the problem attributable to the Department of Defense can be fixed. DOD should not be a discount outlet for bioterrorism equipment. Witnesses from GAO, the DOD Inspector General's office and the Department of Defense will describe the scope of these challenges and what can be done to reduce the risk of homegrown biological terrorism. We welcome their testimony and their service to our country.

At this time the Chair would recognize Mr. Bell.

[The prepared statement of Hon. Christopher Shays follows:]

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Statement of Rep. Christopher Shays
October 7, 2003

Since the anthrax attacks of October 2001, much has been done to strengthen national defenses against biological warfare. Billions have been spent amassing pharmaceutical stockpiles, developing new antidotes, and modernizing public health surveillance and response capacity. The Department of Homeland Security has begun monitoring imports and exports of items [like these] sought by terrorists.

But the increased threat of biological terrorism here at home has not yet affected the way the Department of Defense (DOD) handles the disposition of surplus lab equipment and protective gear that could be of use to would-be bioterrorists. Lax end-use controls mean DOD may be selling critical components of the bio-weapons manufacturing process to persons or nations who wish us harm. Poor inventory controls mean protective suits and masks could end up shielding terrorists while defective suits are given to America's local first responders.

In June of last year, the Subcommittee heard testimony from the General Accounting Office (GAO) that new protective gear was being sold cheaply on the Internet as "surplus" while military units were trying to purchase the same equipment for a far higher price. So we asked GAO to look more closely at what was being sold from the Pentagon's bargain basement.

GAO audited sales of several items that might appear on a bioterrorist's shopping list. Between October 1, 1999 and March 31st of this year, DOD sold more than six hundred pieces of lab equipment and more than a quarter million protective suits. The equipment found its way to Canada, the Philippines and the Middle East.

To demonstrate how easily and cheaply these potentially sensitive items could be acquired, GAO actually purchased lab equipment and protective gear. The material you see here, and more, originally cost DOD $46,900. It was purchased on-line for about $4100.

After our earlier hearings, DOD said all defective chem./bio suits would be found and taken out of active circulation, and that other surplus suits would no longer be available for public sale. But GAO was able to acquire hundreds of the older Battle Dress Overgarments, some of which were from the defective lots DOD has been trying to cull from the supply chain for more than three years. Incredibly, some of those bad suits had been given to a local first responder unit. GAO concludes almost five thousand of the defective suits may have been issued to state and local law enforcement agencies and others. Vague recall notices by the Defense Logistics Agency mean some first responders may still be relying on protective gear that won't work.

Why raise these issues publicly? We're certainly not trying to give terrorists any ideas. Someone has obviously already thought through the process of making and mailing deadly anthrax. And we're not trying to stop legitimate military surplus vendors. They provide a valuable service to DOD and the public.

But the risk of biological terrorism has to be confronted openly and aggressively. Business as usual will not neutralize the potentially lethal combination of lax inventory management, non-existent end use controls and weak accountability over the germs terrorists want to weaponize. Yes, much of this equipment can be acquired elsewhere. That may point to a much larger problem. But that portion of the problem attributable to the Department of Defense can be fixed. DOD should not be a discount outlet for bioterrorism equipment.

Witnesses from GAO, the DOD Inspector General's office, and the Department of Defense will describe the scope of these challenges and what can be done to reduce the risk of homegrown biological terrorism. We welcome their testimony.

Mr. BELL. Thank you, Mr. Chairman. The findings of GAO's undercover investigation are extremely troubling. As you stated, Mr. Chairman, the Defense Department is actively selling to the public equipment that can be used to produce and disseminate biological weapons. To me the most disturbing issue is that these sales aren't one-time accidents or bureaucratic lapses. Quite the contrary. Incubators, evaporators, even protective suits for personal protection were available via the Internet to anyone with a credit card; protective suits that we fail to provide to our men and women in uniform fighting on the front lines in Iraq and Afghanistan, available on the Internet.

These same protective suits were sold by DOD for less than the cost of a McDonald's happy meal and were easier to purchase than a Gap sweater off of eBay.

Mr. Chairman, I apologize for my sarcasm, but this is not what my constituents or the American people would consider adequate homeland security. It is an outrage to think that DOD could have sold equipment used to produce biological agents such as anthrax at one-tenth of its cost to would-be terrorists.

Since the tragic events of September 11th, we no longer have the luxury of waiting for reports like this one to prompt action. Secretary Rumsfeld has recognized this, at least in public appearances. On September 22, 2002, the Secretary asked, do we believe it is our responsibility to wait for a chemical or biological or even nuclear September 11th, or is it the responsibility of free people to take steps to deal with the threat before we are attacked? Of course we know the answer. We must act now to protect this Nation. So why didn't the Pentagon do so?

Why didn't the Department heed the warnings from the Customs Bureau and the Department of Homeland Security last December when they warned that all five items purchased by GAO could be used by terrorists to produce biological weapons? The dots were not just connected. They drew a bold-faced arrow directly to this Pentagon Web site. I certainly hope our witnesses can shed some light on these events.

Finally, Mr. Chairman, I would like to convey the regrets of Representative Schakowsky and Representative Kucinich, the other two Members who originally requested this investigation. Both of them wanted to be here to see GAO's presentation, but they are attending a funeral for Mervin Jones, the late husband of my colleague, Representative Stephanie Tubbs Jones. I know they wanted to attend this hearing because they have been working on this issue for several years, and if this latest report is any indication of the progress so far, there is much work to be done.

Thank you, Mr. Chairman.

Mr. SHAYS. Thank you, Mr. Bell.

At this time the Chair will recognize the vice chairman of the committee, Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman. Mr. Chairman, I want to continue to thank you for your leadership in this committee and bringing to light the numerous areas of which we have threats to our homeland security, sometimes through our own government and our own agencies. You've caused this committee to look at issues concerning DOE, Department of Energy safety, Department

of Defense and also private industry and things that we're not doing that we need to be doing and things we are doing that we shouldn't be doing.

Today we're going to be looking at an issue that is outrageous when you look at the context of where our country is in trying to defend the citizens of the United States. We're not looking at an issue of bureaucratic rigidity. We're looking at issues that seem to violate common sense. They are outrageous when you look at price and just the disposition of government property, when you look at the need domestically and homeland security and first responders and when you look at the threat that we're always trying to diminish in our country. We know we have the knowledge since September 11th of the types of threats that we are facing. I appreciate the chairman bringing to light that also in this process we need to keep in mind the issue that some—in this disposition process some defective suits may be in the hands of local responders, why we have this type of equipment possibly going into the hands of those who want to harm Americans, and, Mr. Chairman, I thank you for your efforts.

Mr. SHAYS. I thank the gentleman.

At this time the Chair would recognize Mr. Ruppersberger.

Mr. RUPPERSBERGER. Again, Mr. Chairman, I also thank you for your leadership in bringing this issue to our attention. I must admit that before this hearing was called I, like a majority of my constituents, was unaware that so much military equipment and materials was not only being sold to the public but being sold over the Internet. Without passing judgment and whether selling these resources was a good or bad idea, I was anxious to learn more about the inventory, the supply chain, the procedures by which these resources were sold and, most important, the oversight throughout the entire process.

It is this oversight that has disappointed me the most. As the GAO report being released today notes, the American government is now in the business of selling resources at a fraction of the original cost. If that was not disturbing enough, it is these—in these tough economic times, much of that equipment is still needed elsewhere in the military or even by America's first responders.

I don't understand how we can purchase top-dollar chemical and biological protective suits and then sell them online for $3 when these suits are needed elsewhere by our military, police or firefighters. I think our new world requires a new way of thinking and a new way of doing business.

With limited dollars, we need to remember that we are all on Team America, and we must provide all responders, those abroad and at home, with the equipment they need to keep us safe. If one military unit has excess, it should go to another. If the military has excess overall, it should go to first responders.

I know this is how it is supposed to work in theory, but this report leads me to believe that this is not happening. I look forward to the testimony today and learning more about this process, how this process works and how the decisionmaking process works throughout.

Thank you, Mr. Chairman.

[The prepared statement of Hon. C.A. Dutch Ruppersberger follows:]

Congressman C.A. Dutch Ruppersberger
Subcommittee on National Security, Emerging Threats, and International Relations Hearing
Emerging Threats: Assessing DoD Control of Surplus Chemical and Biological Equipment and Material
Opening Remarks
10.07.03

Thank you Mr. Chairman. My thanks to you, the ranking member and the other members of this committee for initiating the GAO inquiry resulting in this hearing.

I must admit that before this hearing was called, I… like the majority of my constituents… was unaware of that so much military equipment and material was not only being sold to the public… but being sold over the internet.

Without passing judgment whether selling these resources was a good or bad idea, I was anxious to learn more about the inventory, the supply chain, the procedures by which these resources were sold… and most important… the oversight throughout the entire process.

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I know that is how it is supposed to work in theory, but this report leads me to believe that is not happening. I look forward to the testimony today and learning more about how this process works and how the decision making process works throughout.

Thank you Mr. Chairman.

Mr. SHAYS. I thank the gentleman.

At this time the Chair would recognize Mr. Janklow. Welcome back.

Mr. JANKLOW. Thank you, Mr. Chairman, very much, and, again, I'd like to reiterate what the others have said. Your leadership in these areas that deal with the security of our country and its people in a very nonpartisan, bipartisan way is really astounding and commendable.

Mr. Chairman, as I read the testimony of the various witnesses, the GAO report and the testimony of the witnesses, I thought I was reading fiction. I had no idea that this was nonfiction. It doesn't make any difference where you look. One has to wonder what are these people doing that are responsible for the safety, the security of this type of equipment? With respect to the physical security, of 27 reports, 23 of the reports found weaknesses in physical security. Now, 27 reports, 23 identified weaknesses in control for personal access. Of 27 reports, 23 reported weaknesses in inventory controls, several of them not even able to figure out what their inventory is with respect to these agents, these materials, this equipment that can cause huge havoc and destruction and devastation to people.

With respect to contingency plans, they were defective. Export-import agents, management oversight, the list is endless.

In addition to that, I find it amazing that it isn't that you can buy this stuff on the Internet. It's what are they—who is responsible? We need to know who are the people that are truly responsible for not doing anything. It would be better to have nobody in some of these positions. Then at least we could say that we have to do something about it. What we're stuck with are people that actually have titles and have responsibilities in these areas as they sell defective suits or donate them to local first responders at the same time they can buy the good suits if you want to just make a general purchase over the Internet or another way.

And then as I read the testimony over and over. Some phrases are—people like to use them. We share your concerns, as it says on page 2 of one report, we share your concerns it says on page 3 of a report; we share your concern, as it says another place on page 3. Sharing concern isn't enough, Mr. Chairman. This is ludicrous. It's absurd. We need to know who is responsible. We need to know what is being done to fix it, why isn't it being done on a crash basis.

Daily we worry about other countries and their distribution of weapons of mass destruction. Daily we worry about radioactive isotopes that could escape from other countries and go out into the chain of the world. Daily we worry about weapons of mass destruction like anthrax, Ebola, smallpox, what you can do with livestock with hoof and mouth disease. We read in the news where somebody recovers from a pond a cooler, like an igloo cooler with holes cut in it with places for rubber gloves where they can manipulate anthrax or other agents. Why do they do that? Why ruin a cooler when they can just buy it from the Department of Defense at a reduced price? This is crazy.

Mr. Chairman, I look forward to this hearing and the testimony of these witnesses. This is a great service that you're performing

for the people of America. Now what we need to do is get to the bottom of the problem and see how it gets fixed.

Thank you.

Mr. SHAYS. I thank the gentleman.

This is a team effort, and Ms. Schakowsky had been—when she was a member of the committee, had been very active in this issue, and I also want to say, having been at Congress 16 years, that we have very devoted people in our departments who try to wrestle with these problems and the spirit of this effort, and this committee will try to understand what their challenges are and to see how we can move the process along in a constructive way.

Before recognizing our first panel, I ask unanimous consent that all members of this subcommittee be permitted to place an opening statement in the record and that the record remain open for 3 days for that purpose, and without objection so ordered.

I ask further unanimous consent that all witnesses be permitted to include their written statements in the record, and without objection so ordered.

At this time the Chair would recognize the Chair of the full committee, Mr. Tom Davis, who has done an extraordinary job as chairman of this committee, and we're all very proud I think on both sides of the aisle to work with him and appreciate his leadership.

Chairman TOM DAVIS. I'll just be very brief. Thank you. I think a picture is worth 1,000 words. What we see here, I think to all of us and to the public, is very disturbing, so I'll be interested to hear what the explanations are, where we proceed from here and how something like this could happen. But I appreciate you holding this hearing today. I think it will shed some light on some of the practices that we can then visit I think after we've heard the information that is imparted to us.

Thank you.

Mr. SHAYS. Thank you, Mr. Davis, and we appreciate all the resources you provide to this subcommittee so we can do our job.

At this time the Chair would just recognize our panel. We have Mr. Gregory Kutz, Director, Financial Management and Assurance Team of the U.S. General Accounting Office; accompanied by Ms. Gayle L. Fischer, Assistant Director, Financial Management and Assurance Team; Mr. J. John Ryan, Assistant Director, Office of Special Investigations; Mr. Keith Rhodes, Chief Technologist, Applied Research and Methods. Additionally, we have a second testimony from Mr. Shelton Young, Director, Readiness and Logistic Support Directorate, Office of the Inspector General, Department of Defense.

At this time if our witnesses would stand up, and if there is anyone else that may be called on to respond to questions, I'd like them to stand up so we don't have to swear them in a second time.

[Witnesses sworn.]

Mr. SHAYS. Thank you. We'll start with you, Mr. Kutz. Thank you.

STATEMENTS OF GREGORY KUTZ, DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE TEAM, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY GAYLE L. FISCHER, ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE TEAM; JOHN J. RYAN, ASSISTANT DIRECTOR, OFFICE OF SPECIAL INVESTIGATIONS; KEITH RHODES, CHIEF TECHNOLOGIST, APPLIED RESEARCH AND METHODS; AND SHELTON YOUNG, DIRECTOR, READINESS AND SUPPORT DIRECTORATE, OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

Mr. KUTZ. Mr. Chairman, members of the subcommittee——

Mr. SHAYS. Let me just say that we're going to do a 5-minute time, then roll over the clock another 5 minutes. I understand your testimony may creep a little over 10, but I think it's important for you to set up this issue, and so we understand that your testimony may be a little longer than usual.

Mr. KUTZ. I appreciate that, and thank you for the opportunity to be here to discuss the sale of DOD excess property. As you mentioned, last year we told this subcommittee that DOD was selling JSLIST chem/bio suits on the Internet for pennies on the dollar, while at the same time buying new ones.

Public sales of the suits our soldiers wear today raise concerns about security issues such as reverse engineering. Now we've identified another problem with controls over the sale of excess property. Today our bottom line is that DOD is selling excess property that could be used to produce and disseminate anthrax or other biological agents.

My testimony has three parts. First, background on controls over biological source agents and the expertise needed to produce anthrax. Second, the sale of excess DOD biological equipment and protective clothing. And third, controls over public sales of these items.

First, the anthrax attacks of 2001 have heightened the public's awareness to the risk of a biological attack on the United States. Experts advised us that the production of biological agents for use as a weapon of mass destruction would require substantial expertise and sophisticated equipment. However, they told us it was more likely that terrorists could produce and disseminate a crude form of anthrax that could be used to cause fear, significant economic consequences and some deaths.

The biological source agent is also needed to produce anthrax. Subsequent to the anthrax attacks of 2001, GAO and agency IGs assessed controls at laboratories that handle biological source agents. Substantial problems were identified such as inventory control, physical control and transfer controls. As a result, biological agents may have fallen into the wrong hands.

Moving on to my second point, we found that DOD is selling excess property that could be used to produce and disseminate anthrax. Similar property is available from other sources such as medical industry suppliers, indicating a broader problem.

As you requested, we established a fictitious company and purchased excess DOD property over the Internet from govliquidation.com. We spent $4,100 to purchase these new and usable items. We have with us today the biological equipment and

some of the chem/bio suits and related protective gear that we purchased. The biological equipment currently has no restrictions for sales to the public.

Let me walk you through the six exhibits which you'll probably have difficulty seeing from up there, but they will be on the monitor at the same time. First, and to my far right, we purchased a biological safety cabinet. We found that at least 18 similar cabinets were sold by DOD over the last 3½ years. Although purchased by DOD several years ago, this cabinet appears to be unused.

Second, a bacteriological incubator, we found that DOD sold at least 199 similar incubators over the last 3½ years, including larger versions.

Third, a laboratory centrifuge, we found that DOD sold at least 521 centrifuges over the last 3½ years.

Fourth, a laboratory evaporator, we found that DOD sold at least 65 laboratory evaporators over the last 3½ years.

Experts told us that the final two exhibits, chem/bio suits and related protective gear, would be critical to the protection of terrorists during the production, handling and dissemination of anthrax.

Unlike biological equipment, DOD's policy is that the chem/bio suits and protective gear should not be sold to the public. However, as our fifth exhibit clearly shows, this policy has not been effective.

In June and August 2003 we purchased two DOD bid lots that included over 500 chem/bio suits. We found that DOD sold at least 286,000 chem/bio suits over the last 3½ years.

Several of the suits you see exhibited are unused in sealed packages and have not exceeded their expiration date for effectiveness. To purchase these suits, we submitted fictitious information to DOD and had an end use certificate issued for these purchases.

In addition, 379 of the suits we purchased were defective battle dress overgarments. As you may recall from prior hearings of this subcommittee, DOD has been unable to account for about 250,000 of these defective suits. Our investigation found that all 379 of the defective suits that we purchased had previously been issued to local law enforcement agencies. In addition, 4,700 suits that may be defective were also issued to local law enforcement.

In addition to chem/bio suits, DOD was selling restricted protective gear similar to our sixth exhibit. We found that DOD sold several hundred thousand pieces of protective gear over the last 3½ years.

Because protective gear was only available in large bid lots at the time we made our purchases, we bought these items from a private sector vendor that sells them to DOD. We paid $190 for the items shown on the table, including a mask, filters, hood, gloves and boot covers.

We also found that DOD excess property is feeding a robust secondary market. The purchase and sale of DOD excess property appears to be a profitable venture with many individuals and businesses involved. We investigated 42 buyers of our case study items. We found that 15 of these buyers exported used laboratory equipment to countries such as the United Arab Emirates and the Philippines. Individuals in these countries are known to be involved in transshipments to terrorist-supporting countries.

One of the buyers we investigated had been contacted previously by the FBI has part of the anthrax investigations from 2001. The FBI contacted this buyer about the disposition of several micromilling machines purchased originally from DOD.

My third point is that Federal regulations and policies do not restrict DOD from selling our case study biological equipment to the general public. Initiatives exist to monitor and control exports of the type of items that we purchased, such as Customs Operation Shield America and the Australia Group Agreement. However, there are no Federal regulations for control of domestic sales of any of these items.

In summary, sales of biological equipment and protective clothing is a much broader issue than DOD excess property. The biological equipment and protective gear being sold by DOD are available from a number of sources worldwide. However, uncontrolled public sale of DOD excess property increases the risk that terrorists could obtain and use these items to produce and deliver anthrax within the United States.

Our related report includes two basic recommendations for DOD, which they concur with. First, a risk assessment of excess property sales should be done in conjunction with the DOD scientific community and the Department of Homeland Security. It may be that several of the items that we purchased or other items should not be sold to the public.

Second, DOD needs to establish mechanisms to ensure that protective suits and related gear are not sold to the public. Lack of adherence to valid policies is a chronic problem at DOD that in this case could have significant consequences.

Mr. Chairman, this ends my statement. Mr. Rhodes, Special Agent Ryan, Ms. Fischer and I will be happy to answer any questions.

[The prepared statement of Mr. Kutz follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on National Security, Emerging Threats and International Relations, Committee on Government Reform, House of Representatives

For Release on Delivery
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DOD EXCESS PROPERTY

Risk Assessment Needed on Public Sales of Equipment That Could Be Used to Make Biological Agents

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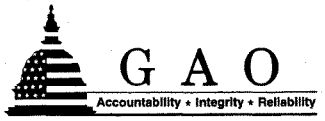

GAO-04-81TNI

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Highlights

Highlights of GAO-04-81TNI, a testimony before the Subcommittee on National Security, Emerging Threats and International Relations, Committee on Government Reform, House of Representatives

Why GAO Did This Study

Due to continuing concerns about bioterrorism and the potential for future anthrax attacks, GAO was asked to audit controls over public sales of excess DOD biological equipment and chemical and biological protective clothing that could be used to produce and disseminate biological warfare agents. GAO used a case study approach to determine (1) the extent to which DOD is selling biological equipment and protective clothing that can be used to make and disseminate biological agents, such as anthrax, and (2) whether existing federal regulations and guidance in DOD policies and procedures address the risk of public sales of these items.

GAO will be issuing a report with recommendations that DOD, in conjunction with its scientific community, the Department of Homeland Security, and the Department of Health and Human Services, perform a risk assessment as part of an overall effort to develop and implement appropriate controls over sales of selected excess biological equipment. GAO also recommends that DOD take a number of steps to ensure proper control of DOD protective suits and related gear.

For more information, contact Gregory Kutz at (202) 512-9095 or kutzg@gao.gov or Keith Rhodes at (202) 512-6288 or rhodesk@gao.gov.

October 7, 2003

DOD EXCESS PROPERTY

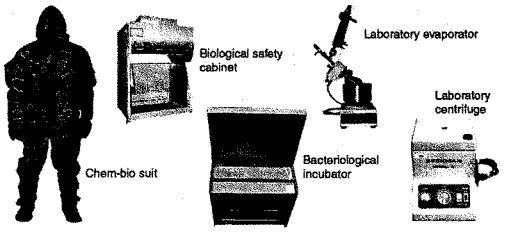
Risk Assessment Needed on Public Sales of Equipment That Could Be Used to Make Biological Agents

What GAO Found

Many items needed to establish a laboratory for making biological warfare agents were being sold on the Internet to the public from DOD's excess property inventory for pennies on the dollar, making them both easy and economical to obtain. Although production of biological warfare agents requires a high degree of expertise, public sales of these DOD excess items increase the risk that terrorists could obtain and use them to produce and deliver biological agents within the U.S. Further, the possibility that *bacillus anthracis* (anthrax) and other biological source agents could have fallen into the wrong hands due to poor controls at laboratories handling biological agents, as previously reported by GAO and other federal investigators, calls for an assessment of the national security risk posed by public sales of excess DOD biological laboratory equipment and protective clothing.

As requested, GAO established a fictitious company and purchased over the Internet key excess DOD biological equipment items and related protective clothing necessary to produce and disseminate biological warfare agents. In total, GAO spent about $4,100 to purchase these new and usable excess items, with a total original acquisition cost of $46,960. GAO's investigation of several buyers of the biological equipment items found that they exported them to countries, such as the Philippines, Egypt, and the United Arab Emirates, for transshipment to other countries—some of which may be prohibited from receiving exports of similar trade security controlled items.

Excess DOD Biological Equipment and Protective Clothing and Related Gear Purchased by GAO



Source: GAO.

Neither federal regulations issued by other agencies nor DOD policies generally restrict DOD from selling the case study biological equipment items to the general public. Further, DOD units did not always follow the department's January 2003 policy for restricting chemical and biological protective suits and related gear—masks, hoods, boots, boot coverings, and gloves—to DOD use only. While our audit focused on DOD sales, the case study items are available from other sources, indicating a broader problem.

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss the results of our audit and investigation of controls over the public sale of selected Department of Defense (DOD) excess property items. At the Subcommittee's June 2002 hearing on ineffective and inefficient DOD business processes, we testified that the lack of asset visibility over the Joint Service Lightweight Integrated Suit Technology (JSLIST)[1] resulted in DOD excessing and selling JSLIST over the Internet for pennies on the dollar, while at the same time procuring hundreds of thousands of new garments annually. The anthrax attacks of 2001 heightened the public's awareness of the risk of a biological attack on the United States. You were concerned that excess DOD biological equipment and chemical and biological protective clothing could be used by terrorists[2] to make and disseminate biological agents, such as *bacillus anthracis* (anthrax). Our discussion focuses on anthrax because it serves as a well-known example of a biological agent.

Conflicting statements have been made before the Congress on how difficult it would be for terrorists or a lone scientist to effectively produce and disseminate anthrax to cause mass casualties. As we previously reported,[3] terrorists face serious technical and operational challenges at different stages of the process for producing and delivering biological agents. Experts represented to us that the production of biological agents as a weapon of mass destruction would require substantial expertise and sophisticated equipment, and that several other obstacles would need to be overcome. For example, terrorists who may lack access to an effective

[1] JSLIST is a universal, lightweight, two-piece garment (coat and trousers) that when combined with footwear, gloves, and protective mask and breathing device, forms the warfighter's protective ensemble. Together, the ensemble is to provide maximum protection to the warfighter against chemical and biological contaminants without negatively impacting the ability to perform mission tasks. JSLIST is the current model protective suit used by the military forces.

[2] We defined terrorists as non-state actors not provided with a state-developed biological weapon. The terrorists could be of foreign or domestic origin and would be operating illegally and outside a state-run laboratory infrastructure or weapons program.

[3] U.S. General Accounting Office, *Combating Terrorism: Need for Comprehensive Threat and Risk Assessments of Chemical and Biological Attacks*, GAO-NSIAD-99-163 (Washington, D.C.: Sept. 14, 1999), *Combating Terrorism: Observations on the Threat of Chemical and Biological Terrorism*, GAO/T-NSIAD-00-50 (Washington, D.C.: Oct. 20, 1999), and U.S. General Accounting Office, Statement for the Record, *Diffuse Security Threats: Information on U.S. Domestic Anthrax Attacks*, GAO-03-323T (Washington, D.C.: Dec. 10, 2003).

vaccine or antibiotic/antiviral treatment for biological agents would be exposed to a significant risk. In addition, terrorists would risk capture and personal safety in acquiring and processing source materials, disposing of byproducts, and releasing the anthrax. Further, outdoor delivery of anthrax can be disrupted by pollution and meteorological conditions. Once released, an aerosol cloud gradually dissipates over time as a result of exposure to oxygen, pollutants, and ultraviolet rays. If wind conditions are too erratic or strong, the agent might dissipate too rapidly or fail to reach the desired area. Indoor dissemination of anthrax could be affected by the air exchange rate of the building. Given the difficulty involved in producing and releasing high-quality agents that could cause mass casualties, experts told us it is more likely that terrorists could produce and disseminate a crude form of anthrax or biological agent. The dissemination of even a crude form of anthrax, particularly the simultaneous dissemination at multiple locations, could result in widespread shutdowns, panic, possibly some infections and deaths, and major national security concerns.

Further, as previously reported by GAO[4] and six other federal agencies, there is a lack of assurance that biological source agents have not fallen into the wrong hands due to poor controls at laboratories handling biological source agents through at least 2002. The DOD Inspector General (IG) has reviewed 26 federal agency investigative reports on security over biological source agents prepared by the Department of Agriculture, the Army, DOD, the Department of Energy, the Department of Health and Human Services (HHS), and the Department of Veterans Affairs. The DOD IG review identified nine systemic areas of weakness that were reported for more than one agency, including management oversight, policy and procedures, physical security, personnel access, inventory control, emergency plans, the Centers for Disease Control and Prevention (CDC) registration, training, and transfer controls. According to a DOD IG official, at the time of the 2001 anthrax attacks, it was determined that the federal government did not have a complete inventory of biological source agents. Moreover, laboratories did not have a complete inventory of the source agents they handled, and they had not performed risk assessments as a means of identifying and reducing or eliminating vulnerabilities. The possibility that anthrax and other biological source agents could have fallen into the wrong hands due to poor controls at laboratories handling biological agents, as previously reported by GAO and other federal

[4] U.S. General Accounting Office, *Homeland Security: CDC's Oversight of the Select Agent Program*, GAO-03-315R (Washington, D.C.: Nov. 22, 2002).

investigators, calls for an assessment of the national security risk posed by public sales of excess DOD biological laboratory equipment and protective clothing.

While our audit and investigation focused on DOD sales of laboratory equipment, laboratory equipment is available from other sources, including General Services Administration (GSA) sales of federal agency excess property, medical industry suppliers, manufacturers, and others—indicating a much broader problem. Our DOD work covered excess property inventory activity related to five case study items, including four pieces of biological laboratory equipment and chemical and biological protective suits (coats and trousers), for fiscal year 2000 through the first 6 months of fiscal year 2003. We obtained and analyzed DOD's excess property database and its Internet sales database, except that we did not audit the general operating system or application system controls over the electronic data processing of DOD excess property transactions or verify the accuracy of the databases. In performing our work, we discussed the production, weaponization, and dissemination of biological agents with experts formerly with U.S. and foreign biological warfare and public health programs. We conducted our audit work and our investigative work from December 2002 through September 2003 in accordance with generally accepted government auditing standards and standards prescribed by the President's Council on Integrity and Efficiency, respectively. Appendix I provides background on DOD's excess property disposal process.

My remarks today will focus on (1) the extent to which DOD is selling biological equipment and protective clothing that can be used to make and disseminate biological agents, such as anthrax, and (2) whether existing federal regulations and guidance in DOD policies and procedures address the risk of public sales of these items.

Summary

In summary, we found that DOD was selling excess biological laboratory equipment and chemical and biological protective clothing over the Internet to the public from its excess property inventory for pennies on the dollar, making them both easy and economical to obtain. The possibility that anthrax and other biological source agents could have fallen into the wrong hands combined with the ability to easily and economically obtain excess DOD biological equipment and protective clothing over the Internet increase the risk that this equipment could be used to produce and disseminate a biological warfare agent, such as a crude form of anthrax. Although the production of biological warfare agents requires a high degree

of expertise, public sales of these DOD excess items increase the risk that terrorists could obtain and use them to produce and deliver biological agents within the United States.

In total, we spent about $4,100 using a fictitious company and fictitious individual identities to purchase over the Internet a large number of new and usable items, including a biological safety cabinet, a bacteriological incubator, a centrifuge, and an evaporator. We also purchased excess DOD chemical and biological protective suits (jackets and trousers) and related gear, such as a mask, hood, gloves, and boot covers, that could be used to protect terrorists during the later stages of production of biological agents when particles may become aerosolized as well as during the handling and dissemination of biological warfare agents. The total original acquisition value of the items we purchased was $46,960. We submitted End Use Certificates[5] in the name of a fictitious individual for our purchases of chemical and biological protective clothing. DOD approved our End Use Certificates because there were no suspicious activity or export violations associated with the fictitious individual and our fictitious address was not detected.

Further, our investigation of numerous buyers of the DOD case study items identified a large secondary market for used biological equipment and protective clothing in good condition. We found that some buyers of excess DOD biological equipment resold these items to buyers in Canada, the Philippines, Malaysia, Egypt, and Dubai in the United Arab Emirates (UAE) for transit to India, Pakistan, and other countries. Once these items are in the secondary market, controls are not adequate to prevent their sale to countries that are prohibited from receiving exports of certain U.S. technological items that are subject to trade security control.

In reviewing federal regulations issued by other agencies with various authorities over the sale, control, or export of biological equipment and related DOD policies, we found that these requirements do not generally restrict DOD from selling the case study biological equipment to the general public. Further, DOD units did not always follow the department policy issued in January 2003 to restrict chemical and biological protective clothing to DOD use only. The Department of Homeland Security's Bureau of Customs and Border Protection has a program–Operation Shield

[5] An End Use Certificate is a form used by DOD to document the intended destination and disposition of sensitive, controlled items released from the department.

America—to monitor sales and exports of about 100 nuclear, biological, and chemical items sought by terrorists, including all five of the types of items in our biological equipment and protective clothing case studies. Although Customs officials briefed DOD policy and investigating officials in December 2002, DOD has not reassessed its policy of selling excess biological equipment to the public.

We plan to issue a report with recommendations for DOD to perform a risk and vulnerability assessment, in consultation with the DOD scientific community, the Department of Health and Human Services, and the Department of Homeland Security, as part of an overall effort to develop and implement appropriate controls over sales of selected excess biological equipment. We are also making several recommendations for DOD to improve controls over excess chemical and biological protective suits. DOD officials told us that they agree with our recommendations and will take appropriate actions to address them.

DOD Sold Biological Equipment and Protective Clothing Items That Can Be Used in the Production and Dissemination of Biological Agents

We found that much of the biological equipment needed to establish a laboratory for producing biological agents are among DOD excess property items sold to the public over the Internet by *govliquidation.com*. While there are many legitimate uses for biological equipment and protective clothing, our undercover purchases of excess DOD case study biological equipment and protective clothing and our investigations of buyers of these items demonstrate the risk posed by DOD sales of these excess property items.

