



NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

MBA PROFESSIONAL PROJECT

**MARINE CORPS OPERATIONS–DEFENSE LOGISTICS
AGENCY’S PROCEDURES FOR GROUND REISSUES /
SECONDARY SALES OF AVIATION FUEL ALIGNED
WITH AUTHORITIES SUPPORTED BY U.S. NAVY
AVIATION APPROPRIATIONS**

December 2020

**By: William A. LaPonza III
Peter N. Misyak**

**Advisor: Philip J. Candreva
Second Reader: John T. Blake**

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REPORT DOCUMENTATION PAGE			<i>Form Approved OMB No. 0704-0188</i>
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington, DC 20503.			
1. AGENCY USE ONLY <i>(Leave blank)</i>	2. REPORT DATE December 2020	3. REPORT TYPE AND DATES COVERED MBA Professional Project	
4. TITLE AND SUBTITLE MARINE CORPS OPERATIONS–DEFENSE LOGISTICS AGENCY’S PROCEDURES FOR GROUND REISSUES / SECONDARY SALES OF AVIATION FUEL ALIGNED WITH AUTHORITIES SUPPORTED BY U.S. NAVY AVIATION APPROPRIATIONS			5. FUNDING NUMBERS
6. AUTHOR(S) William A. LaPonza III and Peter N. Misyak			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000			8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) Programs and Resources, HQMC, Arlington, VA 22202			10. SPONSORING / MONITORING AGENCY REPORT NUMBER
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.			
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release. Distribution is unlimited.			12b. DISTRIBUTION CODE A
13. ABSTRACT (maximum 200 words) This study evaluates the Department of Defense, Department of the Navy, and U.S. Marine Corps processes surrounding the secondary sales of aviation fuel and its alignment and compliance with appropriations law. Assessment of written processes is used to identify possible breakdowns in the current practices of Operations and Maintenance, Marine Corps and Operations and Maintenance, Navy execution. This study focuses on analyzing the current laws, regulations, and published policies that are in effect as of 30 September 2020. Upon a complete assessment of the process, this study identifies concerns about compliance and provides recommendations for improvements to the process.			
14. SUBJECT TERMS financial auditability, policy and business practices, Department of Defense, defense funding, appropriations, resources, aviation fuel, purpose statute, operations and maintenance			15. NUMBER OF PAGES 51
			16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT UU

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BY U.S. NAVY AVIATION APPROPRIATIONS**

William A. LaPonza III, Captain, United States Marine Corps
Peter N. Misyak, Major, United States Marine Corps

Submitted in partial fulfillment of the
requirements for the degree of

MASTER OF BUSINESS ADMINISTRATION

from the

**NAVAL POSTGRADUATE SCHOOL
December 2020**

Approved by: Philip J. Candreva
Advisor

John T. Blake
Second Reader

Amilcar A. Menichini
Academic Associate, Graduate School of Defense Management

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LIST OF ACRONYMS AND ABBREVIATIONS

ADA	Antideficiency Act
AG/SAG	Activity Group/Sub-Activity Group
BISOG	Blue in Support of Green
COMNAVAIRLANT	Commander, Naval Air Forces Atlantic
COMNAVAIRPAC	Commander, Naval Air Forces Pacific
COMNAVEUR	Commander, Naval Air Forces Europe
COMNAVRESFOR	Commander, Naval Reserve Forces
COMPACFLT	Commander, Pacific Fleet
DLA	Defense Logistics Agency
DLA-E	Defense Logistics Agency- Energy
DOD	Department of Defense
DoDI	Department of Defense Instruction
DoDM	<i>Department of Defense Manual</i>
DON	Department of the Navy
DWCF	Defense Working Capital Fund
FARP	Forward Arming and Refueling Point
FAS	Fleet Air Support
FHP	Flight Hour Program
FMD	FuelsManager Defense
FY	Fiscal Year
LRP	Laws, Regulations, and Policies
MAG	Marine Air Group
MAGTF	Marine Air Ground Task Force
MAW	Marine Air Wing
MCO	Marine Corps Order
MET	Mission Essential Task
METL	Mission Essential Task List
MWSS	Marine Wing Support Squadron
NAVSUPINST	Naval Supply Instruction
O&MMC	Operations and Maintenance, Marine Corps
O&MN	Operations and Maintenance, Navy
OFC	Operational Functional Category
OPTAR	Operating Target
POC	Point of Contact
SOP	Standard Operating Procedures
TYCOM	Type Commander
USFF	Commander, United States Fleet Forces
USMC	United States Marine Corps

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ACKNOWLEDGMENTS

We would like to thank our advisors and sponsors for their time and support they dedicated to us throughout this project. To Phil Candreva, VADM Blake, Courtney Goodwin, and Shari Ritter, we sincerely appreciate your expertise and guidance. Your contributions made this project possible. Above all, you made this work meaningful and enjoyable for us.