Excess DOD Items Could Be Used in the Production and Dissemination of Biological Agents

Our analysis of excess DOD property sold over the Internet identified five case study biological equipment and personal protective clothing items—a biological safety cabinet, a bacteriological incubator, a laboratory centrifuge, a laboratory evaporator, and chemical and biological protective clothing (trousers and jacket)–that are among the items needed to establish a laboratory to produce biological warfare agents. Chemical and biological protective suits (jackets and trousers), along with a mask and filter, a hood, gloves, and boots or boot covers (also sold over the Internet by DOD), could be used to protect an individual from infection during the later stages of production of biological warfare agents and during their handling and dissemination. These suits and related gear would be particularly important to terrorists using less sophisticated

equipment than found in a state-sponsored laboratory. Table 1 shows the number[6] of excess DOD case study items turned in for disposal and the disposition of those items during the 3-1/2 years covered by our audit and investigation.

Table 1: Disposition of Case Study Items from October 1, 1999, to March 31, 2003

Case study category	Total turn-ins	Reuse, transfer, donation, other[a]	Sales[b]
Biological safety cabinets	24	6	18
Biological and bacteriological incubators	402	203	199
Laboratory centrifuges	1,315	794	521
Laboratory evaporators	263	198	65
Chemical and biological protective suits (trousers and jackets)	1,466,481	1,180,249	286,232
Total	**1,468,485**	**1,181,450**	**287,035**

Source: GAO analysis of DOD data.

[a]Other includes items remaining in inventory and those disposed of as scrap.

[b]Sales include items sold by the Defense Reutilization and Marketing Service(DRMS) field offices (DRMO) and items turned over to Government Liquidation, LLC for sale to the public.

At the request of the Subcommittee and Representative Schakowsky, we established a fictitious company and fictitious individual identities and over the course of several months purchased over the Internet numerous DOD excess chemical and biological protective suits and each of the above case study biological equipment items necessary to produce and disseminate biological agents. In addition to our case study chemical and biological protective suits, to demonstrate that a complete ensemble could easily be obtained, we purchased one set of related protective gear, including a mask and filter, a hood, gloves, and boot covers, from a private vendor that supplies these items to DOD.

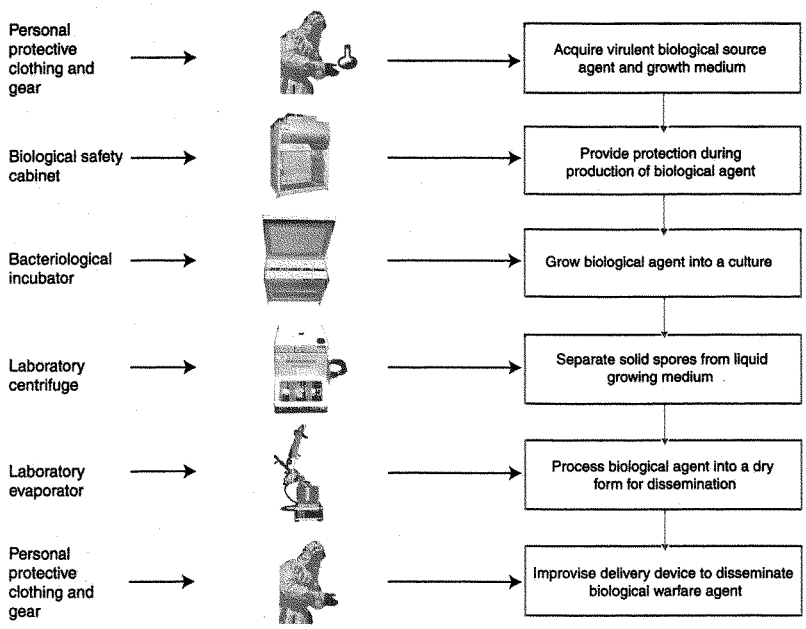
While the availability of biological equipment and the possibility that source agents could have fallen into the wrong hands increase the risk that terrorists could produce and disseminate an anthrax biological warfare

[6] The data in table 1 are based on our queries of DRMS and Government Liquidation, LLC databases using DOD stock numbers and nomenclature. Because database information included non-standard names and identifying information, there are likely to be additional items that met our case study criteria that were not identified in our work.

agent, scientific hurdles involved in producing the anthrax agent would still need to be overcome. The process for producing a biological agent such as anthrax is complex. According to biological warfare program experts, to survive and be effective, a virulent biological agent, such as anthrax, must be grown, handled, and stored properly. In addition, individuals working with biological warfare agents generally would want to protect themselves from infection while performing various procedures. The protection of personnel and the immediate laboratory environment are accomplished by good microbiological technique and the use of appropriate safety equipment, including biological safety cabinets and protective clothing. While laboratory personnel would generally be vaccinated and have access to antiviral treatments to protect them against exposure to biological agents, terrorists would likely not have access to such treatment and would, therefore, need to wear protective clothing during the production of a biological warfare agent.

Figure 1 illustrates the stages involved in the production of biological agents like anthrax, and how the biological equipment items that we purchased would be used in the process.

Figure 1: Process for Making an Anthrax Biological Warfare Agent



Source: GAO.

The following discussion explains how each case study item would be used in the process of making a biological warfare agent and provides the details about each purchase.

Biological Safety Cabinet	A biological safety cabinet would be used to provide a protective environment during the production of anthrax or other biological agent. For example, laboratory equipment, such as a centrifuge, incubator, and evaporator, would be placed inside the safety cabinet during the production process. The safety cabinet has a moveable panel on the front that can be closed during the production process, and filters in the top prevent biological materials from escaping into the surrounding environment. Figure 2 is a photograph of the excess DOD biological safety cabinet that we purchased over the Internet.

Figure 2: Excess DOD Biological Safety Cabinet Purchased from *Govliquidation.com* in May 2003

Source: GAO.

We purchased the bid lot[7] containing this safety cabinet from *govliquidation.com* on May 9, 2003, for $317, plus $226, which included tax, a 10 percent buyer's premium, and shipping costs. The original acquisition cost of the safety cabinet was $4,342. It was the only item in the

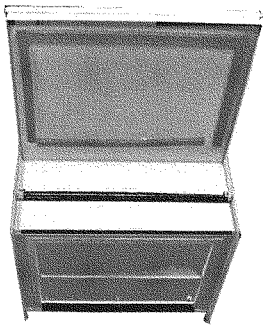
[7] A bid lot refers to one or more items, or a mixed group of items, that are offered for sale to the highest bidder.

bid lot and was listed as being in A4 condition—good, serviceable condition without restrictions as to use. Upon receiving the safety cabinet, we determined that it was in excellent condition and appeared to be unused. Our experts determined that the safety cabinet that we purchased could be used in the production of anthrax. DRMS sold or turned over to Government Liquidation, LLC for sale at least 18 similar excess biological safety cabinets in fiscal year 2000 through the first half of fiscal year 2003.

Bacteriological Incubator

Culturing, or growing, the organism to yield a large quantity of anthrax would be accomplished in a wet medium. During the culturing process, the organism produces spores. The release of spores is necessary to turn the anthrax source bacteria into a culture. A fermenter or a bacteriological or biological incubator would be used to provide a temperature-controlled environment for growing anthrax into a culture. After culturing in a fermenter, the anthrax would be a wet slurry, or liquid concentrate. Growing a culture in an incubator on an agar plate would result in a wet paste. Figure 3 is a photograph of the excess DOD bacteriological incubator that we purchased over the Internet.

Figure 3: Excess DOD Bacteriological Incubator Purchased from *Govliquidation.com* in May 2003



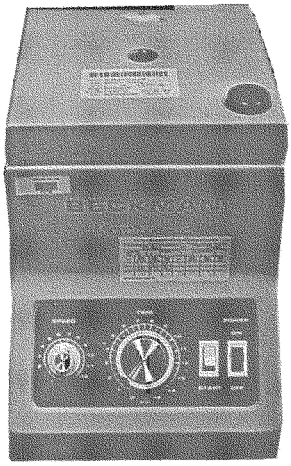
Source: GAO.

We purchased a bid lot containing a bacteriological incubator from *govliquidation.com* on May 9, 2003, for $55, plus $138, which included tax, a 10 percent buyer's premium, and shipping cost. The original acquisition cost of the incubator was $545. It was the only item in the bid lot and was listed as being in A4 condition—good, serviceable condition, issuable to all customers without restrictions. The incubator we purchased was a tabletop model that would primarily be used for testing. We also noted that DOD was selling as excess property large industrial- size incubators that could be used to produce larger volumes of biological agents. DRMS sold at least 199 excess biological and bacteriological incubators in fiscal year 2000 through the first half of fiscal year 2003.

Laboratory Centrifuge

Harvesting, washing, and concentrating the cultured sample would typically be done in a centrifuge, which removes most of the liquid from the wet slurry. A sealed centrifuge—the type used in a laboratory—would be used to separate solid biological spores from the liquid growth medium and begin the drying process. At this point, some particles could become aerosolized and DOD chemical and biological protective clothing and related gear, such as a mask, filter, hood, and boot covers, along with ordinary rubber gloves, could be used for protection. Figure 4 is a photograph of the excess DOD laboratory centrifuge that we purchased over the Internet.

Figure 4: Excess DOD Laboratory Centrifuge Purchased from *Govliquidation.com* in April 2003



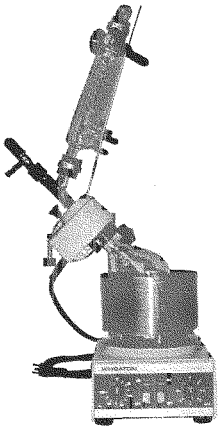
Source: GAO.

On April 3, 2003, we purchased a bid lot containing a sealed laboratory centrifuge and four other laboratory equipment items from *govliquidation.com*. The centrifuge had been used and was listed in B4—good, serviceable condition. With other parties bidding against us, we paid $450, plus $67, which included tax and a 10 percent buyer's premium, for the bid lot. We picked up our purchases from the DRMO and did not incur shipping costs. The original acquisition cost of the five items in the bid lot totaled $2,560, including $500 for the centrifuge. Upon inspection, we determined that the centrifuge was in very good condition. DRMS sold at least 521 excess laboratory centrifuges in fiscal year 2000 through the first half of fiscal year 2003.

Laboratory Evaporator

Biological agents can be processed into liquid or dry forms for dissemination. Experts have told us that liquid agents are easy to produce. Although dry biological agents are more difficult to produce than liquid agents, dry agents in particle form are easier to disseminate. A laboratory evaporator, which performs a dehydration or drying function, could be used to turn the wet anthrax into a dry form. Once the agent is dry, the substance would be ground or milled to reduce it to a sufficiently small size for dissemination. A less sophisticated process would result in a crude form of anthrax in a slurry form or in clumps, which would be less likely to cause mass casualties. Figure 5 is a photograph of the excess DOD evaporator that we purchased.

Figure 5: Excess DOD Evaporator Purchased in June 2003



Source: GAO.

We bid $1,300 for a bid lot containing a used laboratory evaporator listed in B4 (good condition), microscopes, and other laboratory equipment items

that were included in a *govliquidation.com* Internet auction that closed on May 9, 2003. The original acquisition cost of the items in the bid lot was listed as $10,900, including the original acquisition cost of $3,592 for the evaporator. In attempting to purchase the excess DOD laboratory evaporator over the Internet from *govliquidation.com*, we lost to a higher bidder. However, we were able to purchase the evaporator from the winning bidder—the owner of a company that purchases and resells used medical and laboratory equipment—for $425, plus $18 tax. In addition, we paid $733, plus $14 for shipping, to obtain missing glassware items from a commercial laboratory supplier. DRMS sold at least 65 excess laboratory-type evaporators in fiscal year 2000 through the first half of fiscal year 2003.

Other Items Used in the Production of Anthrax

We also noted that DOD excess property sales included other items that would be useful laboratory equipment for the production of anthrax, such as microscopes and micro milling machines. Micro milling machines are high-speed grinders that can be used to grind dried anthrax into small particles for dissemination. While anthrax can be ground by hand, a milling machine makes the process more efficient and assures the production of microscopic particles. DOD sold 13 micro milling machines over the Internet since June 2001.

Protection during Dissemination

To demonstrate the types of protective clothing and related gear that could be obtained from DOD and used during the handling and dissemination of anthrax, our investigators made undercover purchases of excess DOD chemical and biological protective suits over the Internet from *govliquidation.com*. DOD has determined that, unlike the biological equipment, its chemical and biological protective clothing and related gear, such as masks, hoods, filters, gloves, boots, and boot covers, should not be sold to the public. However, as demonstrated by our purchases and discussed later in this testimony, DOD had not implemented effective controls to prevent public sales of its protective clothing and related gear.

The two-piece chemical and biological protective suit (coat and trousers), when combined with footwear, gloves, and protective hood, mask, and breathing device, forms the warfighter's protective ensemble. The ensemble is designed to provide maximum protection to the warfighter against chemical and biological contaminants without negatively impacting the ability to perform mission tasks. DOD chemical and biological protective suits also could be used to protect an individual during the production, handling, and dissemination of biological warfare agents. The photographs in figures 6 and 7 show the protective clothing items that we purchased.

Figure 6: Example of Excess Restricted DOD Chemical and Biological Protective Suits Purchased from *Govliquidation.com* in April 2003

Source: GAO.

On April 12, 2003, we purchased a bid lot listed as containing 58 used DOD chemical and biological protective suits from *govliquidation.com*. The Internet sale was by sealed bid, and we paid $250 for the bid lot, plus $42, which included tax and a 10 percent buyer's premium. The total original acquisition cost of these suits totaled $2,410. The protective suits were the only items in the bid lot and were listed as being in H7 condition (unserviceable condition), because they had been used in training. However, one suit was still in the original sealed package, although it had exceeded its expiration date. These suits were available for sale because DRMS had not properly implemented the department's January 7, 2003, policy to restrict biological and protective clothing to DOD use only. However, in accordance with its prior policy for trade security control, DOD required us to submit an End Use Certificate for approval of this purchase. We submitted a fictitious End Use Certificate and received the protective suits about 3 months after the sale following DOD's approval of the certificate on June 19, 2003. After receiving the protective suits, we

determined that we actually had received 86 jackets and 74 pair of trousers—a total of 160 items of protective clothing.

On June 13, 2003, we made another sealed bid Internet purchase of a DOD bid lot that was listed as containing 458 chemical and biological protective suits. Figure 7 shows examples of the chemical and biological protective suits that we purchased in June 2003. These protective suits were listed as being in A4 condition (good, serviceable condition issuable to all customers without restrictions).

Figure 7: Example of Excess Restricted DOD Chemical and Biological Protective Suits Purchased from *Govliquidation.com* in June 2003

Source: GAO.

We paid $750 for the 458 suits in the bid lot, plus $351, which included tax, shipping, and a 10 percent buyer's premium. The original acquisition cost of the protective suits totaled $35,380. We submitted another fictitious End Use Certificate for the 458 suits, which was approved on July 15, 2003. Upon receipt of the suits on August 5, 2003, we found that we actually had received 424 suits, 39 of which were in sealed packages. We referred the

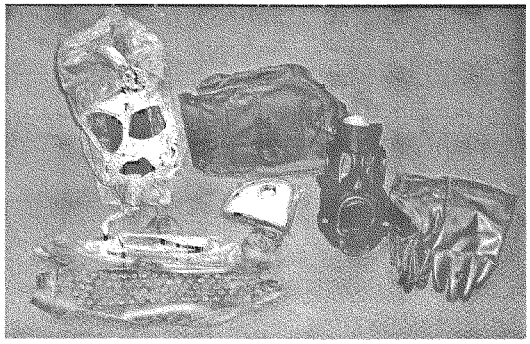
discrepancy related to the 34 suits missing from our purchase to the Defense Logistic Agency Criminal Investigations Activity (DCIA) for investigation.

According to a DOD Chemical Technology Team official, DOD set the expiration dates for chemical protection at the 14-year point because tests identified changes in the property of the garments around this point. Although DOD has not tested the level of protection provided by the protective suits beyond the 14-year point, the official told us that protective suits that remained in sealed packages would provide some level of protection against biological agents. Our April and June 2003 purchases of Internet bid lots containing excess DOD chemical and biological protective suits included 9 protective suits in the original sealed packages that had not reached their expiration dates and 25 protective suits in the original sealed packages that had reached their expiration date but would continue to provide some level of protection.

Although DOD policy effective on January 7, 2003, prohibited the sale of designated chemical and biological protective clothing and restricted these items to DOD use only, we were able to purchase excess restricted protective suits from *govliquidation.com* in April and June 2003 due to the continuing failure to properly implement the January 2003 policy. The breakdown in the implementation of established controls is discussed later in this testimony. Overall, DOD sold at least 286,232 chemical and biological protective suits in fiscal year 2000 through March 2003, including about 4,000 protective suits, after implementation of the January 2003 policy restricted them to DOD use only.

Because related personal protective gear, such as masks and filters, a hood, gloves, and boots or boot covers, also would be needed to protect a terrorist from infection during handling and dissemination of anthrax, our investigators made an undercover purchase of these items. According to our experts, for biological agents, the mask and filter are the most important components of this protective gear. However, most of the related gear was only available in large DOD bid lots at the time we were making our Internet purchases. For example, we identified a bid lot that contained 1,558 boot covers in good condition that sold for $250 and a bid lot of 10,000 gloves also in good condition that sold for $877. As a result, we decided to purchase one set of these items at minimal cost from a private sector vendor who sells them to commercial companies as well as DOD. Figure 8 is a photograph of the new and unused personal protective gear that we purchased on June 13, 2003, for $190.

Figure 8: Chemical and Biological Protective Mask and Filter, Hood, Gloves, and Boot Covers Purchased from a Commercial Vendor in June 2003



Source: GAO.

In addition to protective suits (jackets and trousers), DOD's January 7, 2003, policy restricted numerous types of related chemical and biological personal protective gear, including masks, filters, hoods, gloves, boots, and boot covers, to DOD use only. DRMS sold over 26,000 restricted personal protective gear items over the Internet between January and March 2003, and it continued to sell these items over the Internet through September 2003.

Investigations of Internet Purchasers of Excess DOD Biological and Protective Equipment Raise Concerns about End Use

DOD does not monitor sales of its excess biological equipment, and its monitoring of the sales of its chemical and biological protective suits is ineffective. As a result, DOD has no means of knowing the final disposition of these items. Uncontrolled sales of excess DOD biological laboratory equipment and protective clothing pose a risk that these items could be obtained and used by terrorists to establish a laboratory for producing a biological warfare agent, such as anthrax, and protect themselves during production and dissemination of the anthrax.

We identified 176 Internet buyers of our DOD case study biological equipment and protective clothing items. Our investigation of numerous buyers of our DOD case study items identified a large secondary market for used biological equipment and protective clothing in good condition. We selected 48 buyers for investigation and contacted 42 of them. Of these 42 buyers, 15 (about 36 percent) exported used laboratory equipment to countries around the world, including Canada, the Philippines, Malaysia, Egypt, and Dubai in the United Arab Emirates (UAE). Law enforcement officials have identified individuals in Canada, the Philippines, and Dubai in the UAE that are known to be involved in transshipments[8] to terrorist-supporting countries.[9] These countries are prohibited from receiving certain U.S. technology exports that are similar to our case study items.[10] Transshipments are a major area of export violations. Table 2 describes 10 buyers of our case study items, the nature of their DOD business transactions, and the other sources they use to procure biological equipment for resale.

[8] According to the *Export Administration Regulations* (EAR), transshipments refers to the export or reexport of EAR controlled items through one or more countries to a new country. Regardless of whether such export or reexport is actual or intended, for export control purposes, the items are deemed to be exports to the new country.

[9] Under authority in section 6(j) of the Export Administration Act, the Secretary of State has designated Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria as countries that have repeatedly provided support for acts of international terrorism. As a result, applications for all military end use items from these countries will be denied and applications for non-military use items will be considered on a case-by-case basis depending on the country.

[10] As discussed later in this report, the prohibited items are trade security control items included in the U.S. Munitions List in 22 C.F.R. Part 121, and the Commerce Control List in 15 C.F.R. Part 774.

Table 2: Results of Investigations of Internet Buyers of Excess DOD Case Study Biological Equipment and Chemical and Biological Protective Clothing

Type of business	Case study items purchased from DOD	Non-DOD sources used by the buyers to procure similar items	Method in which biological equipment and protective clothing items are resold	Disposition of biological equipment and protective clothing purchases
1 - Sales of electronic, test, and laboratory equipment	1 incubator 1 centrifuge 1 dryer/ evaporator	GSA, universities, and private companies.	Items are sold on the company's Web site and by direct sales.	Incubator still in stock. Disposition of the centrifuge and evaporator are unknown. Company sells to domestic and foreign buyers, including Canada and Australia.
2 - Laboratory equipment repair and resale business	1 incubator 1 centrifuge	Laboratory liquidation sales and hospitals.	Items are sold through company's Web site and other Web sites that sell lab equipment, such as www.dotmed.com.	The incubator and centrifuge were still in the company's warehouse.
3 - Resale business	2 incubators	State and local colleges and hospitals.	Items are sent to a warehouse in Dubai (UAE).	Shipped to warehouse in Dubai (UAE). Items were generally resold in India, Pakistan, Egypt, and Africa.
4 - Laboratory equipment resale business	3 centrifuges 2 safety cabinets	Government surplus Web sites (e.g., GSA).	Telephone contacts and Internet sales.	One safety cabinet was reportedly sold or traded to a U.S. dealer. Disposition of the other items is unknown. Company sells to domestic and foreign buyers, inDubai (UAE), Malaysia, South Korea, Albania, Lebanon, Chile, Venezuela, and Mexico.
5 - Resale business	1 incubator	None.	Items are sold on the Internet (eBay).	Unknown. The owner said that they probably scrapped the item.
6 – Individual buyer	1 evaporator 1 centrifuge	Local colleges and universities.	Items are sold on the Internet (eBay).	Unknown. The owner did not have sales records available on the centrifuge and he claimed that he scrapped the evaporator.
7 - Resale of medical equipment	21 centrifuges 1 incubator	Internet sites (eBay), wholesalers, laboratories, and hospitals.	Items are sold through telephone contacts.	The owner told us he only received 19 of the 21 centrifuges purchased. He said that he sold 8 of the centrifuges, and the remaining items are still in stock. The company sells items domestically and to foreign buyers, in El Salvador, Mexico, Brazil, South Africa, Asia, and Colombia.
8 – Individual buyer	1,011 biological and chemical protective suits	None.	Items are sold on the Internet (eBay).	The owner stated that he resold some of the protective suits through the eBay Internet auction site. He said that his customers were deer hunters.

(Continued From Previous Page)

Type of business	Case study items purchased from DOD	Non-DOD sources used by the buyers to procure similar items	Method in which biological equipment and protective clothing items are resold	Disposition of biological equipment and protective clothing purchases
9 - Resale business	1 centrifuge	Government surplus sources, hospitals, and universities.	Sends the majority of his items to a warehouse in the Philippines.	The owner told us that he shipped the centrifuge to his warehouse in the Philippines. He said that he ships items from the warehouse in the Philippines to professionals, doctors, medical practices and medical distributors, which are located around the world in areas such as Colombia, South America, and Asia.
10 - Resale business	438 chemical and biological protective suits	None.	Sells items at local military shows.	The owner told us that he resells the protective suits to local customers, mainly farmers and hunters.

Source: GAO.

The following discussion provides detailed information on some of the DOD excess property buyers that we investigated. The circumstances involved in these transactions are consistent with, or are very similar to, "red flags" cited in federal commerce and trade regulations at 15 C.F.R. 732, Supplement 3, which indicate a possible "unlawful diversion" of property by a buyer. The red flags include (1) the customer or agent is reluctant to offer information about the end-use of an item, (2) delivery dates are vague or deliveries are planned for out-of-the-way destinations, (3) the shipping route is abnormal for the item or the destination, and (4) the buyer is evasive or unclear about whether the items purchased are for domestic use, export, or reexport.

- Buyer #1 is an electronic, testing, and laboratory equipment resale company in Pennsylvania that purchased our excess DOD case study incubator, centrifuge, and evaporator over the Internet from *govliquidation.com*. The company also purchases laboratory items from other government sources, such as GSA; private companies; and universities. The company's owner told us that a Federal Bureau of Investigation (FBI) agent had contacted him about customers that had purchased excess DOD Micro-Mills from him. We spoke with FBI officials who told us that they interviewed the owner in December 2002 as part of their investigation of the 2001 anthrax incidents.

- Buyer #2 is a laboratory equipment repair and resale business in Florida that purchased one incubator and one centrifuge over the Internet from *govliquidation.com*. The company also purchases laboratory items from liquidation sales and hospitals. At the time of our investigation, the incubator and centrifuge were still in the company's warehouse due to cancellation of an order for nonpayment. The owner of the business is a Colombian national who told our investigators that all of their company's sales were to foreign buyers and he has had no domestic sales to date. Because the company does not have an export license, it uses freight forwarders[11] to handle its foreign shipments. The owner told us that he generally resells used items to buyers in Central and South America, with the majority of the sales going to customers in Brazil. However, the company also has sold items to customers in Mexico, Canada, and Dubai in the UAE.

- Buyer #3 is a resale business in the state of Georgia that purchased two incubators over the Internet from *govliquidation.com*. The company also purchases medical and laboratory items from colleges and hospitals. At the time of our investigation, the excess DOD incubators that this buyer purchased had been sent to a warehouse in Dubai. We interviewed the owner's son who told our investigators that he was involved in daily business operations. He noted that his family was from Pakistan, and they conduct a majority of their business through Dubai. He said that it was only in the last couple of years that his father had purchased used medical and laboratory equipment in an attempt to open a new market. He said that his father has friends in India who are doctors, and thought he could help them by selling them cheaper used medical equipment. He added that his father was also attracted to the medical equipment because of its low acquisition cost and the potential for a good profit margin. The owner's son told us the company exports 99 percent of their resale items to a warehouse in Dubai, which is operated by the owner's son-in-law, for transshipment to customers in Pakistan, Egypt, India, and countries in Africa. According to the owner's son, the company uses a freight forwarder in the New York City area to ship items to Dubai and the majority of the items are sold to individual buyers who are not end users.

- Buyer #4 is a surplus laboratory resale company in Virginia that purchased three excess DOD laboratory centrifuges and two excess

[11] A freight forwarder is a commercial entity that provides an export and shipping service.

safety cabinets over the Internet from *govliquidation.com*. The company also purchases medical and laboratory equipment items from the GSA excess property web site and other Internet sites. The individual who purchased the excess DOD property for the company told our investigators that he sold or traded one excess safety cabinet to another dealer in the United States. He did not have information on the disposition of the centrifuges or the other safety cabinet. He explained that he has purchased a variety of laboratory equipment from DOD over the Internet. The individual told us that his company primarily sells to other U.S. dealers and occasionally sells items directly to an end user. He noted that most of his customers are U.S. dealers who often sell the property they buy from his company in the overseas market. He also said that his company sometimes sells directly to overseas clients.

- Buyer # 5 is a sole proprietorship located in California. The company purchases used home theatre and office equipment for resale. At one time it also bought and sold used laboratory equipment. This company purchased an excess DOD incubator over the Internet from *govliquidation.com*. The company sells property to customers overseas. The owner told our investigators that she could not recall the disposition of the excess DOD incubator and indicated that it was probably scrapped. The owner also told us that an investigator from the Defense Logistic Agency, Criminal Investigations Activity (DCIA) had recently visited her. She explained that she had purchased an excess DOD fixed attenuator (an aircraft part) from *govliquidation.com* in June 2002 and had sold it to a buyer in Australia. However, she told our investigators that she did not realize that she was supposed to acquire a Department of State export license prior to exporting this item. She said that she received a written warning from DCIA. In addition, during the process of gathering background information on this company, our investigators discovered that the owner's brother, who is affiliated with the company, had a criminal record for failure to declare goods (a U.S. Customs import/export violation). Further, the brother had served 7 years in prison as a result of a conviction for racketeering and money laundering.

Federal Regulations and DOD Policies and Procedures Do Not Provide Adequate Control over Excess Biological Equipment and Protective Clothing

Federal regulations issued by other agencies with various authorities over the sale, control, or export of biological equipment and DOD policies and procedures based on these requirements, do not generally restrict DOD from selling our case study biological equipment to the public. In addition, we found no evidence that DOD's policies resulted from an assessment of the risk associated with sales of excess DOD biological equipment that could be used to make biological warfare agents. For example, although Customs officials briefed DOD and other federal agency policy officials and investigators on the Operation Shield America program and the risks related to sales of biological equipment and other items, neither DOD nor other federal agencies have reassessed the controls currently in place for the sale of excess biological equipment items that could be used to make biological warfare agents. In addition, DOD has not attempted to determine as a basis for reassessing its controls over these items, who was buying its excess biological equipment and protective clothing or how these items were being used. Further, although DOD issued a new policy in January 2003 that restricted excess chemical and biological protective clothing from sale to the public, DOD units did not always follow the policy. Given the history of poor controls over laboratories handling biological source agents, DOD sales of excess biological equipment and protective clothing increase the risk that terrorists could easily obtain and use them to produce and deliver biological warfare agents. The U.S. Bureau of Customs and Border Protection's Operation Shield America program is monitoring sales of biological equipment and protective clothing—including all five types of items in our case study—in an effort to prevent their export to terrorist countries.

Federal Regulations Do Not Adequately Address Risk Related to Sales of Excess DOD Biological Equipment and Protective Clothing

Federal regulations issued by other agencies for controlling biological laboratory equipment and chemical and biological protective clothing focus on trade security (export and import) controls over specifically named items and omit numerous items that could be used for the same purpose as controlled items. For example, our analysis of Commerce Control List Items (CCLI)[12]—dual use items[13]— included in *Export Administration Regulations* issued by the Department of Commerce determined that although some specialized types of biological equipment are subject to trade security control, which restrict them from export to certain countries, the vast majority of these items, including the excess DOD biological equipment items that we purchased over the Internet, are not restricted from sale to the general public, even though they could be used for the same purpose as the restricted items. Further, although DOD policies and procedures require the submission and approval of an End Use Certificate for the purchase of a CCLI and sales of these items to foreign countries may require approval of an export license, we found that these controls can be easily circumvented. Also, we found that *International Traffic in Arms Regulations* issued by the Department of State for controlling military technology items on the U.S. Munitions List (MLI),[14] permit the sale of personal chemical and biological protective clothing and related gear to certain foreign countries based on export license requirements. The Commerce Control List and the Country Control List included in the *Export Administration Regulations* issued by the Department of Commerce are consistent with lists agreed to by the Australia Group.[15]

[12] *Export Administration Regulations*, 15 C.F.R., Chapter VII, Subchapter C (2003).

[13] Dual use refers to property that has a commercial use and also supports a military or government mission.

[14] *International Traffic in Arms Regulations*, 22 C.F.R., Chapter I, Subchapter M (2003).

[15] The Australia Group is a multilateral body that includes U.S. participation. The Australia Group works to halt the spread of chemical and biological weapons and has developed common control lists of items, including biological agents and biological equipment, related to the development of biological weapons.

By establishing criteria for control of sensitive technology items that is based on lists of specified items rather than focusing on how various items could be used, the federal regulations and associated DOD policies do not address numerous DOD excess biological equipment items that also pose a potential trade security or a national security risk. The current approach for applying trade security controls to specifically listed items does not consider the range of other medical or biological equipment that could be used for the same purpose as control list items. For example, two of our case study items—the sealed laboratory centrifuge and the biological safety cabinet—were very similar to a centrifuge and a biological safety cabinet on the Commerce Control List, but they were not on the list. Although the excess DOD biological safety cabinet that we purchased is not a Class III biological safety cabinet, which is a CCLI controlled item, according to HHS Biosafety in Microbiological and Biomedical Laboratories (BMBL) guidelines, it would qualify for use in a Biosafety Level 3 laboratory[16] and thus, along with protective clothing, would provide sufficient protection for a terrorist during the production of anthrax. Further, the excess DOD sealed laboratory centrifuge that we purchased over the Internet could be used in the production of anthrax.

Also, we found that current trade security controls, including export licensing requirements, and DOD policies and procedures, which require buyers of control list items to obtain approval on an End Use Certificate, are not effective in preventing sales of DOD excess property on the control list to individuals who may want to do harm to the United States. For example, while both the End Use Certificate and the export license provide a method for obtaining information about buyers of control list items to permit monitoring and follow-up on the disposition of controlled items that have been sold, compliance monitoring by law enforcement agencies, such as the Department of Homeland Security's Bureau of Customs and Border Protection, is not a preventive control and it may not identify all violations of these controls.

For example, DOD required us to submit an End Use Certificate for our purchases of excess DOD chemical and biological protective suits. We used a commercial mail facility address on our End Use Certificate and

[16] Biosafety Level 3 facility design and construction are applicable to clinical, diagnostic, teaching, research, or production facilities in which work is done with indigenous or exotic agents, which may cause serious or potentially lethal disease as a result of exposure by inhalation.

provided DOD with an altered document showing the mail service facility address as our physical address. DOD did not identify us as a fictitious entity because its pre-sale clearance procedures rely on negative assurance, such as the absence of a criminal record or export violations. In mid-June 2003, a Defense Logistics Agency (DLA) trade security clearance official called our undercover investigator with questions regarding our possible association with two companies and asked for proof of physical address. Our undercover investigator provided bogus information and our End Use Certificate for the April purchase was approved the next day, on June 19, 2003. The End Use Certificate for our June 2003 purchase of excess DOD protective suits was approved after we provided a minor clarification on our End Use Certificate.

Finally, we did not identify any federal regulations covering domestic sale of excess biological equipment items to the general public by federal agencies. Further, DOD policies do not control the sale of this equipment. As previously discussed, our investigations of buyers of our excess DOD biological equipment case study items demonstrated that, once sold, the government lacks adequate control over the final disposition of these items. Our investigation identified numerous buyers who resold these items in foreign countries, including Malaysia, Egypt, several African nations, and the UAE.

Department of Homeland Security Is Monitoring Sales of Certain Biological Equipment and Protective Suits

The new Bureau of Customs and Border Protection in the Department of Homeland Security has an ongoing effort to monitor sales and exports of certain biological equipment and protective clothing. Following the terrorist attacks in 2001, a U.S. Customs Service[17] intelligence report prepared in November 2001 identified 100 nuclear, biological, and chemical items with dual military and commercial applications that are likely to be among the items most wanted by terrorists. The Customs Service list includes items in all five of our case study categories and is designed to serve as a guide, rather than a prescriptive list, for monitoring sales and exports of items that could be used to develop weapons of mass destruction. Also in response to the 2001 attacks, the Customs Service initiated Operation Shield America in December 2001, which is designed to inform the private sector and law enforcement agencies on how to identify and report suspicious buyers of sensitive U.S. technology, weapons, and

[17] The Homeland Security Act of 2002 transferred U.S. Customs Service functions for enforcement of export and import controls to the new Department of Homeland Security.

other equipment that could help terrorists and their supporters carry out attacks on America and its people. Customs agents enforce federal statutes that control the export and import of these items. As of July 2003, Customs agents had reportedly used the Shield America list as a basis for contacting approximately 8,000 manufacturers, contractors, freight forwarders, law enforcement agencies, and others to identify and investigate suspicious acquisitions and attempted acquisitions of controlled items.

DOD Lacks Policies and Procedures for Controlling Excess Biological Equipment

Customs officials briefed DOD policy officials and investigators in December 2002 on the Shield America program in an effort to prevent exports to terrorist-supporting countries. Despite the Customs Service briefings, we found that DOD had no restrictions on domestic sales of our case study biological equipment items. Also, DOD did not reassess its controls or attempt to determine who was buying its excess biological equipment and protective clothing or how these items were being used. Further, federal regulations do not address control of domestic sales or transfers of our case study items equipment. We found that DOD has continued to rely on existing guidance and has not performed its own analysis of domestic security risk, in conjunction with the Department of Homeland Security and others, as a basis for strengthening controls over public sales of its excess biological equipment. The Department of Homeland Security is responsible for the performing comprehensive risk assessments of vulnerabilities to terrorist attacks within the United States, and the Department of Health and Human Service is responsible for risk assessments of vulnerabilities in the public health sector.

Controls over Chemical and Biological Protective Clothing Are Ineffective

Current DOD policy for controlling the sale of chemical and biological protective clothing and related gear goes beyond the guidelines in federal regulations issued by the Department of State for trade security control of military items on the Munitions List, by restricting these items to DOD use only. Due to concerns raised in our September 2001 report[18] and June 2002 testimony,[19] and our continuing work on DOD excess property controls, the department changed its policy in January 2003 to centralize responsibility for control and issuance of nuclear, biological, and chemical property, including JSLIST and other biological and chemical protective suits under the Joint Services Nuclear, Biological, and Chemical Equipment Assessment Program. DRMS headquarters issued guidance, effective January 7, 2003, that prohibits the sale of specifically designated chemical and biological protective suits and related gear, restricts them to DOD use only, and requires them to be turned in at one of four regional screening centers for reissuance or destruction, as appropriate. DOD issued formal operating procedures for control and issuance of specifically designated chemical and biological protective suits in March 2003. However, we were able to purchase restricted DOD chemical and biological protective suits in April and June 2003, and our monitoring of DOD Internet sales showed that DOD continued to sell restricted protective suits and related gear over the Internet.

Our analysis of Government Liquidation, LLC data on Internet sales[20] of chemical and biological protective suits and related gear that were restricted to DOD use only in January 2003, showed that between July 2001 and March 2003 DOD sold a total of about 950,000 of these items.[21] However, as shown in figure 8, sales of protective clothing and related gear dropped significantly following the June 2002 Subcommittee hearing. Figure 9 illustrates the sales activity for the seven quarters ending in March 2003 and shows continuing sales of these items after the January 7, 2003,

[18] U.S. General Accounting Office, *Chemical and Biological Defense: Improved Risk Assessment and Inventory Management Are Needed*, GAO 01-667 (Washington, D.C.: Sept. 28, 2001).

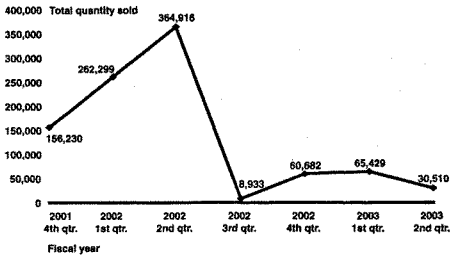
[19] U.S. General Accounting Office, *DOD Management: Examples of Inefficient and Ineffective Business Processes*, GAO-02-873T (Washington, D.C.: June 25, 2002).

[20] DOD initiated Internet sales of excess property within United States in June 2001.

[21] Protective suit and related gear sales include jackets, trousers, masks and filters, hoods, boots, boot coverings, and gloves.

policy went into effect. Of the over 30,000 protective suits and related gear sold in January through March 2003, 15,150 of these items were sold after the January 7 policy change. However, we determined that none of the sales since the Subcommittee's June 2002 hearing included JSLIST suits—the current model protective suit used by the military forces.

Figure 9: Number of DOD Chemical and Biological Protective Suits and Related Gear Sold over the Internet from July 2001 through March 2003



Source: GAO analysis of unaudited Government Liquidation, LLC Internet sales data.

The control breakdowns occurred because (1) DRMS did not notify Government Liquidation, LLC about restricted items that were required to be returned to DOD until February 2003, and it did not take action to assure that the restricted chemical and biological protective suits and related gear were returned to DOD, as required, and (2) DRMS posted the policy change to its Web page and did not actively notify DRMOs of the requirement to restrict designated chemical and biological protective clothing and related gear to DOD use only or have a mechanism in place, such as periodic audits, to ensure that the new policy was being followed.

DOD Lacks Effective Supply Chain Management of Chemical and Biological Protective Suits

Our April and June 2003 purchases of DOD chemical and biological protective suits included hundreds of suits that were defective and/or contained infra-red (IR) reflectant technology.[22] Our ability to purchase these items demonstrates ineffective DOD supply chain management. For example, 379 of the 424 chemical and biological protective suits that we received in our June 2003 purchase were manufactured under a contract associated with the sale of defective suits to the government. Our September 2001 report[23] stated that officials from one company had pleaded guilty in September 1999 to selling 778,924 defective suits to the government. In May 2000, DOD directed units and depots to locate the defective suits and issue them for training use only. At the Subcommittee's June 2002 hearing, we reported that because DOD could not find about 250,000 of the defective Battle Dress Overgarments (BDO),[24] it was not certain if the suits had been used, were still in supply, or were sent to disposal.

Our preliminary investigation determined that the defective BDOs that we purchased were part of an original Air Force turn-in of over 700 BDO suits in August 2000. Between August 2000 and January 2002, most of these suits were reissued to various organizations. For example, the 379 defective BDOs that we received in our June 2003 purchase previously had been issued to the Orange County Sheriff's Department. This is particularly significant because local law enforcement agencies are most likely to be the first responders to a terrorist attack. The Orange County Sheriff's Department turned the suits in at the March, California DRMO in August 2001. However, the DRMO did not identify the turn-in as including defective BDOs and reentered the suits into the disposal process, eventually transferring them to Government Liquidation, LLC for sale in January 2002. Our analysis of the national stock numbers (NSN) associated with the BDO contracts indicates that over 4,700 defective BDO suits may have been reissued to local law enforcement agencies. Additional defective suits may have been issued to others.

[22] IR reflectant technology prevents detection by forward-looking infrared (FLIR) night vision equipment.

[23] U.S. General Accounting Office, *Chemical and Biological Defense: Improved Risk Assessment and Inventory Management Are Needed*, GAO-01-667 (Washington, D.C.: Sept. 28, 2001).

[24] The BDO is the predecessor to the JSLIST protective suits.

Our Office of Special Investigations has notified DLA of these findings and has asked them to follow up to retrieve any defective BDOs that have been reissued. However, we are concerned that DLA's warning to non-DOD recipients of excess protective suits may not receive the same attention as the DOD notice to military units. For example, DLA's September 2001 notice to military units stated that use of the defective suits could cause "death or serious injury" and that these suits should be taken out of their sealed bags and used only for training. However, DLA's September 2003 notice to local law enforcement agencies, Air National Guard units, and others did not contain the same warning of death or injury. Instead, the warning notice sent to these recipients noted that protective suits used by today's military are state-of-the-art and provide excellent protection in a variety of situations. The notice listed NSNs of older suits, which were provided in "as is" condition, and stated that these suits would not provide the higher level of protection of the new technology suits. The notice requested that the suits be removed from service or used only for training. However, the notice to local law enforcement agencies and others did not state that the listed NSNs related to defective BDOs.

We have made several referrals to the DOD IG requesting further investigation of disposition of chemical and biological protective suits. In addition, we are making several recommendations for improving controls over protective suits and related gear. In addition, we are recommending that DOD send the same level of warning that it provided to DOD units to law enforcement agencies and others that may have received defective BDOs.

We also identified problems with controls over DOD protective suits containing infra-red (IR) technology. During fiscal year 2002, due to the risk associated with public sales of items containing IR properties, DLA began working with the Department of State on a major national security policy initiative to ensure effective controls over items with IR technology. According to DRMS officials, in June 2002, DLA issued a policy notice restricting items with IR technology from release outside of DOD. However, about half of the trousers and jackets that we purchased in April 2003 and all of the 424 protective suits that we purchased in June 2003 contained IR properties. We tested and confirmed that these protective suits had IR properties; however, the percentage of their IR properties varied. We contacted DLA officials regarding the percentage threshold for restricting items with IR properties from sale to the public. The officials told us that a threshold had not been established and the policy had not yet been finalized.

Concluding Comments

The difficulty in producing weaponized anthrax sufficient to cause mass casualties does not negate the potential for terrorists to attempt to disseminate a less sophisticated form of anthrax warfare agent, causing fear, disruption, possibly some deaths, and significant economic consequences. The lack of assurance that biological source agents have not fallen into the wrong hands due to poor laboratory controls, combined with the ability to easily and economically obtain excess DOD biological equipment and protective clothing over the Internet, increase the risk that terrorists could produce and disseminate biological warfare agents within the United States. Although Customs officials briefed DOD policy and investigative officials in 2002 on Operation Shield America—an effort to monitor sales of nuclear, biological, and chemical items sought by terrorists—DOD has not monitored sales of its excess biological equipment or the implementation of its policy to restrict chemical and biological protective clothing and related gear to DOD use only. As a result, DOD has provided easy and economical access to key items necessary for production and dissemination of biological agents. Unless DOD and other federal agencies restrict the sale of specific biological equipment and protective clothing critical to the production of biological weapons agents, there is a risk that terrorists could obtain and use these items to harm the United States.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared statement. We would be pleased to answer any questions that you may have.

Contacts and Acknowledgments

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Appendix I

DOD Excess Property Disposal Process

The Federal Property and Administrative Services Act of 1949, as amended, places responsibility for the disposition of government real and personal property with the General Services Administration (GSA). GSA has delegated disposal of Department of Defense (DOD) property to the Secretary of Defense, who in turn delegated this responsibility to the Defense Logistics Agency (DLA). The Defense Reutilization and Marketing Service, within the Defense Logistics Agency, is responsible for day-to-day management of DOD's excess property disposal program.

When a military service or Defense agency has property that it no longer needs, it turns the property over to a Defense Reutilization and Marketing Service field office—or reutilization facility—referred to as a DRMO. Each year, the Defense Reutilization and Marketing Service (DRMS) disposes of property originally valued at billions of dollars that is deemed excess by DOD units. This property includes everything from vehicles and office, hospital, and laboratory equipment to scrap from Naval ships and sensitive and hazardous materials. Excess items that are available for reuse are first offered for reuse within DOD and then for transfer to other federal agencies. Property that is not reutilized or transferred can be donated to state and local governments and other qualified organizations. Action to redistribute excess property allows the government to make full use of its resources, avoids unnecessary procurement of property, and results in economy and efficiency of operations. Except for certain military technology items that must be destroyed and classified information that must be removed, property that is not reutilized, transferred, or donated can be sold to the public. Any residual property may be sold as scrap or is sent to a landfill or other appropriate site for final disposal. Figure 10 illustrates DOD's excess property disposal process.

Figure 10: Defense Reutilization and Marketing Service Excess Property Disposal Process

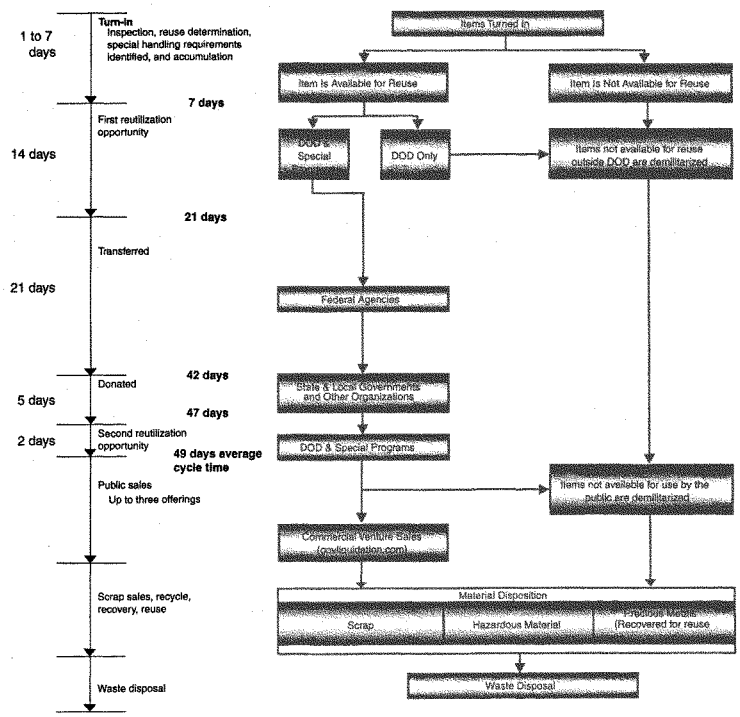

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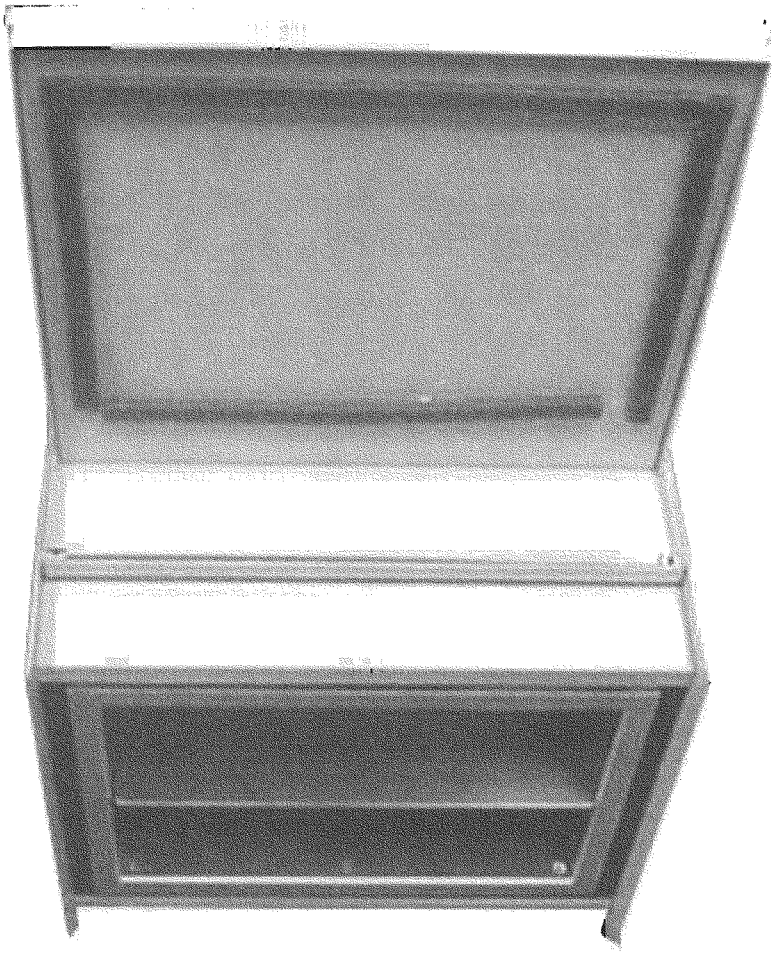
Exhibit 1: <u>Excess DOD Biological Safety Cabinet Purchased from *Govliquidation.com* in May 2003</u>

Source: GAO.

Exhibit 2: Excess DOD Bacteriological Incubator Purchased from *Govliquidation.com* in May 2003

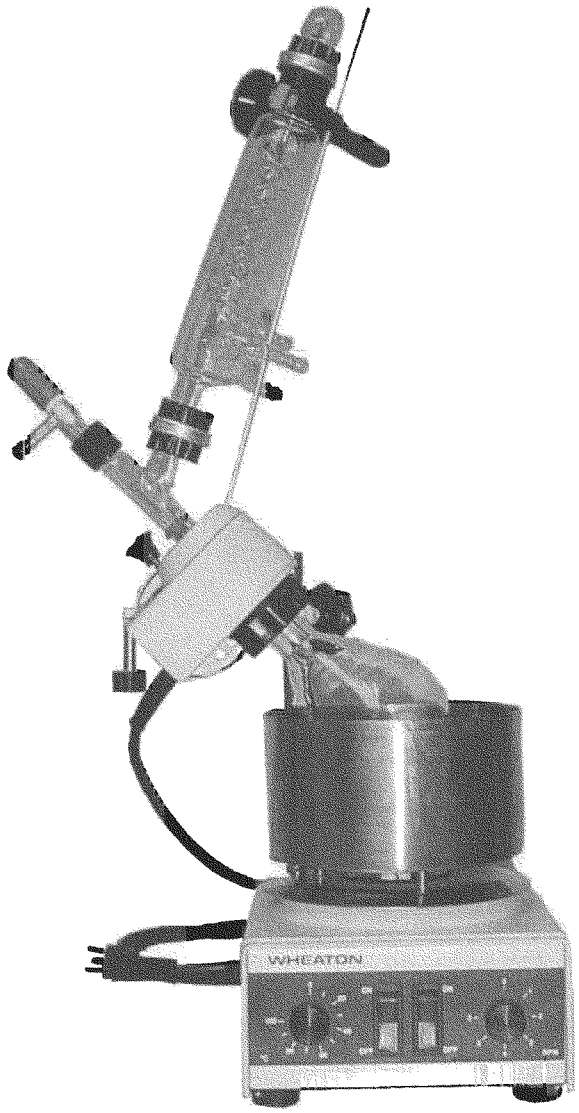


Source: GAO.

Exhibit 3: <u>Excess DOD Laboratory Centrifuge Purchased from *Govliquidation.com* in April 2003</u>

Source: GAO.

Exhibit 4: Excess DOD Evaporator Purchased in June 2003



Source: GAO.

Exhibit 5: Examples of Excess Restricted DOD Chemical and Biological Protective Suits Purchased from *Govliquidation.com* in April 2003

Source: GAO.

Exhibit 6: Restricted Chemical and Biological Protective Mask and Filter, Hood, Gloves and Boot Covers Purchased from a Commercial Vendor in June 2003

Source: GAO.

Mr. SHAYS. Thank you, Mr. Kutz. Thank you for the good work that GAO does.

At this time the Chair would recognize Mr. Shelton Young, Director of Readiness and Logistic Support Directorate from the Office of Inspector General. Welcome, Mr. Young.

Mr. YOUNG. Thank you.

Mr. SHAYS. Is your mic on, sir?

Mr. YOUNG. OK. Thank you. Mr. Chairman, members—is it on? Is it on now?

Mr. SHAYS. You just need to get closer to it, sir, if you would.

Mr. YOUNG. Mr. Chairman and members of the subcommittee——

Mr. SHAYS. I think it was on. I think we turned it off on you here. Tap the mic just so we can see here. And we're going to get you a little closer. Thank you. And take your time.

Mr. YOUNG. OK. Mr. Chairman, members of the subcommittee, thank you for the opportunity to appear before your committee today to address your questions regarding controls over disposal of DOD surplus equipment and controls over select biological agents.

Like the General Accounting Office, we at the DOD IG have identified problems with controls over the disposal of DOD surplus equipment. In our June 2003 report on the Law Enforcement Support Office Excess Property Program, we found that DOD was distributing excess property to law enforcement agencies without the accountability necessary to ensure that property was properly and appropriately transferred.

My main focus with my testimony focuses on a June—or an August 2003 interagency report on security controls over biological agents. The report consolidates the issues identified in 27 reports published by the OIGs of Agriculture, Army, Defense, Energy, Health and Human Services and Veterans Affairs. The 27 reports included 236 government facilities, 4 contractors and 9 universities.

In this open hearing I cannot identify any specific laboratories or agencies with vulnerabilities. Instead, I'm addressing the nine systemic problems that we did find. We are pleased to report that corrective actions were initiated by the six agencies on the recommendations in the individual agency reports.

Five of the six agencies identified problems with physical security controls. For example, three agencies reported that some laboratories lacked adequate physical controls over freezers or units used to store biological select agents. Four agencies identified the lack of intrusion detection systems or physical barriers that were easily bypassed. Also as shown in our written testimony are examples of open and accessible biological agent storage rooms, open access to research facilities and a research laboratory housed in a mobile trailer.

We also found problems with physical access controls which were identified by five of the six agencies. Three agencies identified lack of access restrictions for foreign nationals, scientists or students. Four agencies reported that some laboratories gave employees access without any background investigations or pending the results of background investigations.

All six agencies identified problems with inventory accountability and controls. For example, one agency reported that of 62 locations

required to keep inventories, only 39 kept inventories, and only 22 updated their inventories annually.

Another agency reported that laboratory inventories were not reliable because the way researchers introduced biological agents into the facilities, including use of personal or government credit cards to directly purchase these agents from private vendors, independent reproducing of cultures without adjusting the inventory records and by undocumented sharing of specimens with colleagues from other facilities.

We also found three agencies that identified problems with the adequacy of contingency plans. For instance, one agency could not perform a vulnerability assessment because they lacked a consolidated data base to track the types and locations of agents stored and used.

We also found problems with Centers for Disease Control and Prevention registration. Problems included two agencies' identified laboratories that did not know which agents require CDC registration. One laboratory did not comply with the CDC transfer requirements, because it was unaware of the existence of biological agents at its own facility.

Import and export of agents was another area that was looked at. Three agencies address import and exports of biological agents. Concerns about the import of agents was addressed by one agency, stating in their report that its components lacked a system to track the number of shipments that came into the Nation—our Nation under any individual import permit.

As GAO mentioned, certain biological agents and related technology are export controlled. Two agencies identified examples of inadequate reporting of biological agent shipments. One agency identified the shipment of a biological agent without obtaining an export license.

Four agencies identified the lack of safety and security training, to include personnel controlling access to a facility that had received no security response training.

All six agencies identified management oversight and lack of adequate policies and procedures as the major contributing factors to the previously discussed inadequate controls. For instance, it was reported that management emphasis and oversight focused on bio safety for laboratory personnel rather than bio security.

In summary, Federal agencies, contractors and universities as holders of biological agents do have a responsibility to ensure the security of the biological agents, but senior officials at each agency have initiated corrective actions to improve security controls over these agents.

That concludes my testimony.

[The prepared statement of Mr. Young follows:]

Hold for Release
Expected at 10:00 A.M.
October 7, 2003

October 7, 2003

Statement
of
Shelton Young, Director
Readiness and Logistics Support Directorate
Office of the Inspector General
Department of Defense

before the

Subcommittee on National Security, Emerging Threats
and International Relations
House Committee on Government Reform

on

"Emerging Threats: Assessing DoD Controls of Critical
Chemical and Biological Equipment and Material"

Department of Defense
Office of the Inspector General

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before your Committee today and address your questions regarding controls over disposal of DoD surplus equipment and controls over select biological agents. I share your concerns that terrorists or extremist groups might use surplus DoD biological equipment and agents to produce weapons of mass destruction against United States citizens. Today I want to present the results of an "Interagency Summary Report on Security Controls Over Biological Agents" (Report No. D-2003-126).

The August 27, 2003, report consolidates issues identified in 27 reports published by the Offices of the Inspectors General of the Departments of Agriculture, Army, Defense, Energy, Health and Human Services, and Veterans Affairs. The summary report identified nine systemic problems: physical security, personnel access controls, inventory accountability and controls, contingency plans, registration with the Centers for Disease Control and Prevention (CDC), import and export of agents, safety and security training, management oversight, and policies and procedures. We are pleased to report that corrective actions, as recommended in the 27 reports, were initiated by those agencies.

I will also discuss the problems that we, the Office of the Inspector General, Department of Defense, like the General Accounting Office, have identified with controls over the disposal of DoD surplus equipment.

Interagency Summary Report

Deficiencies in security controls have serious implications for the health of United States' citizens, should those controls be breached and biological agents removed from the facility. Subsequent misuse of the biological agents could have serious health consequences and disrupt the country's agriculture, commerce, economy and, industry.

Biological Agents

Biological agents are micro-organisms, or their toxins, that cause or may cause human, animal, or plant diseases. Such disease-causing biological agents are termed pathogens. Select agents are pathogenic biological agents specifically described as having the potential to pose a severe threat to public or agricultural health and safety. For instance, anthrax (*Bacillus anthracis*[1]), smallpox (Variola major), and the Ebola viruses are considered select agents by the CDC, while foot-and-mouth disease virus and classical swine fever virus are considered select agents by the Department of Agriculture. The CDC has identified 36 biological agents as select agents due to their potentially devastating effect on human populations. Correspondingly, the Department of Agriculture has identified an additional 33 biological agents as posing a threat to U.S. agricultural livestock or crop commodities. Because various Federal agencies, contractors, and universities maintain laboratories with

[1]Spore-forming bacterium that causes anthrax.

biological agents to support biological defense programs, medical research, and clinical diagnostic testing, the CDC—in conjunction with the National Institutes of Health—provides guidelines for categorizing laboratory safety risks into four biosafety levels (BSLs), with BSL-4 being the highest risk. As of March 2002, there were more than 275 facilities registered with the CDC to transfer or receive biological select agents.

Physical Security

Of the 27 reports, 24 addressed the adequacy of physical security controls over biological agents, 23 of which cited one or more weaknesses in the controls. Physical security controls include the use of physical barriers; the use of video camera surveillance, intrusion detection systems, and security guards; and controlling physical access to facilities and laboratories where agents are used or stored. For example, 17 of the 23 reports cited the lack of adequate controls over freezers or units used to store biological select agents, and 14 reports identified that facilities where laboratories were located either did not have intrusion detection systems or had physical barriers that were easily bypassed. In addition, several reports cited facility entry systems that could potentially allowed unauthorized personnel to enter by simply following behind authorized personnel.

Figure 1 shows an open and accessible biological agent storage room located in a hallway outside the laboratory.

Figure 1. Open and Accessible Biological Agent Storage Room

Figure 2 shows a BSL-3 laboratory inside an aging trailer that is equipped with a hitch and wheels, but not with adequate security devices.

Figure 2. BSL-3 Research Laboratory Housed in Mobile Trailer

Figure 3 shows open access to two different research facilities.

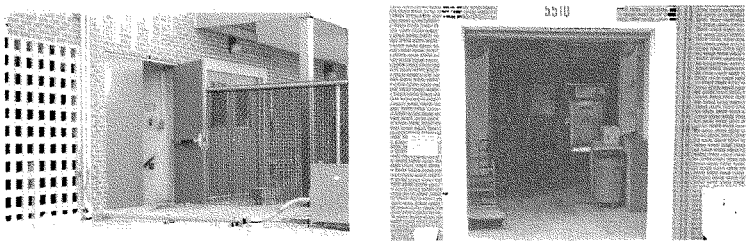


Figure 3. Open Access to Research Facilities

Personnel Access Controls

Personnel access controls were addressed in 25 of the 27 reports, 23 of which identified weaknesses in the controls. Personnel access controls include the use of identification badges, keys, logbooks, and background investigations. Personnel access controls are necessary to preclude unauthorized personnel, including restricted persons identified in the USA PATRIOT Act,[2] from obtaining access to or possession of biological select agents. Access weaknesses found included lack of access restrictions for maintenance and repair personnel and foreign nationals (researchers and students).

[2]Restricted persons include felons or those indicted for felonies, unlawful users of a controlled substance, those dishonorably discharged from the U.S. Armed Forces, individuals adjudicated as mentally defective, illegal aliens, and non-resident foreign nationals of countries supporting international terrorism. As of May 21, 2002, the Secretary of State had designated the governments of seven countries as state sponsors of international terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

Some laboratories gave employees access to biological agents pending the results of background investigations, and other laboratories allowed access by personnel with no background investigation at all.

Inventory Accountability and Controls

Of the 27 reports, 24 addressed inventory accountability and controls, with 23 of the reports identifying weaknesses in the inventory controls. Inventory controls include storage, transfer, record keeping, and destruction of biological agents. The most frequent inventory control weaknesses were poor record keeping and the lack of inventory control systems. For example, an agency report stated that of 62 locations required to keep inventories of chemical and biological agents, only 39 did, and only 22 updated their inventories annually. As a result, one laboratory unknowingly continued to maintain *Salmonella*, and an inaccurate inventory at another location resulted in the Secretary of the agency misreporting to the Department of Homeland Security that the location was not using BSL-3 agents, when in fact it was storing and experimenting with Bluetongue virus and Vesicular stomatitis virus, both classified as BSL-3 agents by the Department of Agriculture.

Another agency's inventories were not reliable because of the various ways researchers introduced biological agents into facilities, including the purchase of biological agents from private vendors over the telephone using personal or Government credit cards. Vendors generally sent the agents directly to the individual researcher. In addition, researchers could independently reproduce cultures, and records showing such culture increases did not always exist. The report also stated that it was a common practice to informally share specimens with colleagues at other facilities and that such exchanges were not always documented. For example, at one facility, a researcher purchased 17 containers of virulent anthrax in 1993 from a private vendor, then later gave the anthrax to a colleague at another facility because his own project was canceled. He and his colleague decided not to register the purchase or the transfer with CDC because they held academic appointments at affiliated universities.

Contingency Plans

Of the 27 reports, 9 reviewed and addressed weaknesses in contingency plans that relate to security controls over biological agents and the facilities that house the agents. Contingency plans document rapid responses and special procedures to ensure the safety and readiness of personnel, equipment, and facilities in response to major emergencies caused by natural disasters, terrorists, or subversives. The following are some examples of the problems cited in the reports.

One agency could not perform a vulnerability assessment because the agency lacked a consolidated database to track the types and locations of agents stored and used.

Several reports cited the lack of up-to-date contingency plans, contingency plans for missing agents, or contingency plans for power disruptions. For example, a laboratory experienced regular power outages and critical system problems, including swipe card access disruptions. Thus, during power disruptions, the doors would remain unsecured until power was restored, resulting in the security of the facility being compromised.