Pete Misyak would also like to thank Amanda Misyak. Thank you for supporting me with great enthusiasm and encouraging me every step of the way.

William LaPonza would like to thank his family for always supporting him and enabling him to pursue success.

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I. INTRODUCTION

All Department of Defense (DOD) business is governed by overarching laws and regulations. The laws and regulations are interpreted by DOD components and military services into policy. Policy establishes and provides internal controls on business processes. The complexity of policy is greatly increased as different mission and business functional areas emphasize their needs in the subsequent policy. Additionally, conflicts of authority for policy and subsequent accountability for the results of mission accomplishment and business transactions increases the difficulty in establishing and maintaining policy. The more elaborate a process is, crossing functional and organizational lines, creates the risks of inefficiency, audit compliance issues, and potentially violations of laws borne in the policy itself. The policy and process complexity continues to increase as each subordinate level within the DOD authors policy to support organizational design and mission. When a military service utilizes business processes that include organizations outside their chain of command, attaining alignment with laws, regulations, and policies becomes far more complex. This study examines a situation where policies that cross multiple organizations have evolved and introduced risk.

A. PURPOSE

This study examined the financial and business processes used by ground units in the United States Marine Corps (USMC) in support of the Navy's Flight Hour Program (FHP). The research was restricted to the USMC's financial authority and use of secondary sales of aviation fuel from the Operations and Maintenance, Navy (O&M,N) and Operations and Maintenance, Marine Corps (O&M,MC) appropriations.

The Navy's O&M,N appropriation is provided for support of both Navy and USMC aircraft for fuel, supplies and maintenance in support of the Navy's FHP (Department of the Navy [DON], 2019b). The Marine Corps' O&M,MC appropriation is provided for fuel, supplies, and maintenance for vehicles and equipment of Marine Corps assets, which does not include aircraft (Department of the Navy [DON], 2019a). This study evaluated the DOD, DON, and USMC processes surrounding the secondary sales of aviation fuel and its

alignment and compliance with appropriations law. Furthermore, this study includes examination of the existing process' ability to facilitate USMC mission accomplishment. This study also analyzed authorities related to Defense Logistics Agency- Energy's (DLA-E) transfer of fuel assets to USMC operating units. Upon a complete assessment of the process, this study identifies potential weaknesses in compliance and provides recommendations for improvements to the process.

1. Research Question

- (1) How can the USMC improve business practices or policy to ensure secondary sales of aviation fuel complies with laws, regulations, policies, and USMC financial authority and operational mission requirements?

2. Secondary Research Questions

- (1) What is the DOD's current as-is state for the business processes surrounding the secondary sales of aviation fuel? Who are the major stakeholders?
- (2) Does the current process violate any laws, regulations, or policies?
- (3) Does the USMC have the appropriate financial authority to purchase aviation fuel with the O&M,MC appropriation?
- (4) What financial authority applies to DLA-E's ability to issue fuel?

B. SCOPE

This study concentrates on the role of the USMC and the use of O&M,MC and O&M,N appropriations for USMC aviation assets. More specifically, this study examined the authority to execute O&M,MC and O&M,N appropriations for USMC aircraft in support of the Navy FHP. Generally, the secondary sales process can involve any USMC units funded with O&M,MC; however, this study focused on the role of USMC Marine Air Wing ground units that support aviation squadrons and utilize the secondary sales process. This study examined the influence of DLA-E policy on the USMC sale of aviation fuel. The information collected in this study was used to identify potential substantive internal control weaknesses in the current practices of O&M,MC and O&M,N execution. This study was constrained to analysis of the current laws, regulations, and published policies that were in effect as of 30 September 2020.

C. METHODOLOGY

This study delivers an in-depth organizational, legal, and policy background that provides the reader with an understanding of the complexity of the organizations, mission requirements, sources of legal requirements, authorities, accountabilities, and functions surrounding the process of secondary sales within the USMC business practices. The primary analysis tool used to evaluate the policy-based processes for weaknesses was a swimlane process chart. Particular attention was placed on alignment of policy to authoritative sources and conflicts/omissions of laws, regulations, and policies.

A swimlane chart provides a depiction of the entity or person/role that performs each function in a process and how they interact with each other to accomplish the mission (Lucidchart, n.d.). Through the swimlane chart, potential weaknesses in the process or in policy were highlighted and analyzed to assess if a violation of law, regulation, or policy occurred.

Furthermore, the process evaluation involved a thorough review of the relevant organizational policies, including current standard operating procedures (SOPs), Marine Corps Orders (MCO), Naval Supply Instructions (NAVSUPINST), Department of Defense forms, Department of Defense Manuals (DoDM), Department of Defense Instructions (DoDI), congressional budget documents, as well as, current statutes and laws. An evaluation of the policies was used to determine if the process conforms to appropriations law and all other applicable policies and regulations. Analysis was conducted on the appropriations used by each service in the process of secondary sales of aviation fuel to ensure the proper authority exists. The findings of this research identify if any policies or laws are violated and describe the violation. Findings provide analysis utilizing defense financial management practices and recommendations are presented for process improvements and methods to operate within fiscal law constraints as of 30 September 2020.

D. STRUCTURE OF THE STUDY

In Chapter I, our research topic was introduced by explaining our purpose, research questions, the scope of our research, and methodology. In Chapter II, an in-depth

consolidation of background information from many sources provides the reader with the required information needed to understand the findings of this study. This chapter is broken down into sections that provide information on all the stakeholders involved in the process of secondary sales of aviation fuel. In Chapter III, the existing process, at the time of this report, is detailed involving how each of the major stakeholders operates secondary sales to accomplish their missions. This chapter includes the USMC, Navy, and DLA and how they interact with each other. This chapter also includes a swimlane diagram to graphically depict how this process is completed. In Chapter IV, the findings of this study are presented to further demonstrate the complexity of the aviation fuel secondary sales process. Analysis of these findings is conducted in this chapter, as well as the recommendations presented. These recommendations serve to provide improvements to the current process and means in which they can be implemented. Finally, in Chapter V, our conclusions are presented and include best practices for the future, based on our research.

II. BACKGROUND

This chapter introduces the topics of appropriations law, USMC appropriations, the FHP, and DLA, and address how they enable, constrain, and prescribe the process for secondary sales of aviation fuel performed by the USMC. Appropriations law and various defense regulations govern the secondary sales process and impact the use of O&M,MC and O&M,N appropriations. The DLA organization is also included because of its key role in the management of the distribution of aviation fuel and its influence on the secondary sales process. These background topics provide the necessary information required to obtain a thorough grasp of the concepts found in the process being examined. The objective of this chapter is to facilitate the analysis of the primary and secondary research questions.

A. APPROPRIATIONS LAW

The military services and other federal agencies can only function to the extent authorized by law. Only Congress has the ability to authorize and appropriate public funding for federal agencies, as established by the U.S. Constitution (National Archives, n.d.). Statutory authority is the foundation for spending federal funds. Statutory authority must be granted by Congress in order to obligate public funds. The Supreme Court case decision of *United States v. MacCollom* (1976) included “the established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress” (*United States v. MacCollom*, 1976).

Appropriations law is rooted in the U.S. Constitution and is shaped by U.S. Code (U.S.C.) and annual appropriation legislation. Congress passed the Antideficiency Act (ADA) to regulate the legal availability of appropriated dollars. Taking any actions beyond the limitations of fiscal law could lead to administrative and/or criminal penalties for the improper use of appropriated funding (Under Secretary of Defense, Comptroller, 2020b). Purpose, time, and amount refer to the three main appropriation law restrictions. The three statutes are contained in the United States Code, Title 31, Money and Finance. The purpose statute (31 U.S.C. 1301) restricts expenditures to what is necessary and within the intended

purpose of an appropriation. The time statute (31 U.S.C. 1502) limits the use of appropriations for expenses incurred only during the period of availability. The amount statute (31 U.S.C. 1341) limits spending from exceeding the amount available in an appropriation (Under Secretary of Defense, Comptroller, 2020b).

The amount statute is the foundation for the administrative control of appropriated funding and is the statute that can trigger the ADA when violated (Under Secretary of Defense, Comptroller, 2020b). Under 31 U.S.C. 1341, an employee of the government “may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation” (31 U.S.C. § 1341, 1982). An employee also cannot “involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law” (31 U.S.C. § 1341, 1982). Violations of the time statute and purpose statutes may lead to amount violations, and an ADA will only occur once the amount statute is violated. (Under Secretary of Defense, Comptroller, 2020b).