CDC Registration

Nine of the 27 reports addressed CDC registration, of which five identified weaknesses. Facilities that ship or receive biological select agents are required to register with the CDC, in accordance with the Code of Federal Regulations (C.F.R.), Title 42, Section 72.6. The purpose of the registration process is to ensure that biological agents are shipped only to facilities with laboratories designed to handle the select agents and with a legitimate reason for possessing the agents. Problems with CDC registration included laboratories that did not know which agents, such as non-virulent agents, required CDC registration, and one laboratory did not comply with CDC transfer requirements because it was unaware of the existence of biological select agents in its facility. In December 2002, 42 C.F.R. Section 72.6 was augmented by 42 C.F.R. Part 73, "Possession, Use, and Transfer of Select Agents and Toxins." Part 73 adds the requirement that facilities that already possess biological select agents but have never registered with the CDC to do so.

Import and Export of Agents

Of the 27 reports, 3 reviewed and addressed concerns with the import and export of pathogens and select agents. Imported plants, plant products, and animals are regulated through U.S. Department of Agricultural permits to protect the Nation's population and food supply. Concerns about the import of pathogens was addressed by one agency, which stated in its report that its components lacked a system to track the number of shipments entering the country under any individual import permit or to ensure that any incoming shipment is actually associated with a valid import permit.

Certain biological agents and related technology are export-controlled in support of U.S. foreign policy opposing the proliferation and illegal use of biological weapons. The Department of Commerce maintains a listing of export-controlled biological agents and export licensing requirements in its Export Administration Regulations. Concerns about the export of biological select agents included shipping biological agents without determining whether an export license was required and inadequate documentation and reporting of biological agent shipments, as required by the Export Administration Regulations.

Safety and Security Training

Of the 27 reports, 9 reviewed and identified training weaknesses. Training is essential not only to remind employees of routine day-to-day preventative measures they can take,

but also to reinforce management emphasis on security. For example, personnel controlling access to one facility had received no security response training. At another location, security personnel were not aware that biological agent material was being stored at the facility. Personnel at other facilities were not trained on which biological agents were export-controlled.

Management Oversight

Of the 27 reports, 14 addressed the adequacy of management oversight, 13 of which identified management oversight as a contributing factor to the inadequate controls over biological agents. Management oversight is key to ensuring that employees are aware of and are taking responsibility for the security of biological agents and the facilities that use, store, maintain, or transfer the agents. The areas of management oversight weaknesses identified included accountability, biosecurity, and development of contingency plans. For example, at one laboratory, management emphasis and oversight focused on bio-*safety* for laboratory personnel rather than on bio-*security*. At another location, senior safety, security, and management officials were unaware that experiments with biological agents were conducted at their laboratories.

Policies and Procedures

The major contributing factor for inadequate controls, according to 25 of the 27 reports, was the lack of or need for improved policies and procedures in the areas of physical security, personnel access, inventory management and training. The most-mentioned deficiency related to the need to improve policies and procedures to control personnel access and to preclude access by restricted persons.

Management Corrective Actions Initiated

Senior management at each of the six agencies have initiated corrective actions to improve security controls over biological agents in response to the individual agency reports. For example, the Secretary of one agency initiated a task force to develop policies and procedures addressing four key controls: physical security, personnel security, inventory control, and biosecurity incident response. In another agency, senior officials assigned a full-time staff officer to establish a biological agent security program and issued interim guidance on safeguarding select agents and on export controls over biological agents. Another agency established an informational Web site, which includes standardized procedures; another initiated followup actions to determine the status of actions taken on the agency's report recommendations.

Controls Over Disposal of Surplus Equipment

Like the General Accounting Office has reported, we, the Inspector General of the Department of Defense, have identified problems with controls over the disposal of DoD surplus equipment.

Report No. D-2003-101, "Law Enforcement Support Office Excess Property Program," June 2003, states that the Defense Reutilization and Marketing Service (DRMS) was distributing DoD excess property to law enforcement agencies without the accountability necessary to ensure that the property was properly and appropriately transferred. We reviewed 148 DRMS excess property transactions related to the Law Enforcement Support Office Excess Property Program and found that 45 percent (66 transactions) had undocumented differences between the quantities of property approved for release and the quantities issued to the law enforcement agency by DRMS; 21 percent (31 transactions) had missing approval records; and 8 percent (12 transactions) had data entry errors in the approval records. For example, office furniture issued by a DRMS office located in New Mexico to a law enforcement agency had an acquisition value of $5,400. The approved request was for office furniture valued at $600. There was no documentation available to support the reason for the increased quantity. Both the Law Enforcement Support Office and DRMS have ongoing initiatives to improve visibility and accountability of DoD excess property. The Law Enforcement Support Office, working with DRMS, planned to fully implement an automated requisition, approval, and issuance process by October 2003. DRMS was in the process of developing digital storage of source documentation to improve visibility and accountability of property transfers.

Summary

Federal agencies, contractors, and universities, as holders of biological agents, have a responsibility to ensure the security of biological agents. We recognize that implementing security controls over biological agents will impact the open nature of the research community and careful consideration is necessary before any such controls are implemented. However, appropriate security controls over biological agents are imperative in today's environment. Without security controls and sufficient emphasis on security, biological agents at Federal, contractor, and university laboratories are vulnerable to theft or misuse. Senior officials at each agency have taken actions to improve security controls over biological agents in response to the published reports, but continued vigilance is needed.

Thank you for considering the views of the various Inspectors General on these critical issues. This concludes my testimony.

Mr. SHAYS. Thank you, Mr. Young.

At this time the Chair would recognize Mr. Turner. What we're going to do is we're going to have 8-minute questioning. We'll have a second round if we need it. So we'll go to Mr. Turner and then to Mr. Bell.

Mr. TURNER. Mr. Kutz, if you could walk me through this process a little bit, because it—I mean, your testimony, as you can tell from the reaction that you received when we were giving our opening statements, is pretty strong and shocking, and as our chairman of the full committee said, a picture is worth 1,000 words. You can look at this equipment and without a whole lot of knowledge with your giving us an understanding of what it represents, it can tell that this should not have occurred.

But the process I would like for you to walk us through is that initially you looked at this issue with GAO, and there was a period of time where there were not policies in place at the Department of Defense concerning some of these items, and then subsequently there were policies which apparently are not being followed.

In looking at your testimony, you go on to say that overall DOD sold at least 286,232 chemical and biological protective suits in fiscal year 2000 through March 2003, including about 4,000 after implementation of the January 2003 policy restricting them to DOD use only.

So in the first part we have a lack of a DOD assessment of a problem. Then we have a policy, and then it not being followed. And then applying it past the suits, there are areas where you say that there are still not policies in place. My concern obviously is that even when you conclude at the end of this hearing that you need additional policies if the process is not working or not being followed, we're not going to achieve much.

Could you walk us through that process of the DOD's policies and how they are supposed to be implemented and how this failure could have occurred.

Mr. KUTZ. Right. With the suits, before January 2003 the suits were required to go through a process called an end use certificate where the buyer is required to provide certain information to DOD that really provides a trail, but is not a preventive control, it is more of a detective control, and so that was the policy in place. I mentioned that what we did to circumvent that policy was submit fictitious information. So that is a policy that is not effective.

Mr. TURNER. That apparently no one confirmed?

Mr. KUTZ. Well, they tried to confirm, and Special Agent Ryan can give you more details, but they were not able to determine that we were a fictitious company. And I'll have him elaborate on that in a moment.

Mr. TURNER. That would be great.

Mr. KUTZ. So starting in January 2003, and I believe because of the hearing you had last June and October, they put in place controls where the suits were not supposed to be sold to the public; and after that we were able to buy 15,150 suits and protective gear. The policy was for both the suits, the mask, the boots, the gloves, etc. So after that they still sold over 15,000 of these items, including the ones that we purchased in June and August 2003. That's when we purchased the suits from DOD.

The biological equipment, there are no policies and procedures in place for restriction of those at this point, and that's what we've asked them to take a look at, is to do a risk and vulnerability assessment of whether or not the equipment should be sold to the public. So right now as of today, the suits and protective gear are not supposed to be sold to the public, and they are looking—I believe they've frozen the equipment from sale right now to the public as they're doing a risk and vulnerability assessment in conjunction with the Department of Homeland Security.

Mr. TURNER. OK. Back to the two issues then, the one issue where there is a policy in place but it's not followed, and the other that we need a policy, but obviously putting a policy in place doesn't help us if the policies themselves, the process that we're following, is defective. So, yes, I'd love you to elaborate on the way that you acquired these through a fictitious company, where the policy was circumvented.

Mr. RYAN. The committee asked us to set up the company, which we did. The items other than the bio/chem suits, like Greg said, there's no policy. So there's no end use certificate that is required. For the bio/chem suits, there was an end use certificate that was required. In that particular case, we filled out the paperwork, we put down information that we had made up, then we forwarded it to them.

They called us and wanted to check on a particular piece of information which we—I would say altered a document and forwarded back to them. After we forwarded the document back, we were given our clearance and allowed to pick up the suits.

Mr. TURNER. Let's just break this one down also. So what you're saying is you didn't even set up an elaborate deceptive process other than credit contact between the fictitious company and DOD?

Mr. RYAN. There is nothing elaborate—there's nothing elaborate about what we did. There is absolutely nothing elaborate. This is a basic scheme to defraud. You assume the identity, you pass on the documentation, and you get what you need.

Mr. TURNER. You didn't even need third parties then to attempt to verify your fictitious information? It was only a DOD and fictitious company exchange?

Mr. RYAN. Yes.

Mr. TURNER. Well, obviously that continues to be troubling, because you go to the next level of saying for the materials that we have in front of us for which there was not a policy, if we do put a policy in place, if DOD is not sufficiently following them, then we have no real confidence that we're not going to have the same presentation in front of us for those items which a new policy applies.

In addition to your recommendations on the risk assessment through the DOD of homeland security, talk a bit about the failures in the Department of Defense obviously for the policies to be affective.

Mr. KUTZ. Well, it would be a combination of I believe after January some of the suits were in, I'll call it, the pipeline. The way it works is the Defense Reutilization Marketing Service provides them to a private sector contractor who sells them to the public on the Internet. That is govliquidation.com.

Some of the suits were already in the pipeline, and they did not—were unable to get them successfully back out of that pipeline. The other part is the chronic issue of the——

Mr. TURNER. Do you know why? You said they were not successful in getting them out of the pipeline.

Mr. KUTZ. They probably got some out of the pipeline but the rest of them stayed in the pipeline and were sold, some of them to us. So that is one of the things. So that should no longer be the case. They should be able to prevent those from getting in the pipeline. The other is just getting out the information to all of the different organizations and units out there involved in this process and providing some sort of a mechanism to ensure that the policy is enforced, and I mentioned in my opening statement it's a chronic issue at DOD. You have a lot of good policies at the Department, but it's so large and so stovepiped and decentralized it's very difficult to get consistent compliance with those policies across this very, very large organization.

Mr. TURNER. Well, that's another area that I have a concern. In looking at your recommendation of—for the items that there currently isn't a policy, you had indicated that a risk assessment should be undertaken between DOD and Homeland Security. Apparently there is not a process within DOD wherein that risk assessment—you're comfortable that they're able to identify what items need to be controlled.

Mr. KUTZ. In conjunction with the scientific community and the scientific community over at the Department of Homeland Security, they should have the bigger picture, and keep in mind this picture is much broader than the Department of Defense excess property. You're talking about lots of people out there that are selling this equipment domestically and worldwide. So whatever solution they have—they might be able to fix this problem, but it is a broader problem, because there's a lot of other organizations and companies out there selling this, and as I mentioned in my opening statement, there's a large secondary market for this equipment that DOD was feeding into. And so Agent Ryan when he was doing his investigations of the buyers found that there was a lot of this equipment going around, and certainly DOD was a large feeder of equipment into this process, but probably in the whole scheme of things they were a very small piece of the puzzle.

Mr. SHAYS. Thank you. Mr. Bell.

Mr. BELL. Thank you, Mr. Chairman. After September 11th we heard the term "connecting the dots" used a great deal, and a lot of times it was used because there was concern that Federal agencies weren't taking adequate proactive measures to keep the Nation safe, and after September 11th we told ourselves that this would never happen again, but Mr. Kutz, it's clear from your testimony that it has. And your report also seems to suggest that the Defense Department was warned about this particular problem and then chose to take no action. Is that fair?

Mr. KUTZ. With respect to the suits, I would say that's fair. I'm not sure about the equipment. I believe that the equipment has flown under the radar screen, and it was not really thought about in a way that this could actually be used to harm us. And so the suits there was certainly ample warning on, and they have made

an attempt. I mentioned in my opening statement that we found JSLIST suits. That is the current suits being used by the soldiers today that were used in Iraq being sold last year. We saw no evidence since your hearing last year that any more of those suits have gone out. So the only suits that we saw going out were what's called the battle dress overgarments, which is the prior generation of technology. But with the equipment, I honestly believe that this was just something that had kind of slipped under the radar screen.

Mr. BELL. Well, let's talk about that, because obviously one of our purposes here today is to try to figure out how we got to this point, how this problem was created so that we can do something about it.

Can you tell me about the effort by Customs and the Department of Homeland Security to identify equipment that could potentially be used by terrorists?

Mr. KUTZ. Yeah. A little bit, and then I'll let my colleagues chime in on this, but the Customs has the Operation Shield America that I mentioned, and we did meet with the agents from Customs, who as part of Homeland Security here, with respect to that. And that really is warning people and getting an awareness out there of suspicious activity of purchasers of new equipment for the most part, and it's also focused on export of that equipment. So Customs does have a program, and they did brief the Department on this program. And, again, I don't think the Defense Department did a lot after that briefing, which is another warning possibly with the equipment, as you mentioned. But Customs does have an active program. There are lots of investigations that they have underway looking at suspicious activity with respect to primarily new equipment.

Mr. BELL. Well, a list was created, was it not, of items that could be potentially used by terrorists?

Mr. KUTZ. Correct.

Mr. BELL. And isn't it as correct that all five of the items that you ultimately purchased from the Department of Defense were on that list?

Mr. KUTZ. They were either on the list or they were very similar to items on the list. That was one of the issues is that in looking at the list from a narrow perspective, if you only looked at the hundred items on that list, you may very well miss important items, but they were similar items to the items that were on the Customs Operation Shield America and the Australia Group Agreement. That is more of an international group looking to try to stem the proliferation of biological weapons worldwide. But they were very similar to the items on those, and in some cases they may have been the same technology. They might have also been a step down in technology. Mr. Rhodes can probably add to that. That could actually be configured in a way that could be used for the same purpose.

Mr. BELL. Mr. Rhodes, do you want to add to that?

Mr. RHODES. Yes. Thank you. One point that I would make goes to the heart of the recommendation about the risk assessment and, is that if you look at any of these lists and you take any one of these individual devices narrowly and you say I'm going to look at

the centrifuge, for example, and you look at the specification of the centrifuge and you say, all right, that individual device in that configuration does not meet the threshold of the list, fine. What is the weapon you're trying to build? This equipment cannot make material equal to what was sent through the mail in October—September and October 2001. It can, however, make anthrax, and it can make anthrax in the crude form that Mr. Kutz is talking about, which is not necessarily going to be at that level, but you are going to be able to make anthrax and you are going to be able to wreak havoc with it.

There's an added benefit of being able to buy all of this equipment, because the suit adds value to the bio safety cabinet, which adds value to the centrifuge, which adds value to the incubator, which adds value to the other equipment. That's really at the heart of the risk assessment is to look at all of this as an ensemble rather than this particular evaporator needs additional equipment in order to be at the level to break the threshold on a list. So that's what we're getting to at the heart of this risk assessment.

Thank you.

Mr. BELL. Mr. Kutz, at some point are you aware of whether the Customs officials met with the Department of Defense to let them know that they were selling equipment that could be used in the manufacture of biological weapons?

Mr. KUTZ. Customs did meet with DOD and provided the same presentation I believe that they provide to private sector companies. I don't know—go ahead.

Ms. FISCHER. Customs agents told us that they met with the Under Secretary of Defense for Policy related to counterproliferation——

Mr. BELL. Do you know who that was?

Ms. FISCHER. Lisa Bronson—in December 2002 and briefed her on their concerns with regard to the items on their Operation Shield America list.

Mr. BELL. And they didn't immediately halt their sales though, did they?

Ms. FISCHER. No, they didn't. We tried to meet with Deputy Under Secretary Bronson ourselves to determine what action DOD might have taken as a result of that briefing, and she declined a meeting with us.

Mr. BELL. She declined the meeting?

Ms. FISCHER. Yes. She sent us a letter that basically said that they follow the Federal regulations that only control the specific items that Mr. Rhodes mentioned to you a few minutes ago—items that are controlled for export purposes, but we were more interested in what DOD thought about the range of items that could be used for the same purpose, and we didn't get an answer to that question.

Mr. BELL. Well, let me get this straight, because you all were investigating this issue at the request of Congress, were you not?

Ms. FISCHER. Correct.

Mr. BELL. And on what basis then did she refuse to cooperate?

Ms. FISCHER. I think you would probably have to ask her that question. She——

Mr. BELL. So as far as you know, they just continued to sell the equipment after being confronted with it?

Ms. FISCHER. Yes. Her written response was that they follow the guidance in the Federal regulations, and it just stopped there. It didn't go any further to say whether they were considering broader controls or not. Since we did not get to meet with her, we really weren't able to discuss this issue further.

Mr. BELL. Well——

Mr. SHAYS. Could the gentleman suspend a second?

Mr. BELL. Sure.

Mr. SHAYS. This is something the committee will followup and appreciate the gentleman pursuing these questions. We want to know why she didn't meet with you, and so we'll follow it up.

Mr. BELL. So the sales were not halted even after the information was brought to the attention of the Defense Department. At some point they were finally halted, and in your opinion was that just because of the threat of bad publicity?

Mr. KUTZ. It was as a result of our recommendation to them to do a risk and vulnerability assessment. So I think that they took that very seriously. And as a result of that in the meantime while they're doing the risk assessment, which may take several months, they are freezing the sale of those items.

And let me clarify on the Customs Operation Shield America, they don't prohibit private sector organizations from selling equipment. What they do is they try to educate them that if a suspicious pattern of purchasing activity happens with some of the people who are buying from you or if a buyer you are not familiar with is trying to acquire some of these items, call us and we will investigate. And that would get into the kind of purchases we made. We made a pattern of purchases here that, again, I think no one was really looking to see if something suspicious was happening.

Mr. BELL. Just to wrap this line of questioning up, Mr. Kutz, or anyone else on the panel, what would your recommendation be to the Defense Department in terms of being more proactive in the future?

Mr. KUTZ. I believe that they—in addition to looking at biological here, they will be looking at chemical also. If you look at the excess property pipeline, there is a tremendous amount of items that go through there. A lot of those items are demilitarized. They are supposed to be controlled from being sold to the public. Or if they're sold to the public, they're altered so that they don't meet their initial purpose. I believe they're going to take a broader look, and you can ask the next panel, to determine if not only this type of equipment but chemical, other types of equipment, may be going out that should be restricted in some way. And I concur that would be the right move here.

Mr. BELL. Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman.

Mr. Janklow.

Mr. JANKLOW. Thank you very much, Mr. Chairman. Mr. Young, or you, Mr. Kutz, any of you, if the Department of Defense were to be searching in a country and found large numbers of safety cabinets, incubators, centrifuges, lab evaporators, chemical, bio gear and milling machines, I assume that we would think that we

had found weapons of mass destruction in a country. Would that be correct? Mr. Rhodes, maybe you can help me.

Mr. RHODES. It would definitely signify intent. I mean, you're looking for an adversary——

Mr. JANKLOW. And these are all the things that we're disposing of through the Department of Defense or other agencies?

Mr. RHODES. Yes, sir.

Mr. JANKLOW. And we talk about them falling under the radar screen. One has to wonder does it really take Members of Congress and people asking for special investigations and audits and Inspector Generals to figure out that this stuff could be dangerous in the wrong hands to this country or another country? I guess it's a rhetorical question.

Mr. RHODES. Following your question, prior—I mean, we were surprised at what we could buy, and our assumption had always been prior to this job and the previous work, that——

Mr. JANKLOW. That it wasn't happening?

Mr. RHODES. Well, that, OK, there's some pieces of this equipment that will sneak through, and there may be a suit or two, but you don't have to worry about it, because no one can get the source material. But as you've heard from the Inspector General, that's not true.

Mr. JANKLOW. Mr. Young, I'm really—as I read your testimony, you found one laboratory that maintains salmonella and didn't even know it.

Mr. YOUNG. That's correct.

Mr. JANKLOW. You found another one that—where the secretary of an agency was misreporting to the Department of Homeland Security that the location was not using BSL–3 agents when in fact you found Bluetongue, which is a livestock virus, a deadly livestock virus, highly contagious, and vesicular stomatitis virus; and they were misreporting saying they didn't even have these items.

Mr. YOUNG. That's correct.

Mr. JANKLOW. Sir, what I'm wondering is as the Inspector Generals did their analysis or their reports, are we dealing with legal problems, are we dealing with indifference, are we dealing with incompetence or a combination of all three? What else is there that we're dealing with?

Mr. YOUNG. Well, I think before the anthrax mailings, their emphasis was on bio safety of the lab personnel. That was their emphasis of management controls over that, and they were not too concerned about bio security——

Mr. JANKLOW. But, sir, that is prior to anthrax. When did the anthrax thing take place?

Mr. YOUNG. This was September 2001—October 2001.

Mr. JANKLOW. And this is, if I remember, past September 2003. When were these Inspector General reports done? They were done this year, weren't they?

Mr. YOUNG. Some of the reports were done before September 11, 2001 or October 2001. Some of the reports were ongoing before that event, and so the timeframe of the reports is from 2001 through 2003.

Mr. JANKLOW. Sir, is there anybody that you know of that's responsible in the government of the United States to deal with these

types of issues that deal with what I'll call atomic, biological, chemical types of issues in the security of the—and the dissemination of that to the public improperly?

Mr. YOUNG. Well, from the Federal perspective, the CDC has to—should be looking at these labs to see if they do meet standards as far as bio safety, and it would be my recommendation that they also look at least at the physical controls at the lab to make sure the lab itself has adequate controls.

But from a DOD perspective, it's a combination of offices between under Secretary of Defense for Intelligence, they have a role; under Secretary of Defense for Acquisition Technology and Logistics, they also have a different role; and Lisa Bronson's office, as you've mentioned before, she's concerned with the export side.

Mr. JANKLOW. Is this too complicated? Is there a way to fix this, or have we got a pretty good system that just isn't being followed?

Mr. YOUNG. Primarily we need guidance and procedures that didn't exist, and so we've issued interim policies and procedures in the Department for—such as for safeguarding select agents they've issued interim policy and guidance on export controls over biological agents.

Mr. JANKLOW. Sir, they issue guidances, and nobody follows them.

Mr. YOUNG. Well, this is in response to our reports. In response to our four reports, these are some of the corrective actions they took. They assigned a full-time staff officer to establish policy and procedures. They issued guidance on safeguarding select agents, and they issued guidance on export controls.

Mr. JANKLOW. Sir, should this be different for different agencies? Why shouldn't this be uniform? We have laboratories. What difference does it make if they're in the Veterans Administration or CDC or in the Defense Department or on a contract agency in some university from the Federal Government? Why isn't this all being administered under one set of controls?

Mr. YOUNG. Something like Code of Federal Regulations, to come out with some standard minimum security standards or—right now it's up to each Federal agency to establish their own controls.

Mr. JANKLOW. But that doesn't make sense, does it, for the safety of America?

Mr. YOUNG. Right.

Mr. JANKLOW. If I could also ask you, sir, one agency couldn't perform a vulnerability assessment because the agency lacked a consolidated data base to track the types and locations of agents stored and used. That particular agency, was it required to have a data base?

Mr. YOUNG. They weren't required to. It's something that they should have had, because, how do you know—that's the agency that misreported to the Department of Homeland Defense or Homeland Security that they didn't have these types of agents, and yet they did, but they didn't have a data base. That's one of the recommendations that was made, and each Federal agency is to establish a data base.

Mr. JANKLOW. If there was a centralized office or individual that was responsible for these things in the government, it would really make more sense; wouldn't it?

Mr. YOUNG. Yeah.

Mr. JANKLOW. Another area dealing with the import and export, I noticed concerns about the import of pathogens was addressed by one agency, which stated in its report its components lacked the system to track the number of shipments entering the country under any individual permit, or to ensure that any incoming shipment is actually associated with a valid import permit.

My question is, sir, these agencies that find all these problems in administering the law, are you aware of any system whereby they ever notify their superiors or an administration or the Congress or anybody that they're having problems implementing what they're supposed to be doing?

Mr. YOUNG. No——

Mr. JANKLOW. Or just when they have problems they just ignore them.

Mr. YOUNG. Well, it takes auditors and reports to raise mass awareness of the problem, so they can take corrective action.

Mr. JANKLOW. Management isn't expected to do that on their own?

Mr. YOUNG. That's correct, because lack of oversight is one of the main reasons we have a problem.

Mr. JANKLOW. And it says disperse from the Agriculture Department to the Veterans Administration to the Defense Department. And I notice the Army is involved in there. What about the Navy and the Air Force?

Mr. YOUNG. They didn't participate in this effort.

Mr. JANKLOW. Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman. Mr. Ruppersberger.

Mr. RUPPERSBERGER. Yes.

You made a comment that I would like to explore a little bit, the fact that the Department of Defense generally has been known to really not to be—you give the statement. I'm asking for your statement, not being listening, adhering to certain policies that could be relevant to situations like today, what was that comment?

Mr. KUTZ. Right, I mean in the work that we've done, in the financial management, inventory management and other areas, and keep in mind DOD today has nine high-risk areas on our list of 26, so they have lots of challenges in the area of business support, but certainly, the adherence to valid policies and procedures we see in many of the studies we do. And again, I believe it gets back to a large decentralized organization and diffuse power across the Department as to, you know, compliance with policy. So, again, there is a lot of good policy, but it is a chronic issue we've seen.

Mr. RUPPERSBERGER. Well, that's what I think, really. We're talking about one issue today, an example of, I believe, that your mission was to go in the area of biological and chemical and we have what we have here today just because of that.

What concerns me is the systemic problem that exists with DOD and how we're going to have oversight and hopefully recommend how things are going to be changed so we do not have these situations.

On page 32 of your report, the GAO report, I just quote just a small part: "our ability to purchase these items demonstrates ineffective DOD supply chain management."

Do you agree with that?

Mr. KUTZ. Yes, absolutely.

Mr. RUPPERSBERGER. And why do you agree with that statement?

Mr. KUTZ. Well, with respect to the defective suits in particular, which is what I believe we're talking about, the problem they've had in controlling the suits is that once they leave the Defense Logistics Agency's warehouse they go up to the various services, Army, Navy, Air Force, Marines. Those services do not have consistent systems or policies for tracking the suits once they leave the DLA warehouses; for example, some have systems, some have spreadsheets, some use pen and paper, some use nothing. And so, when you try to get visibility from the top of all the suits, when do they expire, there's absolutely no way to roll it up, so what happened was when the defective suits have gotten out to the Department, they were unable to recall and find for sure 250,000 of them, and it gets into something I looked into for the subcommittee last year.

I took a visit to Wal-Mart and we looked at Wal-Mart at their supply chain management, which is world class, and they were able to find a tube of toothpaste in a minute, that was—how many tubes of toothpaste were there in Fairfax, VA in 1 minute. Here we are, 3 years later, with the defective biosuits——

Mr. RUPPERSBERGER. That's a good point, because it seems like the DOD was attempting to run a business. It was attempting to really have an inventory chain. It wasn't managed properly. You know, I'm sure Wal-Mart, whatever they sell, they have certain licensings they have to go through, and these are all problems that I'm sure that you did find because you testified to that today.

Mr. KUTZ. And what Wal-Mart told us, interestingly, was remember the Tylenol scare 10 years ago? They needed to get that off the shelves in a matter of hours and they feel they need to get things off the shelves that have problems within an hour or two.

Again, I know the Department is trying to modernize their systems so that they have that same kind of world class supply chain management, but another one of our high-risk areas has been the inability to modernize high-risk systems. So that's going to be a critical element in dealing with the problems you've just identified.

Mr. RUPPERSBERGER. And you talk about the inventory control. It's my understanding that defective suits were sold, defective suits that really probably should have been maintained by DOD to use for training?

Mr. KUTZ. Correct.

Mr. RUPPERSBERGER. And then those defective suits were sold and those suits, and I am not sure whether that was in the report, but I thought I read it, but those suits were literally sold back to us; is that correct?

Mr. KUTZ. Well some of them were turned over to local law enforcement agencies who then returned them to DOD who sold them to us; 379 of the ones that we purchased came back from local law enforcement agencies. Others, it appears that as many as over 100,000 of the 250,000 defective suits could very well have been sold to the public.

In looking at our data base out of the 286,000 suits that were sold over the last 3½ years—it's possible that as many as 158,000

of them could be defective, based on the national stock numbers. It's unlikely that all of those are defective because there were multiple manufacturers of these defective suits. Isratex is the one that manufactured the defective suits.

Mr. RUPPERSBERGER. What I'm interested in, we have hearings after hearings, and hopefully, we will benefit from the hearings so that we can try to have an effect and have change. That's Congress's oversight mission, so to speak. What I'm interested in, and DOD's going to be the second panel and we're going to be able to ask them certain questions, and this is probably not the most joyful hearing for them, what could we do, from your position or from where you stand, what could we do to try to effect it and I think really probably a lot of problems start at the top so we're going to have to effectuate a recommendation that will go to the top level of DOD to change the system. And, for example, I love the comparison you made. You have Wal-Mart who has inventory and was able to find something right away, and yet DOD cannot.

Help me out. What questions would you want me to ask the Defense Department? Were they on the next panel? I haven't done that before, but I thought it was a pretty good question.

Mr. KUTZ. Well, with respect to this, and I think even in the written statement, they said they would be in a position in 3 months to try to come up here and deal with these issues, so you may want to have another hearing and have them come back up and hold them accountable and say have you fixed these problems and we can see whether these problems have been fixed. The things that get DOD's attention are the things before us today or dealing with the money issue and cutting parts of the budget where there is poor performance, so those are the ways that you can impact.

Mr. RUPPERSBERGER. And also good management setting a deadline and holding them accountable for the deadline.

Mr. KUTZ. Right.

Mr. RUPPERSBERGER. But in your opinion, it's going to have to go to a high level to effectuate this?

Mr. KUTZ. Right. This should be from the very top levels of DOD that this is important, and it can be done; I mean, if you look at the DOD from a mission and we always break it into mission and mission support. If you look at mission, the ability to fight and win wars, they get an A. If you look at mission support, as my boss David Walker has said, they get a D.

Mr. RUPPERSBERGER. Well is it a technology problem, is it a lack of technology.

Mr. KUTZ. It isn't a lack of technology. It's a lack of effective technology.

Mr. RUPPERSBERGER. What do you mean?

Mr. KUTZ. Well, they spend $18 or $19 billion a year on their business systems, and those systems are dysfunctional at this point.

Mr. RUPPERSBERGER. Well, that's an important issue and that's something specific that I think we can look at that you feel the systems that they have in DOD generally are dysfunctional for what the needs are today.

Mr. KUTZ. That's correct, and Chairman Shays has had hearings on that before, and so this subcommittee has had oversight over that issue.

Mr. RUPPERSBERGER. Another thing that concerns me greatly, this is just one small investigation, what else is out there that could even have more impact on what we're dealing with today?

Mr. KUTZ. I mean, I obviously cannot tell you, but certainly this is a small example of a broader management challenge the Department faces that gets into, again, the high-risk areas.

Mr. RUPPERSBERGER. Do you feel that the leadership and DOD is putting their head in the sand as relates to this phase of running the Department?

Mr. KUTZ. When you say, which phase do you mean?

Mr. RUPPERSBERGER. Well, the phase of inventory control, management, we're giving an A on fighting the wars, but on actual inventory control, accountability, those issues?

Mr. KUTZ. I believe mission always gets priority over mission support, but I do believe they're taking mission support very seriously, and they are trying very hard to modernize their systems; I mean, they have represented that the supply chain management for the Iraqi war is much improved over what they had 10 years earlier, and they can maybe talk to you about that as part of the second panel.

Mr. RUPPERSBERGER. Mr. Chairman could I just ask one more question of my time.

Mr. SHAYS. Yes.