If either the purpose or time statutes are violated, it is possible to avoid an ADA violation if sufficient and proper funding had been available at all times from the moment the mistake occurred until it was remedied. (Under Secretary of Defense, Comptroller, 2020b). The main concern identified in this study results from the application of the purpose statute. A key component to curing potential purpose statute violations is the three-part necessary expense test that is described in GAO’s *Principles of Federal Appropriations Law* also known as the Redbook. For an expenditure to satisfy the necessary expense test, first, “The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function” (Government Accountability Office [GAO], 2017, p. 3–16). Next, “The expenditure must not be prohibited by law.” (GAO, 2017, p. 3–16). The last part of the three-part test is “The expenditure must not be otherwise provided for, that is, it must not be an item that falls within the scope of some other appropriation or statutory funding scheme.” (GAO, 2017, p. 3–17). This rule describes “if an agency has a specific appropriation for a particular item, and also has a general appropriation broad enough to cover the same item, it does not have

an option as to which to use. It must use the specific appropriation.” (GAO, 2017, p. 3–408).

The current methodology for funding USMC secondary sales of aviation fuel is to purchase the aviation fuel with the O&M,MC appropriation which is then re-issued to USMC aircraft and charged to O&M,N. This study provides analysis on the appropriateness of using O&M,MC as a pass through source of funding and how the process fits within laws and regulations. Issues that do not align with the purpose statute, infringe on congressional control and can lead to greater problems. The amount statute will come into play to determine if an appropriation was exceeded and if an ADA violation occurred.

B. U.S. MARINE CORPS APPROPRIATIONS

Funds appropriated to the USMC are commonly referred to as green dollars. O&M,MC is the primary green dollar appropriation that funds day to day operations for both the operating forces and installations. Congress provides appropriations to the DOD through the annual National Defense Appropriations Act. O&M,MC is an annual appropriation with a period of availability of one fiscal year (FY). The four-digit treasury symbol 1106 represents the O&M,MC appropriation (United States Marine Corps [USMC], 2015, p. 1–7).

As defined in the Department of the Navy (DON) Fiscal Year 2020 President’s Budget, O&M,MC “finances the day-to-day costs of operating the Marine Corps, including training, fuel, supplies, and maintenance of vehicles and equipment, related weapon systems, and the supporting establishment” (DON, 2019a, p. 7). An example of a proper use of O&M,MC would be purchasing ground fuel at a training exercise. Ground fuel is found as a specific line item in the O&M,MC budget exhibits and is also explicitly stated in the description of the appropriation. An example of an improper use of O&M,MC would be the purchase of a vehicle because the Procurement, Marine Corps appropriation specifically budgets for the procurement of vehicles. The use of O&M,MC to purchase a vehicle would constitute a purpose statute violation, because there is clearly another more appropriate appropriation. Purchasing the vehicle with O&M,MC can pass the first two

parts of the necessary expense test because the requirement contributes to the agency function and is not prohibited by law. The reason the purpose statute is violated is because the third part of the necessary expense test is not met. Vehicles are provided for in another, more specific appropriation. Procurement, Marine Corps is required to purchase vehicles because they are budgeted and appropriated within this appropriation. The aspects of fiscal law applied to this example will be similar to what is applied to the use of O&M,MC in the aviation fuel secondary sales process.

The DON President's Budget Exhibit 2020 for O&M,MC contains an activity group (AG) for Expeditionary Forces which has four core elements. The Expeditionary Forces' sub-activity group (SAG) for the Aviation Combat Element (ACE) is one of the four elements and is described as follows:

“Aviation Combat Element (ACE). Provides fixed and rotary wing aircraft organic to the MAGTF in support of the six functions of aviation: assault support, anti-aircraft warfare, offensive air support, electronic warfare, aircraft and missile control, and aerial reconnaissance. Funding supports general administrative costs to Marine Corps aviation units and personnel not engaged in direct aircraft maintenance and repair. Included in this area is support necessary for command and control of aviation operations and related activities residing at the squadron, group, and wing headquarters” (DON, 2019a, p. 23).

The description establishes that administrative costs are covered by O&M,MC, however, direct aircraft maintenance and repair are not intended to be funded in the appropriation. There is no indication that aviation fuel is included in the support costs for the ACE that are funded from O&M,MC.