Mr. RUPPERSBERGER. One more question, where I would just ask if you have any information whether we sold equipment and bought it back? Can you give me some examples of this?

I think maybe Mr. Ryan might know that more than you.

Maybe Mr. Ryan might know that more than you.

Mr. RYAN. In the case that you refer to, Congressman, it's an area in which they were turned in, these suits were turned in. There was a large quantity of these suits that were turned into DRMO's. They're what they call reutilized. Someone went in, didn't purchase them, but within DOD they were reutilized.

That was a special DODAC—that was a law enforcement support organization requisitioned those, California's State coordinator requisitioned over 700 of these suits.

Out of that, one particular law enforcement group in southern California got over 400 of these suits. They were going to use them for an exercise, a mock exercise. The mock exercise did not work. They turned them back in to DOD. At that point, they should have been taken out of service—they should have been taken off line and sent for destruction because there was a notice to destroy those suits.

While they were doing that, there were three other units within DOD that requisitioned them. They got them. The others were then placed in GL's custody for sale, at which time we bought them.

Mr. RUPPERSBERGER. But what I was referring to also was a Wall Street Journal Article of May 13 about plane parts?

Mr. RYAN. I——

Mr. RUPPERSBERGER. Did you know that?

Mr. KUTZ. No.

Mr. RUPPERSBERGER. They were referring to plane parts that were sold and that we bought back.

Mr. RUPPERSBERGER. I guess you haven't read the article.

Mr. KUTZ. I haven't, no.

Mr. SHAYS. It's not like they have enough to do; I mean one of the challenges we have with the Department of Defense, we've had tremendous challenges financially and with inventory control that stretches back decades and decades; I mean, at one point, there was an audit that said 7 trillion transactions in DOD were not auditable, and that went down to 1 trillion today, a little more than that.

Now, that's obviously the same item and the same dollars going back-and-forth and so on, but it's a number that just defies logic. The reason why, in my judgment, you do not get a handle on it is DOD knows that like in any other government agency, we're not going to shut them down, so it just doesn't get the priority, and that's one of the reasons we have these hearings, to have it show up on the radar screen, and frankly to give it a little more public emphasis.

Let me just start with you, Mr. Kutz. In your written testimony, first let me set it up. This is equipment that you, Mr. Ryan, were able to buy.

Mr. KUTZ. That's correct.

Mr. SHAYS. And, in your testimony in response to questions, you pointed out that you could do basic chemical—biological agents, terrorist agents, such as anthrax. The difference here would be it wouldn't be milled anthrax, but let me come to your statement, Mr. Kutz. You said we also know that DOD excess property sales included other items that would use full laboratory equipment for the production of anthrax, such as microscopes, not here, and micro milling machines also not here. Micro milling machines are high-speed grinders that can be used to grind dried anthrax into small particles for dissemination. While anthrax can be ground by hand, a milling machine makes the process more efficient and ensures the production of microscopic particles.

DOD sold 13 milling machines over the Internet since June 2001. That was in your testimony.

Now, I'm told that the anthrax that made its way to the Capitol, a handful of anthrax was potentially a billion spores, so we're talking about not a million, a billion, and, at one point, we were told that they might even have to tear apart the Hart Building and build a new building; I mean, that's how difficult this stuff became for us, so it's your testimony that while Mr. Ryan was not able to buy a micro milling machine, it's your testimony, since 2000, June 2001, 13 were sold; is that correct?

Mr. KUTZ. Right. They just weren't available during the time we were doing your investigation.

Mr. SHAYS. Is it your testimony that some of these 13 were sold after September 11?

Mr. KUTZ. Yes.

Mr. SHAYS. So they weren't all sold between June 2001 and September 2001?

Mr. KUTZ. Correct. Some were sold through March 2003. I do not remember the last date of sale, but they were sold during the period of June 2001 to March 2003.

Mr. SHAYS. So, if we added both the microscopes and the milling equipment, milling machines, would you have been able to build a more sophisticated biological agent, Mr. Rhodes?

Mr. RHODES. Yes.

Mr. SHAYS. And then to reiterate, the only difference is, Mr. Ryan, you weren't able to buy them at that point, but they were for sale sometime since June 2001?

Mr. RYAN. That's correct.

Mr. SHAYS. And after September 11, 2001?

Mr. RYAN. That's correct.

Mr. SHAYS. This is—yes.

Yes, Mr. Rhodes.

Mr. RHODES. I also wanted to make one point about the equipment. This is notional equipment; notional, I mean, you've given us a threshold on time and money. Three additional points we will make. There were biological safety cabinets that were the size of this hearing table that were available. There were centrifuges that were the size of washing machines. There were incubators that were the size of refrigerators, so——

Mr. SHAYS. For sale?

Mr. RHODES. For sale.

Mr. SHAYS. Over the Internet.

Mr. RHODES. Yes; and I just want to make one point, that, in our discussions with other folks in the counterterrorism and biowarfare community, we were discussing relative volume, what can you make, and we all understand that this would make a very small, very, very small amount of material, but, when I was discussing the larger pieces of equipment then everyone became nervous. You know, they said well this will be good for a notional discussion, but when you're talking about a biosafety cabinet that's the size of this hearing desk, you're talking about centrifuges that are as large as washing machines, and you're talking about incubators that are as big as refrigerators. Now you're talking about volume. And now, you're talking about you become—you reach a point at which you can overcome the inefficiencies of material development.

Mr. SHAYS. And is it your testimony that this equipment was for sale and also sold?

Mr. RHODES. It was for sale. I do not know that the larger equipment was sold, but the lots were moving, and to get to the point about intransit visibility, 1 day when we went to delivery sites, the storage sites, the person that walked us into the building was absolutely certain that there were no bio suits, no chem-bio suits available, and we looked into a container and the container was actually marked for boat equipment. It was life vests and brass fittings and things like that, and the suits were in there, so——

Mr. SHAYS. My understanding is sometimes lots are sold with a variety of equipment in it. It's almost like a miscellaneous shipment that you buy and then you kind of open up with some interest, as to what you've purchased.

Mr. RHODES. It's like——

Mr. KUTZ. It's like a grab bag, yes; I mean there might be some good things in there that you never envisioned were in the box.

Mr. SHAYS. But you're willing to take the risk of what you buy; is that correct?

Mr. KUTZ. That might be what certain buyers have learned over time because a lot of people are buying this from the Department.

Mr. SHAYS. I wasn't intending to ask this line of questioning, but we were presented with the requested meeting with Lisa Bronson, and Mr. Bell's rightfully raising some question about that frankly really surprised me, not that he raised it, but the results of the questions.

In the e-mail you sent, we understand that this is a longer e-mail to Mr. Shortwell; is that right?

Ms. FISCHER. Shotwell.

Mr. SHAYS. Yes. It says we understand the customer manager's briefed Lisa Bronson, who is Deputy Under Secretary of Defense Technology Security Policy and Counterproliferation, and it said we understand the customs managers briefed Lisa Bronson on their Operation Shield America program last year. We would like about 30 minutes of Under Secretary Bronson's time to discuss the following: Has DOD prepared a vulnerability assessment that considers the risk associated with sale of certain excess biological laboratory equipment to the public; No. 2, what, if any, consideration has DOD given to controlling or restricting the release of its excess biological or laboratory equipment items outside DOD; so that's bottom line what you requested.

You got an answer that, basically, it's so short I'm just going to read it, and then we will submit it for the record.

In response to your e-mail request dated June 6, 2003, for information regarding controls over JSLIST suits, the following is provided our primary focus on this issue is from an expert control perspective, rather than an inventory control perspective. As of November 27, 2002, military clothing and mass design to protect against chemical and biological agents would include the JSLIST suit have been added to the U.S. munitions list. Excerpts from the State Department's final laws appeared in the Federal Registry as attached. For your information, effort is underway to add protective suits, so do you feel that her letter to you was, in any way, responsive to your questions?

Ms. FISCHER. No, we do not, Mr. Chairman.

Mr. SHAYS. I mean, the obvious fact is it wasn't. I'm surprised that you even needed to say you only wanted 30 minutes of her time. Is it that meeting, is it that difficult to have a meeting to do your job?

Ms. FISCHER. When we asked for a meeting, we worked through Mr. Shotwell, the Under Secretary's special assistant. They said they were very busy, Ms. Bronson was going out of town and didn't have much time available, and that's when we offered to meet for just 30 minutes.

Mr. SHAYS. Let me just say for the record, and I think some of you know that I shouldn't have to say this, that the next time this happens, we shouldn't and you shouldn't be faced with this. You should contact the committee and the committee should inquire, as to why there's not this kind of cooperation, because not only did

she not meet with you, she didn't even respond to your questions, which raises a heck of a lot of questions in our minds, so we will obviously be in touch with her and we look forward to you accompanying us.

Ms. FISCHER. OK.

Mr. SHAYS. And well, without objection, submit this for the record.

[The information referred to follows:]

OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000

POLICY

OCT 7 2003

Honorable Christopher Shays
Subcommittee on National Security, Veterans' Affairs and International Relations
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I understand that your subcommittee received testimony today on DoD's excess biological equipment disposal practices, and that a representative of the General Accounting Office (GAO) reported results of the recent audit entitled "Risk Assessment Needed on Public Sales of Equipment that Could be Used to Make Biological Equipment.

I was very concerned to learn that a GAO representative characterized my office's response to a request for information as a refusal to meet. This is incorrect.

Ms. Gayle Fischer of the GAO requested a meeting with me by email on, June 6, 2003 regarding several broad questions (copy at Tab A). My staff contacted her to arrange such a meeting. After an exchange of telephone calls, Ms. Fischer offered to accept a written response in lieu of a meeting. She asked for a written response on a more narrow question: whether the US Munitions List had been updated to include the Joint Service Lightweight Integrated Suit Technology (JSLIST) suit. On June 19, I sent her a memo in response to her revised request (Tab B). Our internal record of this exchange is provided at Tab C for your information.

I am concerned that the subcommittee has been left with an inaccurate impression. Congress deserves prompt and accurate responses to its questions regardless of whether they are submitted directly to executive agencies or through the GAO. This is the standard to which I hold myself, and that I have directed my staff to meet without exception.

I request that this letter and the three attachments be made part of the record of your hearings. I would welcome an opportunity to clarify any remaining issues with you or your staff. An identical letter to has been sent to Ranking Democrat Kucinich.

Sincerely yours,

Lisa Bronson
Deputy Under Secretary of Defense, Technology
Security Policy and
Counterproliferation

cc: Comptroller General David M. Walker

Shotwell, Charles, CIV, OSDD-POLICY

From: Gayle L Fischer [FischerG@gao.gov]
Sent: Friday, June 06, 2003 5:50 AM
To: charles.shotwell@osd.mil
Subject: GAO Request for Meeting

DRMS Notification Letter 19208... d02873[1] Ineffic & Ineffec B...

Mr. Shotwell, We would like to set up a meeting with Under Secretary of Defense for Policy, Lisa Bronson, to discuss DOD policy as it relates to issues identified in our ongoing audit of controls over DOD excess property (job code 192084). I have attached a copy of our audit notification letter. We are performing our work at the request of the Subcommittee on National Security, Emerging Threats, and International Relations and Representative Janice Schakowsky. We were asked to do our current audit as a follow-on to our June 2002 testimony on Examples of Inefficient and Ineffective Business Processes (attached). One of the case studies discussed in our testimony focused on Joint Service Lightweight Integrated Suit Technology (JSLIST) inventory control weaknesses, including Internet sales of new, unused JSLIST.

In our current audit, we are considering the domestic security risk associated with DOD sales of certain excess biological equipment and chemical and biological protective suits. This biological equipment is not currently subject to any demilitarization restrictions. We have met with Defense Threat Reduction Agency and Customs Service officials and have received briefings from both agencies. We understand that Customs managers briefed Lisa Bronson on their Operation Shield America program last year.

We would like about 30 minutes of Under Secretary Bronson's time to discuss the following:

(1) Has DOD prepared a vulnerability assessment that considers the risk associated with sale of certain excess biological laboratory equipment to the public?
(2) What, if any, consideration has DOD given to controlling or restricting release of its excess biological and laboratory equipment items outside DOD?

We would like to meet with Under Secretary Bronson at her earliest convenience. We also can arrange to have GAO's Security Office provide you with clearance information on GAO staff who would be participating in this meeting, if necessary. Thank you for your assistance in setting up this meeting.

Gayle L. Fischer
Assistant Director
Financial Management & Assurance
202-512-9577
FAX 202-512-6337

TAB A

OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000

POLICY

JUN 19 2003

MEMORANDUM FOR THE GENERAL ACCOUNTING OFFICE (ATTN: GAYLE FISCHER)

SUBJECT: Response to Query Regarding Controls Over the Joint Service Integrated Suit Technology (JSLIST) (GAO Job Code 192084)

In response to your e-mail request (dated June 6, 2003) for information regarding controls over JSLIST suits, the following is provided.

Our primary focus on this issue is from an export controls perspective, rather than an inventory control perspective. As of 27 November 02, military clothing and masks designed to protect against chemical and biological agents, which includes the JSLIST suit, have been added to the U.S. Munitions List. Excerpts from the State Department's "final rule" as appeared in the Federal Register is attached. For your information, an effort is underway to add protective suits designed for civilian use (e.g., civil defense) to the Commerce Control List.

Should you require further clarification on this response, my POC is Charles B. Shotwell, 695-6386.

Lisa Bronson
Deputy Under Secretary of Defense
Technology Security Policy and
Counterproliferation

Attachments
As stated

TAB B
(2)

[Federal Register: November 27, 2002 (Volume 67, Number 229)]
[Rules and Regulations]
[Page 70839-70845]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr27no02-4]

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 4209]
RIN AB-60

Amendment to the International Traffic in Arms Regulations, United States Munitions List

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is revising Category V--Explosives, Propellants, Incendiary Agents, and Their Constituents and Category XIV--Toxicological Agents and Equipment and Radiological Equipment, of the U.S. Munitions List (USML). Amendments are made to the titles of both categories to better reflect the items included in the category and to move the texts of the definitional and interpretive provisions to the appropriate category. Also, to assist exporters, Category V and XIV are reformatted to identify the items by their predominant use. Exporters are also being provided Chemical Abstract Service (CAS) numbers and Chemical Weapons Convention (CWC) references. In addition to reformatting and changes in the language for clarification, Category XIV and Category V are revised to move from the USML to the

(3)

follows:

(1) Alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonyl diflourides, such as: DF: Methyl Phosphonyldifluoride (CAS 676-99-3) (CWC Schedule 1B); Methylphosphinyldiflouride;

(2) O-Alkyl (H or equal to or less than C10, including cycloalkyl) O-2-dialkyl (methyl, ethyl, n-Propyl or isopropyl)aminoethyl alkyl (methyl, ethyl, N-propyl or isopropyl)phosphonite and corresponding alkylated and protonated salts, such as: QL: O-Ethyl-2-di-isopropylaminoethyl methylphosphonite (CAS 57856-11-8) (CWC Schedule 1B);

(3) Chlorosarin: O-Isopropyl methylphosphonochloridate (CAS 1445-76-7) (CWC Schedule 1B);

(4) Chlorosoman: O-Pinakolyl methylphosphonochloridate (CAS 7040-57-5) (CWC Schedule 1B);

(5) DC: Methlyphosphonyl dichloride (CAS 676-97-1) (CWC Schedule 2B); Methylphosphinyldichloride;

(d) Tear gases and riot control agents including:

(1) Adamsite (Diphenylamine chloroarsine or DM) (CAS 578-94-9);

(2) CA (Bromobenzyl cyanide) (CAS 5798-79-8);

(3) CN (Phenylacyl chloride or w-Chloroacetophenone) (CAS 532-27-4);

(4) CR (Dibenz-(b,f)-1,4-oxazephine) (CAS 257-07-8);

(5) CS (o-Chlorobenzylidenemalononitrile or o-Chlorobenzalmalononitrile) (CAS 2698-41-1);

(6) Dibromodimethyl ether (CAS 4497-29-4) ;

(7) Dichlorodimethyl ether (ClCl) (CAS 542-88-1);

(8) Ethyldibromoarsine (CAS 683-43-2);

(9) Bromo acetone;

(10) Bromo methylethylketone;

(11) Iodo acetone;

(12) Phenylcarbylamine chloride;

(13) Ethyl iodoacetate;

(e) Defoliants, as follows:

(1) Agent Orange (2,4,5-Trichlorophenoxyacetic acid mixed with 2,4-dichlorophenoxyacetic acid);

(2) LNF (Butyl 2-chloro-4-fluorophenoxyacetate)

*(f) Equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment as follows:

(1) The dissemination, dispersion or testing of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

(2) The detection, identification, warning or monitoring of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

(3) Sample collection and processing of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

4

(4) Individual protection against the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

This includes military protective clothing and masks, but not those items designed for domestic preparedness (e.g., civil defense);

(5) Collective protection against the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

(6) Decontamination or remediation of the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

(g) Antibodies, polynucleoides, biopolymers or biocatalysts specifically designed or modified for use with articles controlled in paragraph (f) of this category.

(h) Medical countermeasures, to include pre- and post-treatments, vaccines, antidotes and medical diagnostics, specifically designed or modified for use with the chemical agents listed in paragraph (a) of this category and vaccines with the sole purpose of protecting against biological agents identified in paragraph (b) of this category. Examples include: barrier creams specifically designed to be applied to skin and personal equipment to protect against vesicant agents controlled in paragraph (a) of this category; atropine auto injectors specifically designed to counter nerve agent poisoning.

(i) Modeling or simulation tools specifically designed or modified for chemical or biological weapons design, development or employment. The concept of modeling and simulation includes software covered by paragraph (m) of this category specifically designed to reveal susceptibility or vulnerability to biological agents or materials listed in paragraph (b) of this category.

(j) Test facilities specifically designed or modified for the certification and qualification of articles controlled in paragraph (f) of this category.

(k) Equipment, components, parts, accessories, and attachments, exclusive of incinerators (including those which have specially designed waste supply systems and special handling facilities), specifically designed or modified for destruction of the chemical agents in paragraph (a) or the biological agents in paragraph (b) of this category. This destruction equipment includes facilities specifically designed or modified for destruction operations.

(l) Tooling and equipment specifically designed or modified for the production of articles controlled by paragraph (f) of this category.

(m) Technical data (as defined in Sec. 120.21 of this subchapter) and defense services (as defined in Sec. 120.8 of this subchapter) related to the defense articles enumerated in paragraphs (a) through (l) of this category. (See Sec. 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this Category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

06/16/03

TO: Lisa Bronson

FROM: Chuck Shotwell

SUBJECT: Response to GAO Query Controls Over the Joint Service Integrated Suit Technology (JSLIST) (GAO Job Code 192084)

Per your request, I followed up with Joe Nelson and Jim Sell about USML controls over chem/bio protective suits. The attached proposed response (Tab A) provides a copy of the Federal Register entry indicating that military protective suits, including the JSLIST suit, were added to the USML as of Nov 02.

After receiving the initial e-mail from Gayle Fischer (Tab B), she revised her query to simply whether or not the USML had been updated to include the JSLIST suit. She also offered to accept a written answer in lieu of a meeting, as initially requested.

Recommendation: Sign the memo to GAO at Tab A.

Signed please dist. 6/19

RECEIVED
JUN 16 2003
BY:

TAB C

"6

Mr. SHAYS. My time is running down but let me just pursue. Mr. Young, in your testimony, and you're here because you're the other part of the story. You're the part of the story that says we have this lab equipment and this lab equipment can make biological agents and basically, your testimony, it seems to me, you raise serious concerns over potential availability of the germs anthrax, the terrorists who would want to cook in this equipment lab. Do not know where the biological agents are in some cases you found, so they do not control physical access to the agents, you found that out as well, they do not control who has access to the agents. They do not always know where the agents are being exported; is that correct?

Mr. YOUNG. That's correct.

Mr. SHAYS. So, when you combine this to your part of the story, I'm a lot more concerned than I was before we started this hearing. This is far more serious than even I had been led to believe.

Here's what we're going to do. We're going to do 5 minutes—we haven't even talked in the kind of length that I would like just about how it's possible that our first responders could get protective gear that may be defective, how we could grab them this faulty gear back and then reput it out again is simply something that, you know, takes my breath away.

Mr. Bell, we're going to go with you first and then we will go to Mr. Turner, so you have 5 more minutes, give or take. If you need more, use it.

Mr. BELL. Thanks a lot, Mr. Chairman.

I guess if we were just talking about a single instance of this happening, a single purchase slipping under the radar screen, perhaps, we wouldn't be responding in quite such a dramatic fashion, but we're not talking about just one item. We're talking about five items that appear to be critical to the process of making biological weapons, and I'm just curious: On that fact alone, Mr. Kutz, should there be some warnings or some alarms going off somewhere within the Department of Defense.

Mr. KUTZ. What do you mean, with respect to the sheer volume?

Mr. BELL. Right.

Mr. KUTZ. Of sales of this?

Certainly with respect to what we did, there would have been potentially a pattern with respect to the purchases of what we put together here.

On a broader perspective on the volume, with respect to the protective gear, 903,000 of hoods, masks, etc., have been sold over the last, I guess that's the last year and a half, so I think it's just something that was done. I'm not sure. Should there have been a thought of this?

Yes. I wouldn't make any excuses for the Department, they'll have to answer why there wasn't, but the world hasn't necessarily—it hasn't changed how hard it is to make anthrax, necessarily, but the risk of it is more visible because of what's happened, so maybe the thought process should have been what could possibly have been going out the door now that we have the threat.

Mr. BELL. And that was the whole idea of post-September 11, that people would have to reevaluate, that some of these things that perhaps wouldn't have sounded alarms before September 11,

the idea was to reevaluate and make sure that they would in the future.

Mr. Ryan, let me ask you this, because you were responsible for overseeing the undercover investigation; were you not?

Mr. RYAN. That's correct.

Mr. BELL. Was the same credit card used——

Mr. RYAN. Yes, it was.

Mr. BELL. For all purchases?

Mr. RYAN. And the same address for delivery; so, from an intelligence standpoint, if you were looking to gather information, what you're talking about is opening up the sky and looking at more things that are going on.

We try to stay consistent with that and seeing if there was any clue who would identify who we were.

Mr. BELL. And the same names were used for all the purchases?

Mr. RYAN. Same name.

Mr. BELL. Same credit card, and there was a fictitious business name and address, correct?

Mr. RYAN. That's right.

Mr. BELL. And there were false identities that were being used to make the purchases, correct?

Mr. RYAN. Yes, we used a made-up name.

Mr. BELL. And then did you forge or alter documents?

Mr. RYAN. Yes. We did.

Mr. BELL. OK; so that could have been a basis for denying the sales?

Mr. RYAN. If they would have caught it.

Mr. BELL. Right.

Do you know why they didn't?

Mr. RYAN. I think you'd have to ask them on how much importance they put on doing appropriate followup to the information they received. We tested the system. We believe that the system was vulnerable to beat, and that was our goal and we did it.

Mr. BELL. Well, let me ask anyone: What is it about a negative assurance system that allows something like this to happen?

Mr. KUTZ. Well, this end-user certificate, I mean, and I'll give you my view on it. It is not a protective control. It's a detective control that in a best case scenario that could help you identify who did it after it happened. I do not think it's necessarily going to prevent something from happening, and, again, I do not believe they would have been able to find Mr. Ryan if something had happened with this equipment.

Mr. RYAN. The end-user certificate kind of puts the emphasis on the person who's filling it out to be truthful. If you try to be deceptive, you can beat the system, so there's a reliance that people are going to be truthful, and that's my experience. It doesn't always happen.

Mr. BELL. Well, what's frightening about this, terrorists aren't always known for their truthfulness.

Mr. RYAN. I would agree with you and——

Mr. BELL. And isn't this precisely or exactly the way a terrorist might operate in order to get his hands needed on equipment to make a biological weapon?

Mr. RYAN. Absolutely.

Mr. BELL. And shouldn't any system that we design be at least capable of catching some of these discrepancies?

Mr. RYAN. I think they need to do an assessment deciding what is the best way to go about it, using what systems and what information we have available in the law enforcement community and Intelligence Community to decide if the information being submitted is accurate and correct and could be verified.

Mr. BELL. Thank you very much, Mr. Chairman.

Mr. SHAYS. Mr. Turner.

I thank the gentleman.

Mr. TURNER. Thank you.

Mr. Kutz, we were talking about the issue of the end-user certificate and the Department of Homeland Security and the Department of Defense working together on a threat assessment for these materials for this equipment. Wright-Patterson Air Force Base is located in my district, which as you probably know, has a significant research laboratory area which is responsive to the Air Force's needs for weapons systems in the future, and I know if you walked through their labs, you would see some of the types of equipment that you see here.

One thing that strikes me is I know in walking through those labs, if I stopped and talked to the people who are utilizing the equipment, that they'd be able to, with their equipment and their expertise, to very adequately tell me what the threat is of the potential equipment, if it should fall into the wrong hands, regardless of the fact that they're using it for something completely unrelated to biohazard or chemical hazard, and I wondered in your review of the system, whether you found any originating years or participation in the Department of Defense's determination, as to how material should be disseminated?

Mr. KUTZ. With respect to the biological equipment, I do not think there was any, and that is why our recommendation to them—we do not know the answer necessarily to this challenge here, but what we did believe was the risk assessment should be done with heavy consultation with the DOD scientific community, because they have some of the top people in the world who should know which of this stuff could be used, and Mr. Rhodes has interacted with those people before and maybe could even add to that.

Mr. RHODES. Your example of going through wright lab, for example, and seeing the scientists using their equipment and saying well, what specifically is the threat, that's a good assessment, because that's the operator using the equipment, and she or he would understand, but then there's a broader—the consultation that we're talking about is a broader view in saying: If I were your opponent, would this be good enough to do something, because sometimes the scientist working with the equipment will say, yeah, the threat is here, but I would use something different or I would do this or I would do that, and in that kind of discussion, then the individual items fall below the radar.

It's to make certain, as Mr. Kutz has said, that the broad thinking in DOD, both the covert thinking, as well as the overt thinking in the scientific community steps up and says, well, if I can get this suit and I can get this and I can get this and I can get this, then

I have a cumulative effect, and therefore, I can make it, material of this grade; and that can wreak havoc, and that's really the risk. We're trying to get the Department to view risk as a broader issue than just what can I do with one thing and what can I do with certain knowledge and what can I do with certain material. It's, well, what can I do that's good enough, not perfect.

Mr. TURNER. I appreciate that, and I believe that your recommendation on the Department of Defense working in conjunction with homeland security is a very important one; I mean, I think you have illustrated that in your discussion of how do you put these pieces together and what you're then able to amass, that is a threat that alone each individual piece would not, but it does strike me that, in addition to that, we're not just dealing with an issue of the Department of Defense not having internally the knowledge.

And that's why I asked the question, is because I think it's certainly important to look at what are the resources that we have in homeland security that can supplement what the Department of Defense is doing, and on a critical basis, to what you're doing because some of these pieces may not even come from the same locations, but at the point that I'm concerned about, it would seem to me, again, looking at the common sense issue of this, that the Department of Defense does have within it the knowledge for someone to pause and say, you know, we really ought not to do this. It should take GAO in a congressional hearing for the Department of Defense to say it probably isn't best.

And so I was wondering in your processes, if you saw any effort to engage the user, because it would seem to me that if I'm working in my labs at Wright-Patterson Air Force Base and a piece of this equipment is going to go somewhere that I'm probably not involved in the system at all, that it just disappears and goes away into the vast bureaucracy of the Department of Defense, and I would think that more valuable than the end-user certificate that doesn't require any third-party verification might be an originating user certificate that has some—description of a threat assessment by the originating user. Do you see value in that or have you even seen any process that uses that?

Mr. RYAN. If I can use what you're talking about also to bring out the point that DOD has a lot of contractors, and there's a lot of colleges and universities and hospitals that get grant money and Federal money to continue the research of what you're talking about, not only in the DOD labs. If you follow through on your same thought pattern in regards to making them accountable, they're also adding additional equipment into the secondary market.

If there was some type of a control that was put in place whereby DOD would also have to step in and do an analysis of that type of equipment that's being disposed of, again, that would be the original person using it would have to make some assessment, and that also gets back into trying to limit the amount of property that's getting into the secondary markets that's causing the problem.

Mr. TURNER. My time is up, but an interesting topic that I do want to discuss at some point is in looking at the values—thank

you, Mr. Ryan, if you do not mind, the question that comes to mind when you look at this is original acquisition value $46,960 worth of equipment that you purchased for $4,100, and following on what you're saying, Mr. Ryan, there's this huge resale market, there is a resale market because someone sees profits; meaning that the $4,100 that this is sold for is less than its value, and there aren't controls that are being placed on that recent market. You basically have Sanford-and-son type groups that are being formed that are utilizing high level technology Department of Defense equipment without regard to the same controls the Department of Defense is supposed to be following in their policies.

What would you say is the value of this in the resale market, the $4,100 worth of equipment?

Mr. KUTZ. Well, I think it probably is—the way it's being sold, since we bought it for that, that would be by definition the market, but what happens is this is a little different than eBay. These are typically very large lots, which is why we wound up buying the masks from the DOD vendor because they were selling the gloves like in lots of 10,000 pairs of gloves. We didn't want to buy 10,000 pairs of gloves. They wouldn't fit in the GAO building probably, so what happens is it's almost like a wholesale type of an eBay where you're selling these large bid lots to wholesalers who cut them up into the small pieces and sell them singly, either on eBay, on Web page or something else.

So is there potential for some more revenue on this? Possibly, I do not know, but it is a little more different than eBay in that there's much more bulk and it limits the individual. Like an individual might not want to buy 500 suits at a time but, if they had to chance to buy one for hunting purposes or something like that, they might do that. So on eBay they might sell them one or two at a time, versus DOD might sell 300 at a time.

Mr. RYAN. And following up on that, there was one lot that went up for sale that they were bidding on, the agents were tracking it, and they had the microscopes, they had the Heidolph.

Well, we really wanted the Heidolph, but we were willing to buy the batch, the lot. We end up losing that bid by about $50.

Well, what we did is we found out who the buyer was and, 2 weeks later, we contacted them and asked them hey, by the way, do I have a Heidolph for sale. Guy says, oh, yeah, I just happened to get one in a lot and he sold it to us and basically we saved the taxpayers about $800 because we only paid $400 where we lost the lot for $1,300, so there is a secondary market.

The primary goal of that buyer was not to buy the Heidolph, but to buy the microscopes because they were worth a lot more money.

Mr. KUTZ. The Heidolph is the exhibit for the evaporator that we purchased.

Mr. RYAN. So given the fact that they're breaking the lots down and yes, they are selling them in individual pieces and making money off them.

Mr. SHAYS. It's hard to get to the next panel because you keep, you know, revealing a little more information. It's fascinating.

Mr. Ruppersberger.

Mr. RUPPERSBERGER. I will try to ask one question so we can get to the next panel.

We're all trying to find a way, including the Department of Defense, I'm sure, to resolve and fix the problem. We talked about systems and maybe the technology's there, but we do not have the appropriate systems or whatever that is.

I'm going to ask a question I'm sure you cannot answer, but I want to have your opinion: What's it going to cost to really resolve this issue as it relates to the inventory control and the background checks that might have to be looked at, depending on the type of equipment that you're going to sell, and I ask that question, and again, your opinion, I'm sure you will not have any specificity as to the cause, but also is it really worth having this program to begin with?

I mean, how much money are we getting back in the Department of Defense, how much money are we getting back in and the amount of hours that we're putting in with DOD personnel and then all of the issues and the problems that exist, and this is just one small part, so what do you feel the cost factor would be if you have any idea to really resolve this and to fix it right.

Mr. KUTZ. Right—well, with respect to the Defense Reutilization marketing service, we do not believe conceptually that's a bad idea. We think that's probably a good idea. There's a lot of good that's been done.

They re-utilize a large number of property. A lot of it doesn't get sold to the public. A lot of it does appropriately get reused within the Department of Defense.

A lot of it goes to Federal agencies, State and local governments and other needy organizations, so I believe conceptually that it makes sense. It's a matter of controlling sensitive military equipment from going out improperly or biological or chemical equipment or other things like that, so assuming you can put good controls in place over it, it does make business sense.

To solve the broader supply chain management of inventory problems, I cannot tell you if and when they'll fix it, but they certainly plan to spend billions of dollars to do so.

Mr. RUPPERSBERGER. In my comment earlier on, it's going to take a commitment from the top level of management, and the people on the next panel coming here today are the people doing the work every day. If they're not given the resources or the ability to do the job, how are they going to do that? There has to be a strong commitment there.

Somehow I hope we can develop that in the next panel, so I'm going to stop so we can get to that.

Mr. KUTZ. No, and sustained top level leadership in this and other business or mission support areas of DOD we have said is one of the key elements to success, and we agree with you on that.

Mr. RUPPERSBERGER. OK.

Thank you, Mr. Chairman.

Mr. SHAYS. Thanks, gentlemen. Mr. Janklow.

Mr. JANKLOW. Thanks, Mr. Chairman.

Mr. Young, I just have a couple questions: One, in the end of your report in your summary, you talk about the different agencies responding in different ways. There were 27 reports issued by, I believe, six different agencies or six different cabinet level depart-

ments, and I'm pretending the Army's one for purpose of discussion.

One of them set up a task force. One of them appointed a full-time staffer to deal with bioexports. One of them created an informational Web site. And one of them initiated followup actions to determine status of actions taken.

What did all the rest do? Anything?

They do not appear to be very substantive. With problems of the magnitude that you've suggested in your reports that you've found from the 27 reports; appointing a full-time staffer to deal with bioexperts' agency; setting up an informational Web site by another agency; setting up a task force by a third agency; and a fourth one initiating followup actions to determine status of actions taken; that's all that was done?

Mr. YOUNG. There were 27 reports, and I'm just using the assumption that there were probably four recommendations per report. It's probably over 100 recommendations in those reports. All we did in our summary report was highlight some of the recommendations that were at the top level of the agency. Obviously, the recommendations at a given university would be to fix the controls at that individual university. But again, we were just summarizing the results at the high level, and some of the recommendations came to us that were classified so they were not included in our report.

Mr. JANKLOW. Mr. Kutz or Mr. Rhodes, I do not know which one of you gentlemen, was this report—was the GAO report shared with the agencies prior to the time of this hearing today?

Ms. Fischer.

Ms. FISCHER. Our draft audit report, Congressman Janklow, our draft audit report was provided to DOD for comment on September 16.

Mr. JANKLOW. Did they comment?

Ms. FISCHER. Not yet. They have until October 14.

Mr. JANKLOW. Right.

Have you had any feedback at all, as to whether or not they agree or disagree with what you folks have written?

Ms. FISCHER. They told us they concurred with our recommendations and would be taking action.

Mr. JANKLOW. Ms. Fischer, do you sense a sense of urgency by them, in terms of what it is that's escaping from the Defense Department and other agencies out that we do not know who?

Ms. FISCHER. Yes, I do, Congressman Janklow. When we briefed them in mid-August, they pulled back many of the chemsuit sales from the Internet.

However, they were unable to identify those in mixed batch lots, the grab-bag type sales and some of those continued to be sold. They did freeze the sales of the biological equipment prior to this hearing.

Mr. JANKLOW. One has to wonder where in the world anyone would think in this country there would be a market for 286,000 of those suits that had been declared surplus by them and I realize there's a lot of first responders, but they could have gotten them by donation, they didn't have to go buy them, and so they were

passed up in the donation chain, in order to get to the dot com sales.

Mr. KUTZ. The ones who bought the ones that we had investigated, and Agent Ryan can add to this, were hunters and farmers, and I am not sure what the farmers planned to use them for, but——

Mr. JANKLOW. They probably deal with more chemicals than the hunters.

In terms of the systems that appear to be a problem in the Defense Department, one understands the magnitude, or at least tries to understand the magnitude of hundreds of billions of dollars' worth of spending annually, millions of different items and trying to have inventory control. But in substance, it's not really different than what Wal-Mart's doing, it's just maybe different items, but Wal-Mart has a lot of stores, probably as many stores as military bases, probably more. They certainly do not have as many items, but maybe the answer is to go have Wal-Mart or Sears or somebody go help these folks put their systems in place. Spending billions of dollars inventing your systems to help keep track of inventory doesn't make a lot of sense in today's world.

Mr. KUTZ. I mean the Department has outreached. I know Secretary Rumsfeld has an outside group of experts, including people from Sears and other companies who are experts in this area, so they are trying to get the best and brightest input into their modernization efforts, but they've done that before and not be successful, so, again, it's going to take sustained leadership and a lot of good things happening.

Mr. JANKLOW. Can I ask one last question, Mr. Chairman, very briefly?

It's to you, Mr. Young, Mr. Kutz, and Mr. Rhodes. What were, if you were in the Congress, what would you try to do to try and solve this problem to make it safe for the American people and the world? And if I could just ask you, Mr. Rhodes, and I will just ask you three folks.

Mr. RHODES. The first step would be to enforce the controls that the IG has spoken of. The equipment is important, but the source material is most important, so, from your legislative point of view, as Mr. Kutz described earlier, you have both tools at your disposal. You have the legislation that establishes the law and you also have the legislation that gives the money, and the thing that worries me the most, yes, buying this equipment scares me but being able to get the source material scares me the most, and that would be the first step that I would take.

The parallel step, of course, would be to use those same tools that you have at your disposal to make certain that there is inventory visibility to enforce the points that Mr. Turner was making about the operator being in the loop on the discussion of how the material should be disposed, the equipment should be disposed of, as well as the higher levels inside the Department of Defense.

Those would be the parallel tracks I would recommend.

Mr. KUTZ. I would say what you're doing today is one of the things, consistent oversight. You've had several hearings on these suits, I know, and so that ultimately, hopefully, we can get that one solved. It's consistent oversight, a demand for results, and fol-

lowup, using GAO and the Inspector General to let you know that the issues have been resolved would be my view on what we can do.

Mr. YOUNG. I agree with what you're saying. The problem is a lot bigger than DOD. Because if you look at agriculture, they've got 336 labs, Veterans Administration's 88 labs, and DOD's got 21 labs. That's a really huge problem, and it's going to take across-the-board Federal agencies working together, implementing their recommended actions to get a handle on this.

Mr. SHAYS. Would you give those numbers again?

Mr. YOUNG. Agriculture is 336 labs, Veterans Administration's 88 labs, and DOD has 21 labs.

Mr. SHAYS. And do those include labs at universities?

Mr. YOUNG. Well, there is, also, nine universities as part of the study, but there's other ongoing audits right now at the universities.

Mr. SHAYS. Because there's a lot more than nine.

Mr. YOUNG. There's a lot more than nine.

Mr. SHAYS. So these were not—thank you.

You've answered the question. I just have a few more questions and then we will get to our next panel.

With the battle dress overgarment, is it your testimony, Mr. Kutz, that the battle dress overgarment, some of which were defective, were sold both to commercial enterprises and given to government first responders?

Mr. KUTZ. Some were sold to GAO. Some to the commercial people and have been provided to local law enforcement.

Mr. SHAYS. And is it your testimony that some of those battle dress overgarments were defective or may be defective?

Mr. KUTZ. The ones that we purchased were definitely defective. The ones, the 4,700 with local law enforcement may be, and that's why we said for them to followup and as many as 158,000 of the ones sold to the public could be of the numbers tens of thousands.

Mr. SHAYS. But the bottom line is when someone goes to purchase this, this is a battle dress overgarment. They believe that it will protect them, and it may be defective, correct?

Mr. KUTZ. That's correct. Now, if it's already out of the sealed package, it doesn't matter whether it's defective, or not, it's not good, but if it's in a sealed package and it hasn't exceeded its expiration date, one might assume that it would be effective.

Mr. SHAYS. And you did buy some that were in a sealed package?

Mr. KUTZ. Correct.

Mr. SHAYS. So what did we do to get these back when we had our hearings earlier from our own military, because originally we had a hearing that pointed out that our military was getting these defective suits.

What did DOD try to do to get those back?

Mr. KUTZ. It would have been data calls.

Again, they do not have the systems from a top level standpoint that can find out in an hour or two, like Wal-Mart could, where all of the defective suits, lot numbers, contract numbers are, so it was a massive data call and it was unsuccessful; I mean, they were able to recall, as I believe, hundreds of thousands of about 800,000 de-

fective Isratex suits, but there were still 250,000 unaccounted for as of your last hearing.

Mr. SHAYS. Right.

Now, when they sent out the notice to the military, on the top, they had death or serious injury to soldiers will occur if the instructions in this message are not followed. That kind of gets your attention.

Mr. KUTZ. Yes.

Mr. SHAYS. The memorandum for all State coordinators that and law enforcement agencies [LEA's], is a warning on chemical protective or battle dress overgarment.

The purpose of this memorandum is to advise the State and the LEA's of the issues involving chemical protection of BDO suits that your agency may have received through defense reutilization marketing.

It says the protection suits used by today's military is state-of-the-art and provides excellent protection in a variety of situations. The same cannot be assured for old or excess equipment which has been provided to Federal and State agencies in an as-is condition.

Due to the change of our national threat, the Defense Logistic Agency is concerned that persons having older excess suits may be under the impression they are afforded a level of protection higher than actually exists.

I'm not reading that they might say that death or serious injury to individuals who use it, so have you looked at both of these——

Mr. KUTZ. Yes.

Mr. SHAYS. What was your reaction when you saw these?

Mr. KUTZ. The one to the military services got my attention more than the other one.

Mr. SHAYS. Yes, OK, but it is your intention that the public and the first responders may have defective suits?

Mr. KUTZ. Correct.

Mr. SHAYS. I think that I'm going to—is there anything else that we have—oh, yes.

Let me ask each of you to address this question because it will come up. How will it reduce the risk of bioterror to control the sales of this equipment when so many others are selling it as well; for instance, and I will put in the record, that we've received a number of letters from people who were in the business. They buy it and they sell it and if they can buy it at 10 cents on the dollar, and if they can get brand-new stuff at 10 cents on the dollar or less, it's quite a nice business.

We are going to put their letters in the record and the gist of their letters are, you know, what's the big deal, because GSA is selling this equipment and others as well, DOD and so on, so my question to you is, how will it reduce the risk of bioterrorism and control DOD sales of this equipment when so many others are selling as well, GSA, private firms, and so on?

[The information referred to follows:]

R.D.D. Enterprises, Inc.
7870 Hillside Ave.
Los Angeles, CA 90046
Tel: (323) 874-0800
Fax: (323) 874-7778

E. Diskin, Ph.D.
President

U.S. Rep. Christopher Shays (R-CT) 10/6/03
1126 Longworth House Office Building
Washington DC 20515-0704

Dear Mr. Shays,

I am Edward E. Diskin and the owner of R.D.D. Enterprises, Inc. located in California. Our company is the largest in re-conditioning military tents. We buy the surplus damaged canvas nationwide either directly from the U.S. Government through the Defense Reutilization and Marketing Service (DRMS) department or through their private subcontractor "Government Liquidations".

We re-condition the tents in our facilities and resell them in good condition to the U.S. Government through their agencies, to the Israeli Government and to other domestic customers here in the U.S.

Everyone benefits from this procedure. The U.S Government benefits twice, first, they get rid of all the scrap canvas and the damaged tents they cannot use any longer and they get paid for it. Then later, they purchase the reconditioned tents at a price that is about one third of a price of a new tent. By doing this, we offer direct employment to about 40 people, not including additional indirect employment (drivers, inspectors, loaders etc. in other states).

Recently the DRMS has decided to not release any more canvas to private entities because concerns that these items can be used for terrorists activities because the material has infrared components in it.
As a result, the U.S. Government spends and wastes vast amounts of money and labor by burying and destroying all these huge lots of scrap canvas.

Through my many discussions with professional people including a formal Government security member, and through my personal vast experience (I am a retired full colonel), The conclusion is that the decision to not sell these tents is wrong for the following reasons:

..../2

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E. Diskin, Ph.D.
President

1. This is unlikely that terrorists would hide in a tent rather than in buildings or shacks.
2. The procedure of inserting infrared components into the material began around 1991 and more than 90% of the tents that the Government sells as surplus is dated prior to 1991. If someone is concerned about this issue, they can just eliminate the option of selling tents manufactured after 1981, something easy to do because every tent carries a large label-stating year of manufacture.
3. If still anyone is concerned, there is a Government formal form for the "end-user certificate" which has to be filled out by the buyer, stating who the end user is and many other details about the purchaser and about the end user. These days, this form is being used for reselling much more delicate item than tents, items such as Kevlar helmets, etc.

CONCLUSION:
The concerns that these tents will be used in illegal ways are not founded and not based on realistic facts. Still, if there is even the slightest concern, a formal form of "end user certificate" that will be filled out by U.S. civilian purchaser, can eliminate this concern.

If needed, I will be more than ready to come to Washington and appear before the committee and supply any additional data or documentation.

Sincerely,

Edward E. Diskin

Military Outdoor Clothing Inc.
1917 Stanford St.
Greenville, TX. 75401
1-800-662-6430
Fax: 903-454-2433
E-Mail: moci@pulse.net

Dear Mr. Halloran Sept. 25,2003

My name is David Crouch, vice-president of a company called Military Outdoor Clothing Inc, which has been in business for over 20 years. We are located in Greenville, TX.

Our business is retail and wholesale of military surplus clothing and equipment to over 1,500 Army/Navy surplus stores and mail order companies worldwide. We have 18 employees.

It is my understanding that on October 7th,2003, the House Committee on Government Reform; Subcommittee on National Security, Emerging Threats, and International Relations will be receiving testimony on US government surplus sales to the public. Your committee members are concerned that the items that we buy from the government, and in my case military clothing and equipment is being converted to illegal use.

I have seen many changes over the years to the method in which the Department of Reutilization and Marketing Office (DRMO) which is a division of the Department of Defense (DOD) has conducted sales.

Years ago U.S. government surplus was sold thru live auction process held at government warehouses, later the government opened retail type stores to sell products to individuals, however this method didn't work because you had too much product and could not sell fast enough. Then you went to Private Auctioneers (Non-Government employees) to conduct sales in the government's behalf. Then it went back to the DRMO to sell and now back to a private company called Government Liquidation in charge of selling US surplus.

I understand that our government is saving OUR tax dollars by cutting government employees jobs and allowing a private company to sell US surplus, this makes since.

September 11th, 2001 was a dark day in American history and has caused the U.S. government to take drastic measures to make sure that we never have this happen again and keep us safe.

However tragic that day was I believe that there has been an over reaction by the government to the point that since Sept. 11th there has been a tremendous decrease in the amount of US military items sold now.

I feel that your committee is meeting to discuss the future of my and many countless other honest, hard working, tax paying business people, and I fully understand your concerns, but

please allow me to make a few points for you all to consider, and I'm only talking about military clothing and equipment.

1) Our industry HELPS the government by purchasing items that the government no longer needs and our tax dollars bought in the first place and we buy them and the money goes back to the US Treasury.

2) The items of particular interest that seems to have disappeared from government sales are camouflage clothing. For years we have purchased these items, and many times the items are used with holes and dirt and many of them are small sizes and we repair them and sell them to Army/Navy stores who sell them to hunters or kids or people who like the style.

3) Did you know that many of the items in question- have been freely available on the commercial market for years, and as the US surplus has dwindled, the importation of military style clothing and equipment is on the rise to meet the demand?

4) The trashing of NBC suits are now being considered by the government. These suits that we have purchased in the past are sold to hunters to keep in the human scent. These suits when purchased in the past have an expiration date and are no longer guaranteed to do what they were intended for. There are thousands of brand new similar chemical suits available for purchase on the open market now.

5) Throwing US military clothing and equipment in a landfill is a waist of American tax payers money, not to mention the loss of revenue if these items were sold to surplus dealers who makes a profit and pays taxes and creates jobs, and then sold to the Retail stores who makes a profit and pays taxes and creates jobs, and then sold to the end-user who pays sales tax. Also, think about the cost to dump in a landfill and the environmental impact.

If your committee has concerns of U.S. government surplus falling into the wrong hands, please be remindful that the people that hate us are not concerned about their own safety, but are more interested in inflicting as much damage as they can, not only to US citizens but to our economy.

So please don't allow them to win by taking away the sales of government surplus property to law-abiding citizens and small businesspeople such as myself.

I urge you to protect my legitimate interests as lawful purchasers of government surplus property, and please don't destroy an industry of thousands of retailers and wholesalers which some have been around since the end of WWII.

Please forward copies of this letter to all the members of the subcommittee.

If you have any questions, please e-mail; dcrouch@pulse.net

Thank you, David Crouch

David Crouch (Vice-President)
Military Outdoor Clothing Inc.
1917 Stanford St.
Greenville, TX 75401

Mehlrose Associates

11660-304 Little Patuxent Parkway
Columbia, Maryland 21044
410-730-0263

REP. CHRISTOPHER SHAYS
2003 OCT 29 PM 2:35
WASHINGTON, D.C.

September 24, 2003

Congressman Christopher Shays
1126 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Shays:

I am a very small dealer in used laboratory equipment and I buy some used laboratory equipment from the government. In fact, in 1997 when I started my business, it would have been much more difficult to start the business if I did not have access to government surplus. So the government is partly responsible for whatever success I have had and I am grateful for that. As a taxpayer it makes good sense to me that the government try to recover as many of our tax dollars as possible by selling items they no longer need to the public.

It is my understanding that the Subcommittee on National Security, Emerging Threats and International Relations will be holding hearings on the disposition of government surplus, in particular lab equipment, on October 7 and I hope that my perspective might be helpful. Since 1997 about 381 different customers from 43 states have chosen to purchase used laboratory equipment from me. Also since 1997 I have spent approximately $23,746.00 buying surplus lab equipment from the government. A few weeks ago, a local biotechnology company won some new business that required a tabletop centrifuge, they chose to purchase a used centrifuge from me. I bought that centrifuge from the government. Before that a local testing lab decided to begin offering a new service to their customers and discovered shortly thereafter that they would need a certain type of laboratory fume hood to do the work. This lab chose to buy the hood that they needed, a used hood, from me. I bought that hood from the government.

A lab can go to the Fisher Catalog, the VWR Catalog, the Thomas Catalog, the Cole-Parmer Catalog, the Spectrum Catalog, etc., and pay full price for laboratory equipment or they can call me and if I have the item they are looking for they will save 50% off the catalog prices. Testing labs can grow their business using used lab equipment because they can afford to buy the equipment they need to do the test, quality control labs at manufacturing plants can improve the quality of the products they manufacture because they can afford the used lab equipment they need to measure product constituents, better control their production process and improve the quality of their output, entrepreneurs can start biotechnology companies because they can afford to buy the used lab equipment they need to get started, inner city high school students can learn science hands-on because used laboratory equipment was donated to their schools, even scientists whose research is funded by NIH with taxpayer dollars can make those grants go further by buying used laboratory equipment.

Most used lab equipment is being put to work to promote progress. Lab equipment is not so different from any other surplus the government sells or, for that matter, any other product new or used --- it can be used for good or for ill but in the majority of cases it is used for

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good. This is only my perspective, I would hope that your subcommittee's investigation will discover it to be an accurate perspective. If I can be of any further assistance please feel free to contact me anytime at 410-730-0263.

Sincerely,

John Miller

Government Liquidation

September 24th, 2003

U.S. Rep. Christopher Shays
1126 Longworth HOB
Washington DC 20515-0704

Dear Congressman Shays:

House Committee on Government Reform: Subcommittee on National Security, Emerging Threats and International Relations. Proposed hearings Oct. 7th, 2003.

I am writing to you in your capacity as Chairman of the above subcommittee. I understand that following the issuance of draft GAO report GAO-04-15, the subcommittee will be receiving testimony regarding sales of surplus government laboratory equipment from employees of the Defense Logistics Agency and other Federal government employees working in related fields.

Our company, Government Liquidation ("GL"), is the commercial venture partner of the Defense Reutilization & Marketing Service ("DRMS") responsible for the sale of surplus government property that is not reutilized through the Reutilization/Transfer/Donation (RTD) process organized by DRMS. Approximately ninety seven percent of our customers are small businesses with twenty-five or less employees. These customers make their living by purchasing, sometimes refurbishing, and reselling government surplus property. I have attached a short briefing paper with details of GL's activities and its success as a government partner.

Neither I nor my colleagues at GL have seen a copy of draft GAO report GAO-04-15, although we presume it has been partially compiled from data we voluntarily supplied to the GAO on the pretext of facilitating a search for terrorist activities. We do however, know the effect of the draft report and the upcoming subcommittee hearing on our business, and that of our customers. The DRMS has withdrawn surplus laboratory equipment from the property that is referred to us for sale. They have also asked us to withdraw any laboratory equipment from sale that we have already received from them. Although not obliged to do so, in the spirit of support of our government partner, we have agreed to do so.

We can absolutely understand, in the absence of all the pertinent information, that it would be easy to assume that there are few if any legitimate reasons for persons to trade in surplus laboratory equipment, *and that such trade is undesirable or even dangerous*. However, the facts belie this assumption. Let me use two examples provided by our customers of how the sales of surplus laboratory equipment not only supports small business, but also contributes to the public good.

Corporate Address	Telephone	Facsimile	Email Address	Web Address
15051 N. Kierland Blvd. • 3rd Floor • Scottsdale, AZ 85254	480. 367. 1100	480. 367. 1200	info@govliquidation.com	www.govliquidation.com

U.S. Rep. Christopher Shays
September 24th, 2003
Page 2.

The first example concerns the sale of a biological safety cabinet, one of the items specifically mentioned by DRMS as "lab equipment that could be used to process chemical weapons". In this case, our customer, having verified that the safety cabinet was in correct working order, sold it to a mold-testing laboratory in Southern Maryland, where it is used to provide affordable mold testing services to homeowners concerned about the safety of their homes and families.

Another of our customers has told us that many of the ultimate purchasers of the surplus government laboratory equipment he purchases from us are laboratories working on National Institutes of Health projects, and/or grant-aided research. He told us that in many cases, were it not for the availability of surplus equipment, these laboratories could not afford to purchase the equipment they desperately need to pursue their research.

These are but two of the examples of how the availability of surplus government laboratory equipment adds significantly to the public good.

We would also like to add that the trade in used laboratory equipment is entirely lawful. Furthermore, that there are many commercial outlets lawfully trading in used laboratory equipment other than GL. Thus, the withdrawal from sale of government surplus laboratory equipment will only harm our small business customers and the legitimate purchasers and users of this equipment, without providing any addition to National Security. We therefore seriously question what such action is really supposed to achieve.

So, in closing, we are asking that in pursuing their important goal of minimizing threats to our National security, the subcommittee supports the continued sale of government surplus laboratory equipment. If anything, the availability of this equipment adds to the public good, and does not detract from it.

Respectfully,

Anthony G. Humpage
Executive Vice President
Government Liquidation, LLC

Mr. KUTZ. I will start; I mean, we've talked about this internally, and certainly this is a small part of a much broader challenge, and dealing with the DOD would certainly help but not resolve the issues.

And dealings with the DOD would certainly help, but not resolve, the issue. So that's why we have recommended to DOD that they look at this within the Department of Homeland Security, not just what the government is selling, but, again, back to the Customs Operations Shield America and all the private sector and other sources of this material to take a look at this and find out if what we're doing today makes sense from not just DOD, but from a governmentwide and nationwide standpoint.

Mr. SHAYS. So you're basically saying don't make the argument that since GSA is doing it, it's OK for DOD. Your argument is we need to look at GSA, what the Department of Agriculture may sell independently or through GSA and so on, and see if we need to tighten up there as well.

Mr. KUTZ. Correct.

Mr. SHAYS. Anyone else choose to add anything more to that?

OK. You kind of take our breath away. Congratulations for doing this work. I will just say, Mr. Ryan, I want the testimony to reflect accurately, do you feel—and I think it does, but I'd like you to answer this question again. Do you feel that you did anything out of the ordinary to deceive the government or DOD so that you could buy, or could someone like me or anyone else have done the same thing you did?

Mr. RYAN. Anyone can do it. You can do it. Anybody can do it.

Mr. SHAYS. And you could have set up many different purchasing agents, so, for instance, if you were starting to develop the whole picture for developing anthrax, but wouldn't want to bring someone's attention to the fact that you bought this, this and this, though I'm not sure DOD controls would have noticed, but just to protect yourself you could have bought from someone else who had bought, as you did, or you could have had five or six or seven different purchasers that you set up to have bought little parts and then collected it together, correct?

Mr. RYAN. That's fine. I could have a conspiracy with several people and each buy one item and have it shipped to a different place not to bring attention to exactly what's going on, you know, the creation of a lab or whatever you wanted to do with the materials.

Mr. SHAYS. And the bottom line is the people who would want to do this already know they can do it.

Mr. RYAN. Yes.

Mr. SHAYS. So we're not telling them anything they don't know.

All right, folks. Thank you so much for your testimony. Anything you want to put on the record before we go to the next panel? Anything that needs to be put on the record? I don't want you to tell me afterwards we missed something.

Ms. FISCHER. Yes. Mr. Chairman, I do want to point out that last year Congress passed the Public Health Security and Bioterrorism Preparedness and Response Act, and that did address some of the issues with respect to controls over source agents, including a requirement for inventories of those materials. The Department of

Health and Human Services issued regulations last December to start implementing those controls. It may not be perfect yet, but Congress has taken some action in that regard.

Mr. SHAYS. Thank you very much. We'll get to the next panel, and Mr. Turner will take over from there.

Mr. TURNER [presiding]. Are we missing Mr. O'Donnell? Colonel O'Donnell. There he is.

Our next panel will consist of Mr. Alan F. Estevez, Assistant Deputy Under Secretary of Defense, Supply Chain Integration, Department of Defense; Mr. Frederick N. Baillie, Executive Director, Distribution and Reutilization Policy, Defense Logistics Agency; and Colonel Patrick E. O'Donnell, Commander, Defense Reutilization and Marketing Service.

Gentlemen, if you'd please stand for administering the oath.

[Witnesses sworn.]

Mr. TURNER. Note for the record that the witnesses have responded in the affirmative.

Mr. Estevez, I will be beginning with you.

STATEMENTS OF ALAN F. ESTEVEZ, ASSISTANT DEPUTY UNDER SECRETARY OF DEFENSE, SUPPLY CHAIN INTEGRATION, DEPARTMENT OF DEFENSE; FREDERICK N. BAILLIE, EXECUTIVE DIRECTOR, DISTRIBUTION AND REUTILIZATION POLICY, DEFENSE LOGISTICS AGENCY; AND PATRICK E. O'DONNELL, COMMANDER, DEFENSE REUTILIZATION AND MARKETING SERVICE

Mr. ESTEVEZ. Mr. Chairman, distinguished members of the subcommittee, I'm Alan Estevez, Assistant Deputy Under Secretary of Defense for Supply Chain Integration. With me today is Mr. Fred Baillie, Executive Director for Distribution and Reutilization Policy of the Defense Logistics Agency; and Colonel Patrick O'Donnell, Commander of Defense Reutilization and Marketing Service. We welcome the opportunity to address your concerns regarding the disposal of DOD excess chemical and biological suits and laboratory equipment.

I'm responsible for developing policy regarding materiel management within the Department of Defense. During my testimony I will briefly discuss the Department's view of the GAO report and provide a brief discussion of relevant materiel management policy. I will be followed by Mr. Baillie, who will provide specific responses to the GAO report.

To begin, let me state that the Department recognizes the findings and recommendations of the General Accounting Office report on excess property. We are keenly aware of the tragedy the Nation endured on September 11, 2001, and the need for heightened awareness of the potential threat that our Nation faces. The Department concurs with the GAO recommendation to conduct a risk and vulnerability assessment to determine if additional controls are necessary to ensure excess DOD supplies and equipment are not accessible by those who in turn may use those assets to develop chemical and biological agents with the intent to harm the United States.

As recommended in the GAO report, the Assistant Secretary of Defense for Homeland Defense has agreed to take the lead in

bringing together an interagency group to conduct the risk and vulnerability assessment. In addition, we have begun a review of DOD logistics policies and procedures used in processing excess property. We will stay actively engaged with the team developing the risk assessment to determine if new or amended guidance is needed. The risk assessment will focus not only on the laboratory equipment identified in this report, but on the broad scope of DOD excess property that could be used to develop chemical or biological agents. This will be a large undertaking and will require coordination within the Department and among Federal agencies to ensure that the risk is assessed appropriately and consistent implementing policies are developed. We anticipate being able to update this committee on our progress in approximately 3 months.

The results of the risk assessment will play a pivotal time role in the creation and/or revision of our policies regarding the sale of excess property by the Department of Defense. There are a host of policies, rules, and regulations regarding the disposal of excess property. Some of those rules include interactions or involvement with the Department of State and Department of Commerce and other Federal agencies. While these policies are detailed and quite specific, they do need to be reassessed, and, in light of the post-September 11 climate, to ensure that they achieve the goals of accountability and control of the items that could be used against the United States or its allies.

We are aware and understand the potential terrorist threats to the general public, but offer the following to keep this issue in perspective: While we have some control over the extent to which the public can acquire supplies and equipment through the Department of Defense that can be used to harm the United States, the items cited in the report are readily available on the commercial market.

In closing, Mr. Chairman, I would like to reiterate the fact that we take the potential threat of terrorism at home and abroad very seriously. If that requires us to change our materiel management policy, we will certainly do so.

Thank you, sir.

Mr. TURNER. Thank you.

[The prepared statement of Mr. Estevez follows:]

Testimony of Alan F. Estevez
Assistant Deputy Under Secretary of Defense
Supply Chain Integration
Hearing before the House Committee on Government Reform
Subcommittee on National Security, Emerging Threats, and International Relations

Mr Chairman and distinguished members of the Subcommittee, I am Alan Estevez, Assistant Deputy Under Secretary of Defense for Supply Chain Integration. With me today is Mr Fred Baillie, Executive Director for Distribution and Reutilization Policy of the Defense Logistics Agency, and Col Patrick O'Donnell, Commander of the Defense Reutilization and Marketing Service. I welcome this opportunity to address your concerns regarding the disposal of DoD excess chemical and biological suits and laboratory equipment. I am responsible for developing policy regarding materiel management within the Department of Defense. Meanwhile, policy responsibility for Chemical and Biological (CB) Defense issues is shared between the Under Secretary of Defense for Acquisition Technology and Logistics and the Under Secretary of Defense for Policy. During my testimony I will briefly discuss the Department's view of the GAO report and provide a brief discussion of the relevant materiel management policy. I will be followed by Mr Baillie who will provide more specific responses to the GAO report.

We were asked by the subcommittee to determine whether the sale and disposal of excess medical and laboratory equipment and protective CB clothing pose a national security risk. We were also asked to determine whether DoD guidelines, policies and procedures and DoD implementation and oversight of these guidelines

provide and adequate framework for controlling the disposal of excess biological equipment and protective CB clothing.

To begin, let me state that the Department recognizes the findings and recommendations of the General Accounting Office report, "DoD Excess Property: Risk Assessment Needed on Public Sales of Equipment That Could Be Used To Make Biological Agents." We are keenly aware of the tragedy the Nation endured on September 11th, 2001 and the need for heightened awareness of the potential threat our nation faces. The Department concurs with the GAO recommendation to conduct a risk assessment to determine if additional controls are necessary to ensure excess DoD supplies and equipment are not accessible by those who in turn may use those assets to develop chemical or biological agents with intent to harm the United States.

As recommended in the GAO report, the Assistant Secretary of Defense for Homeland Defense has agreed to take the lead in bringing together an interagency group to conduct the risk and vulnerability assessment. In addition, we will conduct a complete review of the previously mentioned DoD logistics policies and procedures used in processing excess property. While these policies are detailed and quite specific, they need to be reassessed in light of post September 11 climate to ensure they achieve the goals of accountability and control of items that could be used against the United States or its allies. My office has already begun a thorough excess materiel disposition policy review and will stay actively engaged with the

team developing the risk assessment to determine if any new or amended guidance is needed. The risk assessment will focus not only on the laboratory equipment identified in this report but the broad scope of DoD excess property that could be used to develop chemical or biological agents. This will be a large undertaking and will require coordination within the Department and among other federal agencies to ensure that the risk is assessed appropriately and consistent implementing policies are developed throughout the federal government. We anticipate being able to update the committee on our progress in approximately three months. The results of the risk assessment will play a pivotal role in the creation and/or revision of policy guidance regarding the sale of excess property by the Department of Defense.

I would like to briefly describe the disposal process for the committee. DoD excess property is reported to the Defense Reutilization and Marketing Service (DRMS) who makes it available for reutilization for 14 days. On the 15th day, the DOD excess personal property is then reported to the GSA. GSA makes it available for 21 days. Property is available for donation to eligible organizations through state agencies on the 22nd day. Surplus property not donated is then provided to DRMS' Commercial Venture sales contractor in the United States and its territories. DRMS' sales contractor, Government Liquidation then resells the property to the general public.