C. U.S. NAVY APPROPRIATIONS AND FLIGHT HOUR PROGRAM (FHP)

The USMC receives support from Navy appropriations for certain services that are not budgeted within green dollars. The most prominent examples of this support are USMC aviation and associated support costs, Navy Corpsman support, and Chaplain services. These direct support items are funded with what is referred to as Blue in Support of Green (BISOG) or blue dollars. BISOG represents the direct support portions of the Navy's budget spent on the Marine Corps that are not funded with USMC appropriations. This funding is programmed by both the Navy and USMC as a part of the Department of the

Navy's overarching budget. Additional examples of Navy support to the USMC include equipment purchased by USMC aviation units with Other Procurement, Navy, and the aircraft purchased for the USMC inventory with Aircraft Procurement, Navy (United States Marine Corps [USMC], 2009a, p. 15). This study focuses specifically on the support funded from O&M,N.

As defined by DON President's Budget Exhibit 2020, the O&M,N appropriation "finances the day-to-day costs of operating naval forces, including fuel, supplies, and maintenance of ships, Navy and Marine Corps aircraft, related weapon systems, and the support establishment ashore" (DON, 2019b, p. 1). The four digit treasury symbol 1804 represents O&M,N (Department of the Navy [DON], 2015, p. 1-7).

The USMC FHP consists of the allocation and obligation of O&M,N to procure, operate, and maintain USMC aircraft (United States Marine Corps [USMC], 2009b, p. 2). Aviation Fuel is a cost funded by the FHP and other costs include aviation related materials and supplies authorized to be purchased by Marine Aircraft Wing units. The end state of the FHP is, "the ability for USMC aviation to train in prescribed readiness areas, perform flights in support of required maintenance and logistics efforts, and perform peacetime and deployed operations" (USMC, 2009b, p. 2). Flying hour requirements are developed from the integration of target readiness levels, unit training plans, and the reporting of flying hours executed. Marine Corps requirements are combined with the Navy's own flying hour requirements in one OP-20 FHP budget exhibit during annual budget development (USMC, 2009b, p. 2).

Funds for the Flight Hour Program are passed from the Commander, U.S. Fleet Forces and Commander, Pacific Fleet to the four Type Commanders (TYCOM); Commander, Naval Air Forces Pacific (COMNAVAIRPAC), Commander, Naval Air Forces Atlantic (COMNAVAIRLANT), Commander, Naval Reserve Forces (COMNAVRESFOR), and Commander, Naval Air Forces Europe (COMNAVEUR). The funding is then allocated to Marine Forces Pacific (MARFORPAC), Marine Forces Command (MARFORCOM), and Marine Forces Reserve (MARFORRES) in the form of an Operating Target (OPTAR) (USMC, 2009b, p. 2). "The Commander who issues an OPTAR still retains all legal and accounting responsibility for the funds. A command may

choose to issue OPTARs to its subordinate activities rather than issuing them an Operating Budget” (DON, 2015, p. 59). Funds allocated to the Marine Forces (MARFORs) are then distributed to the Marine Air Wing and finally to the Marine Air Group in the form of OPTAR grants (USMC, 2009b, p. 31).

The O&M,N OPTAR grants distributed to the Marine Aircraft Wing and Marine Aircraft Group for the FHP are broken into Activity Group (AG) and Sub-Activity Group (SAG). AG/SAGs are four-character alphanumeric codes used in many appropriations to tag resources by a specific purpose. The AG/SAG 1A1A represents mission and other flight operations, including Tactical Aircraft (TACAIR) operations and Fleet Air Support (FAS) operations (USMC, 2009b, p. 4-1). The AG/SAG 1A1A can be further broken down into Operational Functional Category (OFC) that provides for a more specific use of funds and the type of support it provides which can be direct or indirect (USMC, 2009b, pp. 4–1). OFC-01 is provided for direct support and is identified by fund codes 7B for aviation fuels and 7F for flight equipment and administrative supplies (USMC, 2009b, p. 4-2). The process of secondary sales focuses on fund code 7B which provides direct support funding to Marine Corps aviation units for aviation fuel in support of the Navy FHP.

It is important to note that OFC-01 funding, including fund code 7B for fuels, contains no discretionary funding (USMC, 2009b, p. 4-3). Historic fuel utilization on existing aircraft “provide accurate information as to how many gallons per hour (on average) a given type of aircraft will utilize during an hour of flight. The OP-20 budgeting process utilizes these gallons per hour figure to calculate a relatively accurate estimate of the cost for a given fiscal year based on the number of flight hours to be flown.” (United States Marine Corps [USMC], 2014a, p. 21 Ch 2). This projection of gallons per hour is referred to as the burn rate. If a specific aircraft type’s actual fuel consumption is below or above the burn rate, research is required to determine the cause (USMC, 2014a, pp. 21–22 Ch 2). Due to the lack of discretionary funding for aviation fuel, a requirement for meticulous record keeping regarding aviation fuel transactions is required by the Marine Aircraft Groups.