DoD disposal policy calls for excess property to be used, to the extent practicable, to prevent concurrent procurement and disposal. We provide retail supply activities

visibility of assets transferred to the Defense Reutilization and Marketing System (DRMS) and they withdraw assets for their own use as needed. Sales are done after screening is completed. DoD components identify and apply applicable controls, worldwide, over materiel to prevent its unauthorized use. Materiel that is designated by the OSD to require demilitarization is processed accordingly to eliminate its military capabilities. Materiel on the U.S. Munitions List or the Commerce Control List is prohibited from sale to foreign nationals whether they are located overseas or in the United States. The State Department determines items which comprise the U.S. Munitions List. DoD assigns demilitarization codes to control or direct the disposition of each item on the list. Items not on the Munitions List generally have no controls placed upon them unless they are dual use items appearing on the Department of Commerce Commodity Control List. DRMS controls the disposition of each item received by taking action as defined by the assigned demilitarization code. Ultimately, our objective is to properly account for government property, ensure every opportunity is extended to authorized activities to obtain the items, and reduce the amount of property destined for disposal.

We genuinely share the Committee's concerns about potential terrorist threat to the general public but offer the following to keep the issue in perspective. While we have some control over the extent to which the public can acquire supplies and equipment through the Department of Defense that could be used to harm the United States, we currently have little or no control over commercial activities selling similar products on the open market.

In closing Mr Chairman, I would like to reiterate the fact that we take the potential threat of terrorism at home or abroad very seriously. If that requires us to change materiel management policy, it's a small price to pay to promote the safety of the United States and its citizens.

Mr. TURNER. Mr. Baillie.

Mr. BAILLIE. Mr. Chairman, distinguished members of the subcommittee, I'm Fred Baillie, the Executive Director for Distribution and Reutilization Policy of the Defense Logistics Agency. Like Mr. Estevez, I welcome the opportunity to address the disposal of DOD excess nuclear, biological and chemical [NBC], protective equipment and the potential use of excess medical laboratory equipment for the production of chemical and biological agents. My office is responsible for implementing policy on the reutilization, transfer, donation and sale of excess surplus DOD property and equipment. As such, we agree that effective control measures are needed to prevent excess DOD property and equipment from falling into the hands of those who wish the United States and its allies harm.

DLA is responsible for managing millions of pieces of equipment for DOD. As stewards of this property and equipment, our focus is to maximize accountability and insure that internal controls that are in place are followed or upgraded as needed. We continue to incorporate the results of our own internal assessments with external checks by GAO and the inspector general to validate established measures and affect improvement as necessary.

We recognize the problems identified in the GAO report that excess DOD NBC clothing and equipment could be used to make and disseminate biological agents. We also are concerned that first responders not receive faulty NBC protective gear. We take both problems identified very seriously. Actions have been taken to address them already, including, as you noted, notifying the affected agencies of established policies and providing disposition instructions for NBC gear and equipment.

We are doing even more. If the property meets current NBC protective standards, it will be issued to the military services. If not, it will be utilized for training purposes only or destroyed.

As GAO identified, our surplus sales contractor, Government Liquidation [GL], received NBC suits that were fit for training only to sell to the public. We have addressed this matter. First, we are reviewing all clothing turned in, removing any chemical and biological suits, and sequestering them. Additionally, GL is returning to DLA all NBC suits in its possession.

State and local law enforcement agencies are eligible to receive excess and surplus DOD property under special programs authorized by Congress. Each State has a coordinator and works through DLA's Law Enforcement Support Office [LESO], to receive excess property. We have contacted these coordinators about the NBC suits, issuing a warning alert and personally notifying them that the suits may be defective. We requested that those law enforcement agencies in possession of NBC suits in question take the suits out of service by using them for training purposes only or disposing of them.

The recommendations directed toward DLA in the GAO report are valid, and we concur with their usefulness in our efforts to maintain accountability, issue only serviceable equipment, and to maintain control of that equipment. We also concur with the recommendation for the conduct of a risk assessment to determine what controls are necessary to ensure all excess DOD supplies and

equipment are not accessible to those who may use them to develop chemical or biological agents to use against the United States.

We welcome and appreciate the Assistant Secretary of Defense for Homeland Defense taking the lead in bringing together an interagency group to conduct this risk and vulnerability assessment. DLA will be an active member of that risk assessment group.

We recognize the problems noted in the GAO report and are addressing these problems. We understand what is at stake here. The procedures we have in place today are being thoroughly reviewed and are being changed as appropriate to ensure adequate control measures are in place to prevent excess DOD property and equipment from falling into the hands of terrorists. The procedures we implemented to dispose of NBC protective equipment, coupled with quality control actions recently initiated will help ensure our military and first responders have effective, safe and serviceable equipment.

Mr. Chairman, that concludes my testimony. I look forward to answering your questions. I will be followed by Colonel O'Donnell, Commander of the Defense Reutilization and Marketing Service.

Mr. TURNER. Thank you.

[The prepared statement of Mr. Baillie follows:]

Not for publication until released
By the House Government Reform Committee
Subcommittee on National Security, Emerging
Threats, and International Relations

STATEMENT OF FREDERICK BAILLIE

EXECUTIVE DIRECTOR FOR DISTRIBUTION AND REUTILIZATION POLICY

DEFENSE LOGISTICS AGENCY

BEFORE THE

HOUSE GOVERNMENT REFORM COMMITTEE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

OCTOBER 7, 2003

Not for publication until released
By the House Government Reform Committee
Subcommittee on National Security, Emerging
Threats, and International Relations

STATEMENT OF FREDERICK BAILLIE

EXECUTIVE DIRECTOR FOR DISTRIBUTION AND REUTILIZATION POLICY

DEFENSE LOGISTICS AGENCY

BEFORE THE

HOUSE GOVERNMENT REFORM COMMITTEE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

OCTOBER 7, 2003

Mr. Chairman and distinguished members of the Subcommittee, I am Fred Baillie, Executive Director for Distribution and Reutilization Policy, of the Defense Logistics Agency. With me today, is Colonel Patrick O'Donnell, USA, Commander, Defense Reutilization and Marketing Service (DRMS). I welcome this opportunity to address your concerns regarding the disposal of DOD excess nuclear, biological and chemical (NBC) protective equipment and medical laboratory equipment. My office is responsible for implementing policy on the reutilization, transfer, donation, sale and control of excess surplus Department of Defense property and equipment. As such, we share your concerns regarding effective control measures to prevent excess DOD property and equipment from falling into the hands of those who wish the United States and its allies harm. DLA is responsible for managing millions of pieces of equipment for DOD. As stewards of this property and equipment, our focus is to maximize accountability and ensure that internal control measures are in place, are followed, or upgraded as needed.

We continue to incorporate the results of our own internal assessments, with external checks by GAO and the IG to validate established measures and affect improvement, as necessary.

We recognize the problems identified in the GAO report. We share your concern that DOD's excess NBC clothing and equipment could be used by terrorists to make and disseminate biological agents, such as anthrax. We also share your concern that "First Responders" not receive faulty NBC protective gear. DLA takes both of these problems very seriously and actions have been and are being taken to address them, including notifying the affected agencies of the policies and providing disposition instructions for NBC gear and equipment.

DLA is doing even more. The United States Marine Corps (as of Nov 2001) manages the Joint Service NBC Equipment Assessment Program. On March 21, 2003, DLA and JSNBC implemented policy requiring DRMS to contact the JSNBC before disposing of appropriate NBC protective equipment. If the property meets current NBC protective standards, it will be issued to the military services. If not, it will be used for "Training Purposes Only" or be destroyed. As GAO identified, our surplus sales contractor, Government Liquidation, received chemical biological suits to sell to the public. We have addressed this matter. We are reviewing all clothing turned in, removing any chemical and biological suits and sequestering them. Additionally, GL is returning to DLA all NBC chemical and biological suits in its possession.

State and Local Law Enforcement Agencies are eligible to receive excess and surplus DOD property on the same priority as the DOD, under special programs authorized by Congress. Each state has a coordinator and works through DLA's Law Enforcement

Support Office (LESO) to receive excess property. We contacted these coordinators about the chemical biological suits, issuing a warning alert. This alert noted that the chemical suits these organizations received through the LESO program, may be defective and requested that they take the suits out of service by either using them for "Training Purposes Only" or disposing of them.

The recommendations to DLA in the GAO report are appropriate and we concur with their usefulness in our efforts to maintain accountability, issue only serviceable equipment, and to properly dispose of that equipment. We also concur with the recommendation for the conduct of a risk assessment to determine what controls are necessary to ensure excess DOD supplies and equipment are not accessible to terrorists who may use them to develop chemical or biological agents to use against the United States. We welcome and appreciate the Assistant Secretary of Defense for Homeland Defense taking the lead in bringing together an interagency group to conduct this risk and vulnerability assessment. DLA will be an active member of that risk assessment group.

The first GAO recommendation is that DLA require and confirm that Government Liquidation, LLC, return all restricted DOD-use only excess NBC protective clothing in its possession to DOD. As I stated earlier, Government Liquidation is returning all requested equipment.

The second recommendation is that DLA consider additional improvements to controls over the assignment of demilitarization codes to these restricted items, particularly those items that are purchased locally and have local stock numbers. We agree. In 1998, DLA established the Demilitarization Coding Management Office (DCMO) to review the accuracy of the Department's Demilitarization Codes. DCMO

reviews all 14.7 million inventory items in the Federal Logistics Information System (FLIS) for accuracy and makes recommended demilitarization code changes when assigned codes are determined incorrect. A team has recently been formed (May 2003) and will review the demilitarization code assignment process to determine areas of deficiencies where improvements can be made to correct demilitarization coding inaccuracies and address how best to correctly assign demilitarization codes for items purchased locally with no assigned National Stock Number (NSN).

The third recommendation is that DLA establish mechanisms such as periodic audits to provide assurance that excess NBC chemical and biological protective clothing is being properly controlled. To ensure we are not receiving these suits, DLA has added a review for NBC equipment to future quarterly Defense Reutilization and Marketing Office (DRMO) Self Assessments and Compliance Assessment Visits. The DLA Disposition and Regulated Program Management Division will participate on these periodic inspections to ensure NBC suits that are no longer required are properly destroyed and place additional controls in place if necessary to ensure our war-fighters and first-responders only receive approved NBC equipment and gear. Our Law Enforcement Support Office (LESO) published a memorandum to all state coordinators requiring that any future issues made to Law Enforcement Agencies (LEA) will be marked for "Training Purpose Only" on the NBC protective equipment. This office will continue to conduct compliance inspections every two years on each state participating in the LESO program and will complete annual reconciliations for all states receiving Demilitarization-required property, including NBC protective equipment.

The fourth recommendation is that DLA notify local law enforcement agencies of identifying information on defective chemical and biological protective suits and request that they return any such suits that they have received to DOD. As noted previously, we have already implemented this recommendation.

The fifth recommendation is that DLA establish appropriate criteria and finalize and issue a policy for restricting the disposition of clothing items with IR reflectant properties. We submitted a request for a commodity jurisdiction determination to the Department of State this summer. Their determination will provide the appropriate controls on textiles with infrared reflectant characteristics. Department of State has said, they will have a decision by mid October. Once issued, DLA will provide the appropriate guidance on the control of these textiles.

Mr. Chairman, distinguished committee members, we recognize the problems noted in the GAO report and are addressing these issues. We understand what is at stake here. The procedures that we have in place today are being thoroughly reviewed and are being changed as appropriate to ensure adequate control measures are used to prevent excess DOD property and equipment from falling into the hands of terrorists. The procedures that we implemented to dispose of NBC protective equipment, coupled with internal control actions recently initiated, will ensure our military and first responders have effective, safe and serviceable equipment for use.

Thank you Mr. Chairman.

Mr. TURNER. Colonel.

Colonel O'DONNELL. Mr. Chairman and distinguished members of the subcommittee, I am Colonel Patrick O'Donnell, Commander of the Defense Reutilization and Marketing Service for the Defense Logistics Agency. I welcome this opportunity to address your concerns regarding the disposal of DOD excess nuclear, biological and chemical [NBC], protective equipment and laboratory equipment. DRMS is responsible for the execution of DOD policy on the reutilization, transfer, donation, sale, environmentally responsible disposition and control of DOD excess property.

DRMS supports U.S. forces worldwide, screening their excess for redistribution within DOD, or transfer to other Federal agencies, donation to authorized organizations, sale to authorized purchasers, and contracted disposal of environmentally regulated property. As such, we share your concerns regarding effective control measures to prevent excess DOD property from falling into the hands of those who wish the United States harm. To that end, DRMS has always placed a primary emphasis on protecting national security through compliance with processing excess DOD property according to its assigned demilitarization [DEMIL] code.

Items requiring demilitarization are destroyed under U.S. Government control at secure facilities. Items subject to State Department or Commerce Department controls are only sold when the purchaser has been cleared by the Defense Criminal Investigative Agency. Environmentally regulated property is disposed of in accordance with all Federal, State and foreign country laws and regulations.

Mr. Chairman, we take our stewardship responsibilities for protecting the public's interest very seriously. It is important that those items identified in the GAO report and other items that can be used against the United States be assessed for the risk they pose to our national security and homeland defense. We wholeheartedly support and look forward to participating with our parent agency, the Defense Logistics Agency, and the interagency group to conduct the risk and vulnerability assessment recommended by the GAO.

In addition, DRMS has taken a number of actions to reduce risk and vulnerability while the Department is conducting the interagency assessment. As recommended by the GAO, Government Liquidation [GL], has returned, and DRMS has confirmed all potential restricted DOD-use-only items of chemical and biological protective clothing in its possession to DRMS. Government employees are now performing a 100 percent inspection of all suspected potential restricted DOD-use-only in order to sequester those items pending the completion of the Department's risk assessment, risk and vulnerability assessment.

DRMS has also stopped delivery and sales of all laboratory equipment pending completion of the risk assessment. DRMS routinely works with the DLA, Demilitarization Coding Management Office [DCMO], to improve controls over the assignment of DEMIL codes to restricted items. DRMS has added an inspection protocol to ensure that excess chemical and biological protective clothing is being properly controlled at its defense reutilization and marketing offices.

To the quarterly DRMO self-assessment checklist. Every 3 months each chief of each DRMO performs an internal inspection of the DRMO using inspection protocols developed by DRMS headquarters staff to reflect potential at-risk situations. The DRMO certifies in writing compliance or noncompliance with each protocol being inspected. For those situations where the DRMO is not in compliance with the protocol, the DRMO chief must submit a corrected plan of action to one of my two field commanders.

The chemical and biological protective clothing protocol is in use this quarter. This protocol has also been added to the command compliance assessment visits of the DRMOs that are performed by the DRMS headquarters staff and members of Mr. Baillie's staff. DRMS is assisting the program manager for the Law Enforcement Support Office [LESO], to recover any defective battle dress overgarment LESO recipients may have inadvertently received. Pending the Department of State commodity jurisdiction determination, DRMS suspended the processing of any textiles with the potential to have the infrared reflectant [IR], properties.

Mr. Chairman, distinguished committee members, we recognize the problems noted in the GAO report and took the appropriate measures necessary to ensure—identify items that pose risk to our national security and homeland defense are not released to unauthorized parties. DRMS stands ready to execute all policy and procedure changes that ensure adequate control members for items identified as being restricted use items.

Thank you, Mr. Chairman.

Mr. TURNER. Thank you.

[The prepared statement of Colonel O'Donnell follows:]

Oral Statement of Colonel Patrick O'Donnell
Commander, Defense Reutilization and Marketing Service
Defense Logistics Agency
Hearing before the House Government Reform Committee
Subcommittee on National Security, Emerging Threats, and International Relations

Mr. Chairman and distinguished members of the Subcommittee, I am Colonel Patrick O'Donnell, Commander of the Defense Reutilization and Marketing Service of the Defense Logistics Agency. I welcome this opportunity to address your concerns regarding the disposal of DoD excess nuclear, biological, chemical (NBC) protective equipment and laboratory equipment. DRMS is responsible for the execution of DoD policy on the reutilization, transfer, donation, sale, environmentally responsible disposition, and control of DoD excess property. DRMS supports U. S. forces worldwide; screening their excess for redistribution within DoD, for transfer to other Federal Agencies, donation to authorized organizations, sale to authorized purchasers, and contracted disposal of environmentally regulated property. As such, we share your concerns regarding effective control measures to prevent excess DoD property from falling into the hands of those who wish the United States harm. To that end, DRMS has always placed a primary emphasis on protecting National Security through compliance with processing excess DoD property according to its assigned

Demilitarization, or Demil, code. Items requiring demilitarization are destroyed under U. S. Government control at secure facilities. Items subject to State Department or Commerce Department controls are only sold when the purchaser has been cleared by the Defense Criminal Investigative Agency. Environmentally Regulated Property is disposed of in accordance with all Federal, state, and foreign country laws and regulations. Mr. Chairman, we take our stewardship responsibilities for protecting the public interests very seriously.

It is important that those items identified in the GAO report, and other items that could be used against the United States, be assessed for the risk they pose to our National Security and Homeland Defense. We wholeheartedly support and look forward to participating with our parent agency, the Defense Logistics Agency, in the interagency group to conduct the risk and vulnerability assessment recommended by the GAO. In addition, DRMS has taken a number of actions to reduce risk and vulnerability while the Department is conducting the interagency assessment. As recommended by the GAO:

Government Liquidation (GL) has returned, and DRMS has confirmed, all potential restricted DoD-use only items of chemical and biological protective clothing in its possession to DRMS. Government employees are now performing 100% inspection of all suspected potential restricted DOD-use only in order to sequester those items pending completion of the Department's risk and vulnerability assessment. DRMS has also temporarily suspended delivery and sales of all laboratory equipment pending completion of the risk assessment.

DRMS routinely works with the DLA Demilitarization Coding Management Office (DCMO) to improve controls over the assignment of Demil codes to restricted items.

DRMS has added an inspection protocol to ensure that excess chemical and biological protective clothing is being properly controlled at its Defense Reutilization and Marketing Offices (DRMO) to the quarterly DRMO Self Assessment Checklist. Every three months, the Chief of each DRMO performs an internal inspection of the DRMO using inspection protocols developed by DRMS HQ staff to reflect potential "at risk" situations. The DRMO certifies, in writing, compliance or non-compliance

with each protocol being inspected. For those situations where the DRMO in not in compliance with the protocol, the DRMO Chief must submit a corrective plan of action to one of my two Field Commanders. The chemical and biological protective clothing protocol is in use this quarter. This protocol has also been added to the Compliance Assessment Visits of the DRMOs performed by DRMS HQ staff and members of Mr. Baillie's staff.

DRMS is assisting the Program Manager for the Law Enforcement Support Office (LESO) to recover any defective Battle Dress Overgarments LESO recipients may have inadvertently received.

Pending the Department of State commodity jurisdiction determination, DRMS suspended the processing of any textiles with the potential to have Infrared Reflectant (IR) properties.

Mr. Chairman, distinguished committee members, we recognized the problems noted in the GAO report and took the appropriate measures necessary to ensure identified items that pose risk to our National Security and Homeland Defense are not released to unauthorized parties. DRMS

stands ready to execute all policy and procedure changes that ensure adequate control measures for items identified as being restricted use items.

Thank you, Mr. Chairman

Mr. TURNER. We will now turn to our chairman to begin an 8-minute round of questions.

Mr. Chairman.

Mr. SHAYS. Thank you, gentlemen. Thank you for being here. Thank you for your service to our country.

I would like to know what, if anything, did you hear from the first panel or from the Members of the Congress who sit on this committee that you disagree with or want to qualify?

Mr. BAILLIE. Regarding the trade security control and the GAO investigation that was conducted, I'd like to state that while, in fact, the undercover operation began in May 2003 and progressed through June and July, there are also checks and balances throughout the process of issuing that end user certificate. DLA's Office of Criminal Investigation Activity does conduct postsale investigations. During one of those postsale investigations, we did discover the company that was set up by Mr. Ryan and his investigators. So while certainly a dedicated, informed individual can access the vulnerability of the system up front, there are checks and balances that, at least in this case, did catch the fact it was a fictitious corporation.

Mr. SHAYS. Just so we can be more specific, when did you discover it?

Mr. BAILLIE. I believe early August was when our people found—conducted the postsale investigation and subsequently determined that was, in fact, a fictitious organization.

Mr. SHAYS. August of——

Mr. BAILLIE. 2004. I believe May 2003 is when Mr. Ryan——

Mr. SHAYS. Had they already made most of their purchases by then?

Mr. BAILLIE. I believe so, yes, sir.

Mr. SHAYS. OK. Anything else?

Mr. Estevez.

Mr. ESTEVEZ. Yes. I'd just like to add that the equipment here, none of this equipment is on the Commerce control list or the U.S. munitions list, so there's no restrictions on the export of equipment; fully agree with GAO that there's a pattern here that we need to look at, which is why we concur with their recommendation of doing the risk assessment on how we do it. But this equipment is available on the commercial market, exportable, so the fact that we're accessing it is just one small part of the thing that needs to be done.

Mr. SHAYS. Any other part that you would qualify? Colonel?

So basically, though, you would concur with, as you remember them, what was said from the panel and what was said from up here at the dais? Is there anything else that we said that you might want to just qualify?

OK. Just getting on that side of the equation, dealing with the suits. I mean, there's three issues here. One is the end use controls, the lab equipment, as I see it, and the other is inventory controls for protective suits. Why was it possible for these protective suits to be sold after it had been determined and committed to Congress that they would not be sold, would not be issued to any military people unless they were marked as potentially defective, and,

therefore, as practice suits and not suits you'd use in battle? Mr. Baillie.

Mr. BAILLIE. Yes, sir. Mr. Chairman, once the GAO identified that this was an issue, that they were being sold, Colonel O'Donnell's people went back and did a complete scrub of the processes that we used to move that equipment through the system. As the first panel mentioned, there are a number of turn-ins that are done in batch lots, if you will. A batch lot literally is a very large box that sits on a pallet probably half the size of this testimony table. In there, when the services turn in equipment and goods, it is literally stacked in without potentially full accountability. As part of assessing the process, it was determined that was one of the major ways these suits were making it through the screening, through the policy that had been set up.

Subsequent to the GAO findings, Colonel O'Donnell has instituted a process change where all of those batch lots will literally be torn apart and inspected item by item. So while this will add substantial time to his processing time, we believe this is a serious enough issue that's the kind of action we need to take.

Mr. SHAYS. As it relates to the notification, I saw a real difference between what we told our military personnel last year, death could result, versus really a vanilla-type notification to the commercial folks. First off, it's true we don't know who has the battle dress overgarments, correct?

Mr. BAILLIE. We know at least from the GAO report that there's approximately 718 individuals out there with suits; California Office of Criminal Justice, Nevada Department of Public Safety and the Sacramento FBI Office. Of the 718, 474 were subsequently turned in. We have not only sent out the across-the-board warning letter that you mentioned, sir, but have personally contacted each of those individual coordinators with the identified suits, in addition to which this week, in Atlanta, we are currently having a—our regular recurring conference where we bring all the States together. This subject is being discussed in detail within the confines of that particular conference.

Mr. SHAYS. When you say that those are the local governments that have suits potentially for their first responders, it is very possible that other local governments, counties, have them for first responders that we don't know about, correct?

Mr. BAILLIE. It's possible, yes, sir.

Mr. SHAYS. It's also possible, I mean, also dealing with the whole issue of the commercial sales, when people see these suits, they have reason to believe they work, particularly if they are sealed and within expiration date. How many suits do we have out in the commercial market; do we know?

Mr. BAILLIE. I don't have that figure offhand sir.

Mr. SHAYS. I mean, the bottom line is we really don't know; isn't that correct?

Mr. BAILLIE. I don't know.

Mr. SHAYS. Colonel O'Donnell, do you?

Colonel O'DONNELL. Sir, at this time I could not give you an accurate answer.

Mr. SHAYS. But there is a reason why. I mean, it's not that you haven't looked at your notes. It's there were some that were batched that you don't know were bad.

Colonel O'DONNELL. Yes, sir. In other words, as Mr. Baillie's indicated, when property goes out in batched lots, it's——

Mr. SHAYS. So when you say "at this time," you wouldn't be able to tell me at any time.

Colonel O'DONNELL. No, sir. In fact, after I said that, I thought, you know, we don't track as that property goes out whether or not those items are still in the bags or out as a part of a batch lot.

Mr. SHAYS. But even if they're not in the bags, even if they are in the bags, they could be defective.

Colonel O'DONNELL. Yes, sir. From the standpoint when they are taken out——

Mr. SHAYS. No, you need to hit that again. I'm sorry.

Colonel O'DONNELL. When those suits are taken out of the bag——

Mr. SHAYS. No, I don't need to go that way. When they're taken out, there's no guarantee of anything. But you didn't send bags that were taken out. You sent bags that were sealed that may still be defective. I mean, these are like a no-brainer kind of answer. I mean, don't drag this one out. I'm just basically asking a point of fact that some of the suits that we sent out were defective. If they're not in their protective container, they are deemed not to be proper to use. If they are, you can make an assumption, particularly if the expiration date hasn't been reached, that they work. And the fact is that some of them don't work properly; isn't that correct?

Colonel O'DONNELL. Yes, sir.

Mr. SHAYS. And it's also correct we don't know who has those suits.

Colonel O'DONNELL. That is also correct.

Mr. SHAYS. OK. Thank you.

Thank you, Mr. Chairman.

Mr. TURNER. Mr. Bell.

Mr. BELL. Thank you, Mr. Chairman. And thank you all for your testimony here today.

Mr. Baillie, you testified that the Department of Defense detected that it was dealing with a fictitious company, Mr. Ryan's fictitious company.

Mr. BAILLIE. Yes, sir. Mr. Bell, that is the information that our criminal investigation people have passed on to me prior to this hearing.

Mr. BELL. So you're not basing that on your personal knowledge, but what you have been told; is that correct?

Mr. BAILLIE. Yes, sir.

Mr. BELL. Would it surprise you to know that the GAO actually informed the Department of Defense in August that it was a fictitious company with which it had been dealing?

Mr. BAILLIE. My information, sir, was that somewhere before August, GAO informed that they were running an investigation like this, but did not identify the company. What I have been informed is that the postsale investigation identified the company.

Mr. BELL. But the purchases were actually made—well, let me clarify what you just said. That they had been told, given some information by GAO, regarding a fictitious company, but not the name of the company?

Mr. BAILLIE. Right; that GAO was conducting the undercover audit, and that it was ongoing. Other than that they were not provided the name, as I was informed.

Mr. BELL. And so after that point, the Department of Defense was able to uncover——

Mr. BAILLIE. The particular organization or individual's name, yes.

Mr. BELL. And I'm not going to belabor the point, but that type of excuse is what troubles me, because obviously, if we're not dealing with an undercover investigation, if it is actually a terrorist who's making these purchases, they're not going to provide that kind of information to the Department of Defense.

Mr. BAILLIE. Yes, sir.

Mr. BELL. And the purchases were made between May and July, and during the time that the purchases were being made, there was no detection whatsoever that this was a fictitious company, despite the fact that the same credit card was being used, that false names were being used, documents were being forged, etc. Would you agree with that?

Mr. BAILLIE. Yes, sir.

Mr. BELL. Would you also agree that the red flags and alarms should have sounded long before GAO made any type of report to the Department of Defense that an undercover investigation was being conducted?

Mr. BAILLIE. Certainly the process in and of itself should have identified those things, yes, sir.

Mr. BELL. Mr. Estevez, I'm somewhat fascinated by the safety cabinet that we have here today, because according to the GAO—and I have never shopped for a safety cabinet, so I certainly couldn't say one way or the other, but according to the GAO, it appears to have never been used. Is that—do you know?

Mr. ESTEVEZ. I'm sorry. No, sir, I don't.

Mr. BELL. If that's correct, and let's assume that it is, why would the Defense Department be selling a new high-quality safety cabinet for pennies on the dollar if it had never been used?

Mr. ESTEVEZ. I can't address specifically why this cabinet was turned in for reutilization.

Mr. BELL. Or any new large piece of equipment such as that.

Mr. ESTEVEZ. The using unit has excess or has no need for this, any piece of equipment, they turn in into the Defense Reutilization and Marketing Service. And I'll let the colonel walk through the process, but essentially other defense activities can then requisition that while it's in DRMO. At some point DRMO passes it over for resale if—depending on what its militarization characteristics are and export controls, etc., and we recoup what we can based on the value of the item on the open market.

Mr. BELL. So if it's no longer——

Mr. ESTEVEZ. Required by the Department, by the activity in the Department.

Mr. BELL. Can you say that nobody else in the Defense Department purchased a new safety cabinet during this same timeframe that we're talking about?

Mr. ESTEVEZ. I can say while this was available in DRMO, no one purchased one when they could have gotten this one. I can't say that no one was out looking for one in the same time period when this one was no longer available.

Mr. BELL. Colonel, do you know?

Colonel O'DONNELL. No, sir, I don't.

Mr. BELL. OK. Did you want to add to Mr. Estevez's answer on the process?

Colonel O'DONNELL. Well, I think, in a short answer, he's encapsulated how the process works. Each of the services at each of its—their different installations determines, you know, locally what is excess to their requirements. There are processes within those services to review property across the board or at some level across the organization and make those internal adjustments, and the property is then turned in to a DRMO. It is offered for redistribution DOD-wide. If at the end of that screening process, which is exclusive to DOD, that window of opportunity to observe the property by authorized Federal agencies and other authorized screeners, they've got access to view the property over our Web site, and at the end of that reutilization transfer and donation screening process, a disposition decision is made with respect to what's going to happen on the property. And then in the case of these particular items, they were transferred to our commercial partner, government-liquidations.com, for sale.

Mr. BELL. A policy directive was issued by the Department of Defense in January to restrict sales of chemical and biological protective suits from being sold to the public. But in spite of that directive, the Department of Defense has continued to sell the protective suits to the public, and the GAO has found that you're selling them to the public to this very day. Whoever wants to answer the question may, but I'm curious as to why the Department of Defense has failed to follow its own directive.

Mr. BAILLIE. Yes, sir. That goes to the batch lot issue that I discussed before and that the first panel commented on. We do not allow the suits to go when they are identified if they are, in effect, mixed in with very large batch lots of things. Prior to Colonel O'Donnell's changes his——

Mr. BELL. Well, let me stop you there, because GAO purchased two lots of chemical and biological suits, and I believe one was in April, and the other purchase was in June, and they bought hundreds of suits, and there was nothing in those lots except those suits. There was no question about separating the suits from other equipment. So let me go ahead and ask you again why didn't you all follow your own directive?

Mr. BAILLIE. OK. We have not actually analyzed the particular purchases that GAO made, sir.

Mr. BELL. Will you go back and do so now that you know that they were not mixed in with any other equipment?

Mr. BAILLIE. Absolutely. In order to ensure that we make those changes to the process, it's key to us that we find out what broke down, and that we in turn change the process to fix that.

Mr. BELL. I think it's also troubling to this committee that after Customs and the Department of Homeland Security had made the Department of Defense aware of the dangers posed by uncontrolled sales and some of the activity that was going on, that no action seems to have been taken to restrict the sale of the biological equipment after the briefing. Do you know why no action was taken?

Mr. BAILLIE. I think I need to turn to Mr. Estevez at the OSD level to address that, sir.

Mr. ESTEVEZ. Sir, of course I can't address, having not been the person that Customs came to talk to. I will say that my understanding from USD policy is at the time it was a general briefing. We were focused on going to war in Iraq, and we were certainly taking it seriously at this point. We will be focused on this.

Mr. BELL. You're certainly not suggesting that everything else just comes to a standstill at the Department of Defense when we're preparing for war.

Mr. ESTEVEZ. Absolutely not, sir.

Mr. BELL. OK. Well—and you all did decide to restrict sales after the GAO report came out, correct?

Mr. ESTEVEZ. That is correct.

Mr. BELL. My time has expired, Mr. Chairman. Thank you.

Mr. TURNER. Mr. Janklow.

Mr. JANKLOW. Thank you very much, Mr. Chairman.

Mr. Estevez, your testimony indicates we were asked by the subcommittee to determine whether the sale and disposal of excess medical and laboratory equipment and protective CB clothing pose a national security risk. Have you done that?

Mr. ESTEVEZ. In the area of clothing we've obviously restricted the sale.

Mr. JANKLOW. Let's go to the medical equipment.

Mr. ESTEVEZ. Yes, sir. For the equipment, that is why we are going to do the risk assessment that the GAO has suggested that we do. All this equipment in and of itself is available. There are no restrictions on it from export controls, from the Commerce control, from U.S. munitions list. So we have to look at things that are not necessarily in and of themselves a danger, and we are going to do that risk assessment.