D. AVIATION FUEL: DEFENSE LOGISTICS AGENCY-ENERGY

DLA is the DOD agency which provides both strategic and operational-level logistics support to the military branches. Nearly every consumable item used by the U.S. military forces is sourced and provided by DLA (Defense Logistics Agency [DLA], n.d.). DLA-E is a subordinate command responsible for providing the DOD and other government agencies with comprehensive energy solutions (DLA, n.d.). DLA-E acts as the central procurement agency for fuel and related services required by the DOD. The functions include the award and administration of the contracts for bulk fuel, ground fuel transferred at the point of sale, and aviation fuel transferred at the point of sale. DLA-E manages capitalized fuel inventory and also provides military services with non-capitalized fuel support (Department of Defense [DOD], 2018a).

Capitalized fuel is defined as “fuel that is owned by the Defense Working Capital Fund (DWCF) while in storage tanks, servicing vehicles, and ships until the point of sale” (DOD, 2018, p. 16). Non-capitalized fuel is defined as “fuel that is owned by the military department while in storage tanks, servicing vehicles, and ships until the point of sale. The military department assumes management responsibility and ownership (title) for inventories financed from the military department’s appropriations or funds” (DOD, 2018, pp. 16–17).

In other words, capitalized fuel is owned by DLA at refueling points. DLA supports sales to military services at these refueling points to include DOD air stations. Fuel is considered non-capitalized once it is sold to a military service. The two terms differentiate who has ownership of the commodity. The individual service is responsible for secondary sales and ground re-issue transactions for non-capitalized fuel. A secondary sale is an instance in which DLA owned or contracted fuel is first sold to a customer and that customer in turn re-issues that fuel to another activity or entity and seeks reimbursement (Department of Defense [DOD], 2018b, p. 47). A ground re-issue transaction is one type of secondary sale. It is an issue of service owned fuel previously sourced or authorized from DLA Energy to an authorized customer. The ground re-issue transaction creates a bill to an authorized standard price customer and allows financial reimbursement to the original purchaser (Defense Logistics Agency-Energy [DLA-E], 2018, p. 11).

DOD Directive 5101.08E establishes Director, DLA as the Executive Agent (EA) of “bulk petroleum pursuant to the authority of the Secretary of Defense under Section 113 of Title 10, United States Code” (Department of Defense [DOD], 2017, p. 1). The DOD EA for bulk Petroleum is responsible for “end-to-end supply chain management and oversight for all DOD bulk petroleum products and systems in coordination with the DOD components” (DOD, 2017, p. 3). DLA performs integrated materiel management for the DWCF bulk fuel supply chain compliant with DoDI 4140.25 and DoDM 4140.25. DLA provides the functions of procurement, transportation, storage, distribution, ownership, and accountability through to the point of sale (DOD, 2017, p. 4).

III. EXISTING PROCESS

To allow for a complete picture of a process to be analyzed, this chapter explains the relationship of the three main stakeholders in the process of secondary sales of aviation fuel. This is accomplished by using the example of a training exercise in which the USMC ground unit is supporting the USMC aviation units. The major stakeholders that impact this process are the USMC aviation units funded by O&M,N, the USMC ground units funded by O&M,MC, and DLA-E which is a DWCF. Understanding how each of these stakeholders influence the process will provide clarity as to where potential breakdowns occur. How these stakeholders interact can also enable us to identify if lapses in communication are present and where those might happen.

A. NECESSITY OF PROCESS

The as-is state of the USMC process for secondary sales of aviation fuel is necessitated by Marine Corps' unit readiness. A Mission Essential Task List (METL) is defined as "a standardized list of tasks a unit must be able to accomplish during combat/contingency operations." (USMC, 2009b, p. 2-4). The METL for USMC aviation units is connected to the FHP as the number of flight hours flown represents the amount of flying required to obtain and maintain a T-2 level of readiness (USMC, 2009b, p. 3-1). "A T-2 level of readiness allows a unit to fulfill its MET output standard in support of a Marine Air Ground Task Force (MAGTF)" (USMC, 2009b, p. 3-1). The hours that are flown by USMC aviation units in support of the FHP including fuel and maintenance required to support are classified as a "Blue" (funded with O&M,N) purpose.