Mr. JANKLOW. When are you going to do it?

Mr. ESTEVEZ. Based on the GAO finding, we are initiating it now under our Assistant Deputy Under Secretary, our Assistant Secretary for Homeland Defense.

Mr. JANKLOW. Are you still continuing to get rid of the equipment in the interim?

Mr. ESTEVEZ. The equipment identified by GAO is no longer for sale, and we have suspended sales while we do this risk assessment.

Mr. JANKLOW. You know Government Liquidators, you referenced them as a partner; is that right, Mr. Baillie, or——

Colonel O'DONNELL. Yes, sir. They are a commercial venture partner.

Mr. JANKLOW. Do they pay you for this stuff, or do you pay them for doing their work?

Colonel O'DONNELL. No, sir. We have a profit split arrangement with GL; 80 percent of the proceeds that they receive for the property sold in any given lot or any given sale is returned to——

Mr. JANKLOW. Why do they think—let's take the laboratory equipment. When you said you wanted it back, that it was already in their custody, why did they think they didn't have to return it; that if they did, it would be gratuitously?

Colonel O'DONNELL. We have an extremely positive relationship with GL in terms of our working relationship.

Mr. JANKLOW. Which means when you give them something, they don't ever have to give it back even if you want it? Is that right?

Colonel O'DONNELL. The title for that property that's passed to GL, sir, passes to that company. If they were to——

Mr. JANKLOW. Excuse me. It passes before it's sold?

Colonel O'DONNELL. Yes, sir.

Mr. JANKLOW. OK.

Colonel O'DONNELL. Title passes to GL. But if in those instances where—in this particular instance where we have asked them to return property to DOD control, they have complied with those requests.

Mr. JANKLOW. I know that, but I just wondered why they didn't think they had to if they didn't want to.

Can I ask all three of you, why—isn't most of this we're talking about today common sense, whether or not these things could be of danger to the people of America if they're not used properly? Isn't this really common sense? And to defend by saying, well, you can go out and buy it someplace else, that's kinds of what the kids say when they sell dope. Well, everybody's doing it, so what's wrong with us doing it?

What I'm really curious about is that why did it take a congressional GAO audit to uncover this stuff and then prompt someone to fix it? Isn't that your job, Mr. Estevez? Isn't that your job, Mr. Baillie? Isn't that your job, Colonel? Isn't that what your titles imply?

Mr. ESTEVEZ. Sir, I'm focusing on the overall material management policy for the Department of Defense. This is certainly part of my job, identifying a pattern. I agree—you know, I have to agree with you. We probably should have stepped up to this sooner. However, I do have to point out, again, in and of itself this equipment is used by laboratories, hospitals, universities around the world, and there's no restrictions on it. So focusing on our small piece of this is not going to solve this problem, which, again, is why we're going with Homeland Security, the Department of Homeland Security, and our Assistant Secretary on Homeland Defense to lead the entire risk assessment of this. It's going to involve State, Commerce and other activities in order to get this right.

Mr. JANKLOW. But I'm puzzled. My question is, does it—just because it's commercially available, does that mean you ought to be selling it at 10 percent of its value to get it out of your inventory? Take protective suits. Why don't you just give them away to all the local governments, which you do? And why are you keeping defective ones for any purpose?

The fact of the matter is you've set up a pretty elaborate system on how you're going to now audit every couple of years to make

sure of all of these local governments that have these suits are using them for training purposes only. Isn't that a little futile really?

Mr. BAILLIE. You're absolutely correct, sir, as far as the defective suits. I believe some prior Department policy had said to use them for training purposes. Subsequent policy has said the defective suits, the Isratex suits, that this committee discussed a number of years ago are to be destroyed. They are currently the ones that we identify in the Department being processed by Colonel O'Donnell's people at Red River. They are being shredded and put in a landfill.

Mr. JANKLOW. Now, what about the ones that are out there? Wouldn't it behoove us to just tell them turn them in, we'll trade you—there aren't that many of them out there, are there—and give them what you get when you sell the new ones? Why don't you just trade them; tell them, turn them in, and we'll give you more out of inventory?

Mr. BAILLIE. You're absolutely right, sir. Our instructions are for the, I believe, 16 stock numbers that the Isratex suits include, we have said return them to us. We will dispose of them. For the other older BDOs, we are allowing people the choice of either disposing of them, using them for training purposes, which is a legitimate action. But the defective suits, sir, you're correct, we need to retain control of them and ensure that they are disposed of, shredded, put in the landfill down at Red River.

Mr. JANKLOW. Let me ask you, this spins off of something Mr. Estevez indicated, are the functions that each of you perform so great—and they very well may be; I mean, I don't suggest for a moment you're not busy—that the concerns about certain types of equipment being disposed of to—we'll call to the general public and getting into the wrong hands, should that be handled by a single entity someplace within the government with a very strict set of controls, and not within your three particular bailiwicks, or can you all handle it? And we're just dealing with the Defense Department, with you. We're not dealing with the Energy Department, the Veterans Administration, the Agriculture Department, all these other agencies that were the subject of IGs' examinations.

Mr. BAILLIE. Sir, at least speaking for the Defense Logistics Agency, there is nothing more important than making sure that people's lives are protected. The issue, I think, as the first panel identified, is that this is exceptionally broad, ranges across the whole government, not to mention the entire Department of Defense.

Within DLA we have subsequently on our—we had on our own, prior to the GAO investigation, identified other areas that are similar risks to the public. One, I believe, was noted in the GAO report, the infrared reflectant technology in a lot of our clothing. That was identified by the Demilitarization Coding Management Office in DLA. We have also identified some issues with gas masks. Colonel O'Donnell's people have identified additional things to include such common items as fertilizer. You know, following the Oklahoma City tragedy, Colonel O'Donnell's folks went through and pulled fertilizer off as an item for sale.

So I think the reason we welcome this hearing is that it focuses all of us on the much, much bigger issue. We can take individual actions within DLA, but this is clearly a governmentwide issue.

Mr. JANKLOW. Mr. Chairman, can I ask one more quick question? It will be very brief.

Mr. TURNER. Sure.

Mr. JANKLOW. Thank you.

With respect to the hearings that have been had in a legitimate way, if you were in Congress—let me just ask anyone of the three of you to respond. If you were in Congress, what would you do? Is there anything you think you could do to make this situation better, or is this something that can be fixed within the executive branch?

Mr. ESTEVEZ. I'd like to be able to answer that. I really can't, sir. I can say that we in the executive branch, certainly speaking for the Department, I can't speak for the executive branch as a whole, are now focused on this, and we will be focused on this issue. And it is not—it is a complex issue because each and every one of these items in and of itself can't, you know, produce bad things. It's the pattern and how do you tie that pattern together, and we're going to work to get it right. If, you know, we need legislation, we would be happy to come to you and ask.

Mr. JANKLOW. It's like bullets and rifles. You have to put them together to have a problem.

Mr. ESTEVEZ. Absolutely, sir.

Mr. JANKLOW. Colonel.

Colonel O'DONNELL. Well, I think that's been a common thing this morning that this is an extremely wide problem and no doubt a very, very complex one. Trying to make good judgments as to, you know, how all these various components can be put together to create biological weapons and/or other weapons of mass destruction is a very significant undertaking and requires, you know, expertise across all governmental agencies. I don't think anyone would hold themselves out to be an expert, you know, in an area that broad. So this is something that's far-reaching and has some pretty profound consequences.

Mr. JANKLOW. Thank you, Mr. Chairman.

Mr. TURNER. Mr. Ruppersberger.

Mr. RUPPERSBERGER. Yes. The areas that we really are talking about here today are twofold. It is more the broader issue, the systemic problem generally of the inventory control and the program that is going on, and then second the more—the serious issue of—at this point is the biological.

But before I get to some of those issues, I do want to get this clear as it relates to Ms. Bronson. You know, congressional oversight is extremely important. It's our system of government. And, you know, it's important that we have—the people doing the job for us have the ability to get information, and that people will see them, and that really disturbs me that there's lack of cooperation. And I wouldn't like to have a sting operation involved in my operation either, but, bottom line, there was a reason for it, and we have this hearing today because of it. But when someone does not cooperate in that regard, that's an affront, I think, to Congress and to the country.

The first thing, I want to ask you a question. Did Ms. Bronson refuse to cooperate with GAO on her own, or was she directed not to cooperate? Does anybody know the answer to that?

Mr. ESTEVEZ. Sir, my understanding from her office is that she did not refuse to cooperate. Her understanding was that a letter would suffice rather than a meeting. They did not refuse the meeting. Again, that's my understanding from her office.

Mr. RUPPSERSBERGER. Well, it seems to me that's her opinion about a letter should suffice. I think it's very extremely important that we make Ms. Bronson available to this committee just to make sure that we get it straight on what the roles that we do have and that we do have that cooperation, and I would hope that you could take that message back. But to say a letter would suffice on something as serious as this, that doesn't get it here, and I think it's something that we really need to deal with. And not—you know, her name has been mentioned today, and I'm sure this happens a lot, and it's a matter of a broader problem that we need to cooperate. No one likes it, but it's something that we are trying to get to the bottom so we can do what's best for our country.

Now, on the issues of this program, the first thing I want to get into just the broader scale, and then I'll come into the chemical and biological. Should this system that we have, the distribution and what is it, reutilization program that you three are really very much involved, the GAO testified that they thought it was a good system for some situations. How do you analyze the systems that you or they are involved with? Is it really worth what we are doing? In other words, are we getting moneys back? Are we able—that are going to justify what we need to do? If, in fact, we have problems—and we have problems here today, and it worries me what the other problems might be because we don't have control over a large quantity of information and documents and whatever. Is it worth it to keep going on with that system, and if it is, how much is it going to cost to do from what you see from your perspective to give you the resources and the tools, including the manpower, to move forward in an appropriate way?

Mr. ESTEVEZ. Let me address from the broad term, Congressman. We think it is a good system. It enables us to get some recoupment on the investment of excess property that we would have to pay to destroy if we weren't selling it. And, in fact, we do destroy equipment that has military characteristics that we can't put out on the market. So, for the stuff that has reuse, it makes it available to not only for sale, but prior to that for use throughout the Federal—you, know the Department of Defense first, then the Federal Government, and through donations to selected parties, law enforcement, some universities, etc.

So it's a program that helps the general public. It helps us recoup some investment on inventory that is no longer needed within the Department of Defense.

Mr. RUPPERSBERGER. Bottom line, what does it cost to run this program? Will you please stop my time for a second? I'm just kidding.

Colonel O'DONNELL. Sir, last year, my annual revenue for actually fiscal year 2003, our operating budget was $292 million.

Mr. RUPPERSBERGER. OK.

Colonel O'DONNELL. Total revenue generated by DRMS in fiscal year 2003 was $333 million.

Mr. RUPPERSBERGER. All right. Well, your budget includes what? Does it include manpower?

Colonel O'DONNELL. Manpower, sir, infrastructure, buildings.

Mr. RUPPERSBERGER. Technology?

Colonel O'DONNELL. Yes, sir.

Mr. RUPPERSBERGER. What kind of technology do you have for your inventory? What systems do you have?

Colonel O'DONNELL. We have Daisy, which is an internal—which is a DRMS-unique program that manages our inventory; in other words, when this property is in our control, provides us a number of ways of looking at the property not only in terms of its location, but tells us a lot about the physical characteristics of the property, its acquisition value, its demilitarization code.

Mr. RUPPERSBERGER. Do you agree that there is an inventory control problem, the ability to identify what you have and where it's going?

Colonel O'DONNELL. Sir, I would agree that at least within DRMS we work real hard to follow all of the policies and procedures that are currently in effect with respect to the disposition of excess DOD property. Our ability to make management decisions relative to property that's in our custody is really a function of the quality of information that we receive from our customers or our generators in terms of the accuracy of the descriptions, the accuracy of the stock numbers, because, again, that's what my people make inventory management decisions based upon.

Mr. RUPPERSBERGER. Well, I can understand that, and that's maybe part of the problem. But, you know, we had testimony here today that a Wal-Mart or Sears within 1 minute can determine, you know, what they have as far as their inventory is concerned. And it seems to me that should be a goal of ours.

But, you know, what I'm really leading to here, I know you can only deal with the information that you have, that you have in there, but when you have new equipment, you know, that is—you can't identify it, when you have—and I'm sure of this. I have two Army bases in my district. They're always talking about getting more resources, and when you—is there any system there when, say, your military bases are asking for resources, and within that inventory that you can check to see whether or not what you're selling is something that someone else might need? Do you have any system in place that can deal with that?

Mr. ESTEVEZ. Sir, we have a multitude of systems that do that. Each of the services has their own systems of wholesale and retail levels like at the national level and down at the base level. If you're at an Army base, and you're requisitioning an item, it'll search other Army bases to see whether they have that item before it'll go to the national level.

With that said, because we have these multiple systems, there are gaps, and we are—as Mr. Kutz indicated, we have a fairly intensive effort to modernize our systems, and we are working with people like Wal-Mart and Sears to see how their practices work.

Mr. RUPPERSBERGER. I have to go because I see the yellow light's on. I want to get to the other phase, and we're not going to solve

all this right here. I'm going to request that our chairman bring you back and that we give you a timeframe to give us a report on where the systems are, including how can you meet the same goal that the private sector has with respect to finding out where your inventory is. If you know what you have, it seems that solves part of the problem, and it is very important, I think.

Now, I want to get into just—there's the red light. You told me I was going to have a couple of minutes. I want to get into the biological and chemical issue. To begin with, have you, as a result of what is out there and what we're concerned about—and you've said you've coordinated with Homeland Security. Have you given this information to the relative intelligence agencies so that they can deal with it, FBI, other groups such as that? Are they involved with determining and working with you on the risk assessment on where, what we have out there that we need to retrieve?

Mr. ESTEVEZ. Sir, it's really preliminary. We are just kicking this thing off based on the report that we had and the recommendation. So we are just standing up this task force to do that.

Mr. RUPPERSBERGER. Well, it seems to me that it's an extremely high priority and something that really should be done right away.

Second, in order to be able to retrieve some of this, these materials or equipment or whatever that is out there, there probably is going to be a legal problem, because once you have sold something to somebody, you've passed title. And I would think that—and I would again ask our chairman that we consider legislation that would allow us to retrieve that, those items that were necessary to get back into our control, because right now we could have a serious legal problem that we can't get it back because we've already—we've sold it, and the title has passed. Do you have any comments on that?

Mr. ESTEVEZ. Actually, we've proposed legislation to that effect.

Mr. RUPPERSBERGER. Do you have it out there already, or you would——

Mr. BAILLIE. In talking with our counsel, DLA has proposed to OSD and had approved by OMB for at least a couple of years legislation that would have allowed that. It has not made it into the subsequent final legislation. We do, in fact, have similar legislation working at OSD again this year. We would obviously welcome that kind of language in helping us with this issue.

Mr. RUPPERSBERGER. Well, I know our chairman is a man of action, so maybe we can help you along in that regards. And one other thing. If we find, based on the risk assessment, that we have vulnerabilities as it relates to our national security with respect to what has happened now, do you feel that part of your program should be shut down for at least 6 months or a year to make sure that we know exactly what we have, what we need to do, and to get it right?

Mr. ESTEVEZ. I would say we would do what's necessary, and if that's what it takes, we will do that in order to get it right.

Mr. RUPPSERSBERGER. But you don't have enough information right now to analyze what you need to do in that regard.

Mr. ESTEVEZ. That is correct, sir.

Mr. RUPPERSBERGER. I said it before, and I want to say it again: We have to get the attention of the leadership. I mean, you're sit-

ting here taking it today, and that's your job, but you need resources. You need commitment from the top to make sure you can do what you have to do. And I know that it's very difficult, especially when you have a very strong leader, that you have to maybe say what you want to say at some times that might offend policy that could be different. But this is serious. This is something we have to work on, and we're going to hold you accountable to come back to make sure that we get this right.

Mr. BAILLIE. If I may agree with Mr. Estevez's last statement, it's been somewhat unpopular, especially with the infrared technology issue. We've had that frozen now for at least 6 months, if not 9 months. We're getting a lot of concern from the commercial sector out there about it. But when you're dealing with people's lives, as Mr. Estevez said, we'll take the actions we need to take.

Mr. RUPPERSBERGER. OK. Thank you.

Mr. TURNER. Thank you.

Gentlemen, as part of your opening statements, you made statements such as, you know, we agree with the GAO report. We recognize the issues. We have concerns. We're committed. We've revised modified policies. And, you know, I think the questions that you've been getting from this committee have been focusing on the issue of then what? And I know that in your statements I appreciate your identifying this issue as broader than just the Department of Defense by indicating that of course there are no restrictions on private sector sales of some of these types of equipment.

And you've also talked about, you know, our education curve as we become more aware of threats that we are facing with different types of equipment, because similarly, as you identified, Mr. Baillie, I think, fertilizer, I mean, you could begin to put things over here in the exhibit that we have that we would not normally have thought of as terrorist tools; box cutters, for example. But some things are more easily identifiable as intuitively a problem, such as this lab equipment that we have in front of us.

So even granting that there isn't similar controls in the private sector, and that some types of equipment that we wouldn't normally think of as terrorists using could also be used in this example, we do have a situation here where the Department of Defense either has policies in place that they're not following, or areas where we can easily view where there should be policies in place. And my concern, and my first question, relates to two things. One, in the areas where there are policies in place that obviously were not being followed, I'd like your comments on that, because any discussions that we have about expanding policies really don't give us any comfort level that's going to result in anything if there are existing policies that are not being followed.

So I'd like you in my first question to discuss the issues of policies not being followed and how they could be more effective, and in that I'd like you to also talk about the issue of this ineffective end user certificate, because when we had our earlier testimony, GAO was saying that, you know, Mr. Ryan, who had coordinated this, would not be able to be located by any of systems. Once you ultimately did determine if you—had independently determined that there had been a purchaser that was suspect, it sounds as if you have in place a process that doesn't do anything but push

paper and is going to be ineffective in accomplishing its goal. If you would address that, please. Mr. Estevez first.

Mr. ESTEVEZ. With regard to the policies not being followed, we have a number of mechanisms to identify problems in the Department of that regard. IG, GAO, the military services each have one of their own reports that come into my office, for instance, and this—and on DRMS activities. So while I would like to say that the process worked, in fact it did after a time, that's sort of the mechanisms that we rely on. And we were stepping up, in this area, our assessment teams, and I'll make sure that those reports get the Office of Secretary of Defense-level review.

For the specific thing on the end user certificate, I'm going to have to turn that over to Mr. Baillie on the specifics on that.

Mr. BAILLIE. Thank you.

Yes, sir. We would agree the end user certificate process needs to be strengthened. The fact that Mr. Ryan was able to do what he was able to do causes us great concern. We are working with a number of the law enforcement agencies, Justice, Homeland Security, some of the other folks, to give us access to additional criminal information data bases that will allow us to do what the system should do, which is to prevent the kind of thing that happened in this case. So at this point the process, yes, could be strengthened. We are working to do that across the government.

Mr. TURNER. Colonel.

Colonel O'DONNELL. Sir, again, from the DRMS perspective, again we've got in place, I think, what appears to be a viable set of policies and procedures. Our execution of those policies and procedures, again, from the DRMS perspective, is as good as our ability to identify the property that flows through our various facilities. In terms of, again——

Mr. TURNER. I'm sorry. Let me interrupt you a second, Colonel. You just distinguished between policy and their implementation, and my suspicion—and correct me if I'm wrong, and tell me what the difference is—don't your policies include the implementation processes? I mean, are you saying that you have these policies of we won't do these things, and then separately the implementation processes are put together, and do you need to change those?

Colonel O'DONNELL. At the Department level policies are broad policy guidance decisions on how—what should be done and how the process should work. They don't go into the individual processes of how DMRS should operate. Those are implemented by Defense Logistics Agency down through their component.

Mr. TURNER. OK, Colonel. Then in making that statement, if you could be specific as to how the policies are good, but the implementation is not?

Colonel O'DONNELL. Well, the policies and ultimately the procedures are well thought out and are changed, you know, over time as conditions would indicate that there's a need to change. Our challenge is in terms of executing a lot of the policies, and I think about it in the context of this particular investigation where you have property that's introduced into the DRMS inventory. And as I indicated earlier, our ability to make management decisions or disposition decisions relative to that property is as good as the information that we're getting from our customers.

I guess, having said that, you know, we don't have a way to look back up the pipeline to assess whether or not the information we've got is accurate. We deal with the here and now. I've got a series of stock numbers. I have property management codes, deauthorization codes that tell me I can do certain things or not, as the case may be, and we react or we execute accordingly.

Mr. TURNER. Taking that question that I had asked to the first panel was concerning the operator involvement. You had taken some action to look at end user identity, but, again, having Wright Patterson Air Force Base in my district, knowing the labs that are there, knowing and having spoken to operators of some of those labs, I know that would probably be a very fertile environment for initial assessment or description of the threat for threat assessment that some of the equipment or materials might pose, and I think I hear you saying that there is no operator involvement. At least when I asked the first panel, they were not aware of any. So I guess the question is, is there originating operator involvement in that threat assessment; and, two, if there isn't, do you believe it would be helpful?

Let's start with the Colonel. He was discussing the issue of his lack of full and complete information.

Colonel O'DONNELL. The information that we get from a customer on a turned-in document doesn't indicate, other than if there's a demil code attached to a particular stock number, that there is a threat. So I'm not suggesting for a moment that, you know, operators or the owners or the proponents of that equipment haven't thought that process through.

But in the case of things like textiles, for example, where you get in property that has locally assigned stock numbers, you don't have a code that, you know, gives you some restrictive guidance as to what you're supposed to do with the property; and——

Mr. TURNER. Colonel, I understand that. You described a very clear code before, and it sounded pretty much like your position is you were describing it was that of a traffic cop. I get in this. It goes there. I get that in, and it goes there. My question is, how do you think it would make your system work better; and, specifically, what additional information from the originating operator would be helpful?

Colonel O'DONNELL. Sir, I guess that goes back to, ultimately, the item manager for a given piece of equipment, and to have at the outset—in other words, at the beginning of the supply chain for an individual item a good, solid, reasoned determination as to what demilitarization requirements need to be ascribed to an individual piece of equipment, if any.

Mr. TURNER. So is that answer a yes?

Colonel O'DONNELL. Yes, sir.

Mr. TURNER. Thank you.

Mr. Baillie.

Mr. BAILLIE. Congressman Turner, the Colonel hit on another one of the key control issues that we discovered subsequent to the GAO report, and that's that local stock number. What the Colonel has had his folks do, in addition to tearing apart every batch lot, is to reject any submissions of clothing and textile that an operator submits with a local stock number. You know, sometimes the local

operator does not know or can't find the national stock number, which is the key to all the things the Colonel was talking about. It's got the demil, it's got the identification, and it's what the daisy system runs off of.

When something is submitted with a local stock number, that piece of the process just stops, and it's then——

Mr. TURNER. Back to my original question just for a second, because it just seems like, again, that we're asking a question that I can't imagine the answer isn't just yes, but I don't quite understand the answer I'm getting back. The question is, one, is the originating operator of the equipment that's being disposed involved in the assessment in DOD in determining its threat; and, if not, do you think that would be helpful?

Mr. BAILLIE. The person who determines the threat in the Department is the procuring inventory control point. So the service or DLA inventory control point that buys a particular item, in this case I believe most of those are DLA items, that inventory control point is the one who puts the demil code and the kind of sensitivity on it. So, yes, sir, involving them is key.

Mr. TURNER. But that's not the original operator.

Mr. ESTEVEZ. Actually, I was going to say what Mr. Baillie said, that the procuring activity who's buying it for that operator assigns the demil code. Of course, what we have here is any one of these items in and of itself would have no demil code. So that raises the complexity of how do you look at, you know, one thing—it goes back to putting the gun together. This is putting the gun together. So one thing may not have a demil code. Putting in a collective activity may require a different category.

As we do our risk assessment, we'll certainly be working with the scientific community and the Department to determine what can be used for what and in what combinations.

Mr. TURNER. Thank you.

Mr. Chairman.

Mr. SHAYS. Thank you.

The problem with the gun analogy is we're not talking about guns. We're talking about weapons of mass destruction. That is the real problem with this dialog, so there has to be a much heightened concern.

First, on protective gear, the battle dress overgarment, Colonel, I don't understand, frankly, why this protective gear was sold in the commercial market. I don't understand why it was given to potentially a first responder, other than the argument that it was put in a batch that we didn't identify. But what I really don't understand is, once you track these suits that were defective, why they were reentered into the disposal process after the suits were returned by local law enforcement agencies. Why did that happen? You collected the bad suits that should never have been sent out in the first place, and then we resold them.

Colonel O'DONNELL. Sir, part of the problem I think in this particular situation is the fact that you had defective suits that had the same stock number—national stock number as nondefective or the older battle dress overgarments. Without having ready access to a contract number to go, you know, piece by piece against that contract number——

Mr. SHAYS. Well, with all due respect, though, no suits were to be resold. So when you identified you had sent out bad suits, none of these suits were to be sold. Correct? That was the agreement that we had. Correct? Is that not correct, Mr. Baillie?

Mr. BAILLIE. Yes, sir. That was the agreement.

Mr. SHAYS. So there really is no good answer. Is that correct?

Colonel O'DONNELL. Sir, other than the fact that suits were in the pipeline, as was alluded to by the first panel, I'd have to agree with that.

Mr. SHAYS. I've been trying to be respectful of the fact that this is a difficult situation, and I try to imagine that you are my constituents. So how would I feel if my constituents were being asked these questions? That just kind of gives me a little reality.

But you did agree that—except in two exceptions, you agreed with what the first panel said, and you didn't disagree with anything that we said in the first one. It's pretty devastating stuff, but, Colonel, we swear our witnesses in not because we think they're going to lie but because we don't want it to be casual. And I felt that the question that you had said—this proactive comment to us that you had discovered Mr. Ryan's faults in operation—or the GAO's faults in operation in August was a little surprising to me, particularly after speaking to GAO, and Mr. Bell went through this; and I would like you to be what—I think less casual and be very precise, because it's important that you not give us a false impression.

I want you to tell me if you think it is an impression you want me to have that you discovered in August on your own without any assistance that this was happening, or whether there may have been more to the story than that. And if you're getting it secondhand, I really would advise you to make sure that you're really precise on this. And I'm asking you, Colonel, because you are the one who brought it up—I'm sorry, Mr. Baillie.

Mr. BAILLIE. No, I did, sir.

Mr. SHAYS. OK. I'm sorry, Colonel.

Mr. BAILLIE. My intention was, as Congressman Turner offered, was there any additional information that we wished to introduce into the record. Certainly it was not my intention in using that particular piece of information to convey any casual nature to this. This entire thing is very serious. My intention was to say for the completeness of the record that——

Mr. SHAYS. I want to make sure that I ask it this way, just so you don't get yourself in a hole here. Did you on your own, without any knowledge or any indication from GAO, discover this operation?

Mr. BAILLIE. No, sir. If you predicate it on knowledge of GAO, the information I was given——

Mr. SHAYS. The answer is no, right? And I think that is a better answer.

Mr. BAILLIE. Yes, sir.

Mr. SHAYS. GAO did inform you that they had some operation going on. OK. I mean, even if you did, I would have said the operation had really concluded, but I just think it's a little misleading to us to have it seem like the system on its own discovered this, and I don't think that's accurate. And you've clarified the record.

Mr. BAILLIE. Yes, sir.

Mr. SHAYS. OK. Thank you, and I thank Mr. Bell for asking those questions. I'm done.

Mr. TURNER. Mr. Bell.

Mr. BELL. Just a couple of questions to wrap up; and if you covered it when I was out of the room, I apologize.

But earlier you heard the testimony from GAO regarding Ms. Bronson and her lack of cooperation when they sought to meet with her, and I'm curious as to whether, if you know, if Ms. Bronson refused to cooperate with GAO and basically with Congress since we had requested GAO to carry out this investigation, did she do that on her own accord or was she directed by someone not to cooperate?

Mr. ESTEVEZ. And my response to that earlier, sir, my understanding is that Ms. Bronson was led to believe that writing a letter back to GAO was an adequate response and that no meeting was necessary.

Mr. BELL. Do you know if she talked to any higher up——

Mr. ESTEVEZ. Not to my knowledge, sir.

Mr. BELL. I think it's important, as we go forward, as the GAO needs to meet with Ms. Bronson or anyone else, that there be greater cooperation on the Department. Would you agree with that?

Mr. ESTEVEZ. Sir, speaking for myself, we stand fully ready to cooperate with GAO and Congress on any matters that they bring to us, and I think the folks behind me who have worked with me before would back me up on that.

Mr. BELL. Based on what you all know today, do you plan on enhancing the post-sale followup and investigations in any way on the equipment that's being sold by the Department?

Mr. BAILLIE. Yes, sir. As I stated before, we are actively working—our criminal investigation folks are actively working with Justice and other law enforcement agencies to get us access to additional criminal and terrorist data bases that we believe are necessary to screen out the kinds of things that happened in this case before they ever get into the system.

Mr. BELL. Let me just say this in closing, that—and you all can comment if you care to—that I think we all realize what a difficult position you're in; and I'm also certain that this is probably—you're not—not your most pleasant experience coming here and having to answer these questions. But in my way of thinking and probably in the thinking of the other members of the committee, you've really been given somewhat of a gift here through this report, because proactivity is tough, and as creatures of government, we don't do it very well. We wait until there's a major blackout before we start talking about passing an energy bill. We wait until public education is in the tank before we start passing laws to improve public school, educate. We are reactive creatures in government, but September 11th changed everything.

I was sitting up here and I was trying to imagine what the first lines of a story would be if this had been different and you had been dealing with an actual terrorist instead of a GAO investigation. And I wrote something: Federal authorities reveal today that the anthrax believed responsible for killing hundreds over the

course of the last 3 months was produced by terrorists using biological equipment they purchased on the Internet from the U.S. Department of Defense.

I don't think any of us can begin to imagine what that would do to the trust of the American people, what the hearing would be like following such a story and how unpleasant that would be. So we're on notice now. We're on notice now, and hopefully the Department of Defense will take it very seriously and do everything they can not just to respond to what GAO has brought to light but whatever else comes to light, not sweep it under the rug but actually try to respond to it. I sense that will be your attitude going forward, and I hope it will be, and you're free to respond.

Mr. ESTEVEZ. I couldn't agree with you more, sir. You know that we do not concur with every GAO report that comes our way. We wholeheartedly concur with this one. It is a good response, and we take it seriously and intend to take it seriously, and we're going to look at more than just these little items here that are out here. We intend to do this as a broad sweep of how we are—what we are putting out for sale and working with our interagency counterparts in order to get this right. You're absolutely right, sir.

Mr. BELL. Thank you for your testimony.

Mr. Chairman, thank you for calling this hearing.

Mr. TURNER. Mr. Janklow.

Mr. JANKLOW. Thank you. I've got two quick questions.

One, Mr. Baillie, you just talked about your working to get additional data base access. Doesn't that really belie the whole issue, sir? The reality of the situation is, to the extent that I can legally buy equipment from the Department on the bids or from an agency on the bids, you have no way in a practical sense to ever determine who I'm selling it to. So as long as I can clear your scrutiny, the rest of it's irrelevant. Wouldn't you agree with that?

Mr. BAILLIE. I would agree, sir, that the entire process needs to be assessed as a part of the risk and vulnerability assessment. You're correct. We can——

Mr. JANKLOW. And the second thing I'd like to ask you, you've all indicated you're undergoing this risk assessment, at least in the Defense Department. Is this Department-wide, or is this Army-based?

Mr. ESTEVEZ. This is going to be interagency, sir. This is led by Homeland, Defense and the Department with Homeland Security.

Mr. JANKLOW. How long do you anticipate this risk assessment will take? And, two, when would we be able to have a report of what's been accomplished or what's been implemented?

Mr. ESTEVEZ. We're prepared to come back within 3 months to give you our progress status report on where we are.

Mr. JANKLOW. Do you feel that you will have the risk assessment done and the plan in place by then?

Mr. ESTEVEZ. I would hesitate to say that, sir.

Mr. JANKLOW. OK. Thank you very much, Mr. Chairman.

Mr. TURNER. We thank you for your participating in this hearing, and I'd like to ask if throughout the questions and your answers if at this point you have any additional thoughts that you would like to include in the record before we adjourn?

Does anyone from GAO at this point want to comment on anything that they have heard in this testimony on our second panel before we adjourn?

If not, we thank you all for participating, and we'll be adjourned.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned.]

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