B. ORGANIZATIONAL BACKGROUND

The aviation ground support units, which operate underneath the MAW, also have METLs. The Marine Wing Support Squadrons (MWSS) in particular have a Mission Essential Task (MET) for conducting Forward Arming and Refueling Points (FARPs). A FARP, "permits combat aircraft to conduct rapid refueling and rearming operations in close proximity" (United States Marine Corps [USMC], 2014b, p. 3-42). Training to this MET ensures that the MWSS can provide timely aircraft support and includes conducting aircraft

fueling activities. The MWSS is funded with O&M,MC appropriations to support their METL. When a MWSS is going to train to this MET, they need to obtain aviation fuel so they can establish a FARP. The MWSS works with the EA for bulk petroleum, DLA, to secure the aviation fuel. The MWSS re-issues aviation fuel to the aircraft in secondary sales (outlined below and in Figure 1), with the MWSS acting as the reseller and the flying squadron with aircraft as the buyer.

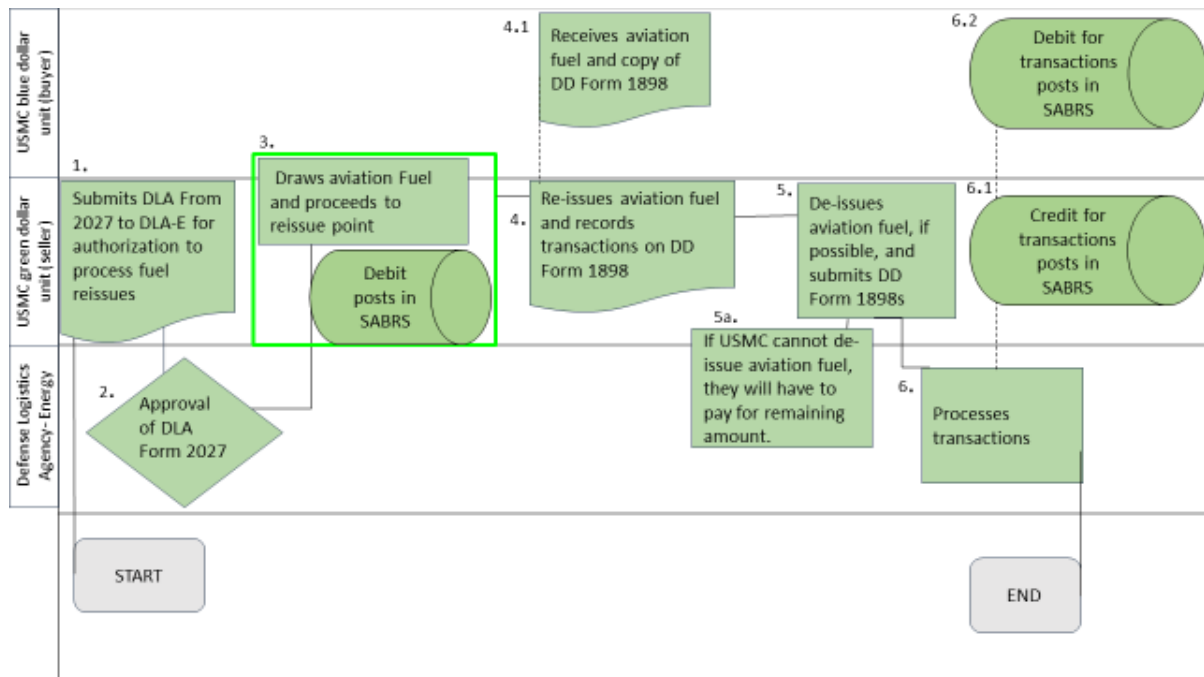


Figure 1. Existing process swimlane for aviation fuel

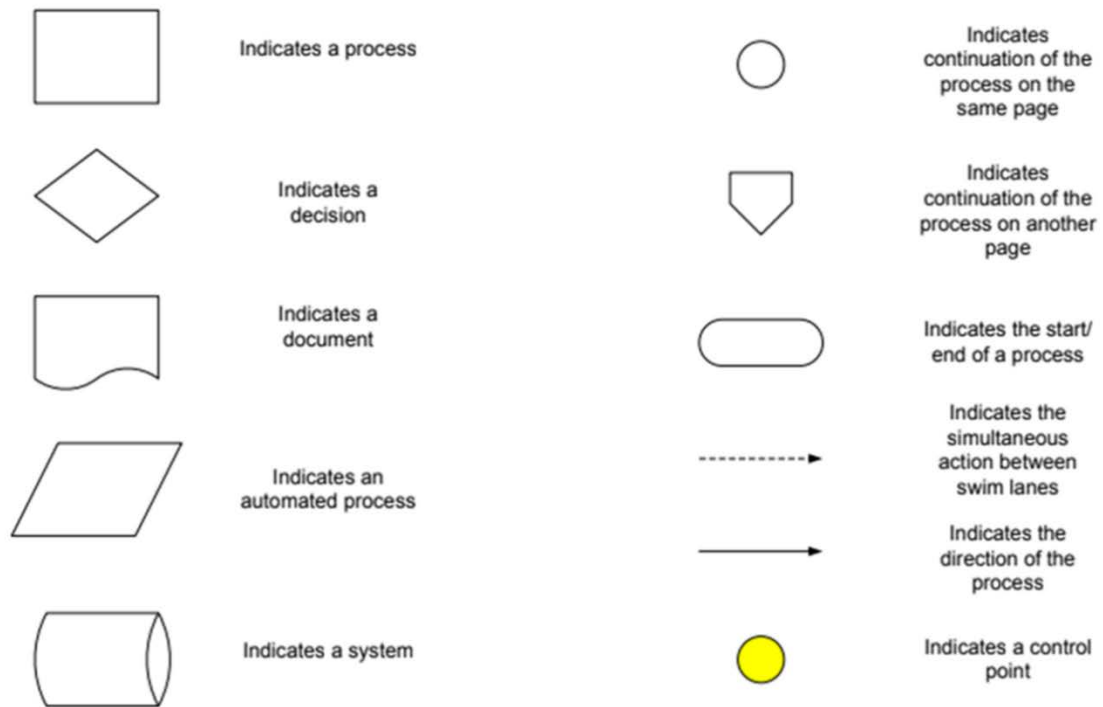


Figure 2. Legend for swimlane

C. STEP-BY-STEP PROCESS

In July 2018, DLA-Energy published their P-23 document, titled “*Procedures for Authorization and Processing Ground Re-Issue Transactions,*” which defines a ground re-issue as an issue of DLA-E customer-owned fuel, previously sourced from DLA-E, to another authorized customer. This transaction creates a bill to an authorized customer and allows financial reimbursement to the original purchaser (DLA-E, 2018, p. 11). This requires that the MWSS follow the current procedures for authorizing and processing ground re-issue transactions which begins with requesting authorization from DLA-E (STEP 1) to process ground re-issue transactions utilizing the DLA Form 2027 (DLA-E, 2018, p. 7).

Once DLA-E approves the request, they will return the approved DLA Form 2027 to the seller (STEP 2). This DLA Form 2027, once approved, enables the seller to utilize the DLA Energy inventory accounting system to facilitate reimbursement of their ground re-issues/secondary sales (DLA-E, 2018, p. 5). In this scenario, the MWSS requests

permission from DLA-E to use their accounting system to perform the transactions of secondary sales.

The MWSS' request for secondary sales is approved by DLA-E, and proceeds to fill up their tanks with the aviation fuel from DLA-E (STEP 3). When the aviation fuel enters a MWSS truck or tank, it becomes non-capitalized fuel. At this point, aviation fuel is purchased with "green" O&M,MC funding, the only funding the MWSS has access to in order to accomplish their readiness mission. The MWSS conducts their mission and sets up a FARP. They coordinate with the USMC squadrons to plan flight operations through the FARP. When an aircraft from an USMC aviation unit lands at the FARP for aviation fuel, the MWSS provides aviation fuel, and documents the transaction using a DD Form 1898 Energy Sales Slip (STEP 4). The DD Form 1898 annotates what unit the buyer is from, the aircraft that was fueled, the quantity of aviation fuel and the accounting information of the aircraft's unit (DLA-E, 2018, p. 9). The MWSS fills out a single DD Form 1898 for every fuel transaction. The MWSS provides a copy of the completed DD Form 1898 of the transaction to the aircraft for their fuel files (STEP 4.1) (USMC, 2014a, p. 20 Ch 2).

When the MWSS has completed their ground re-issue transactions at their FARP location, they will submit the filled out DD Form 1898 Energy Sales Slips to DLA-E (STEP 5) (DLA-E, 2018, p. 9). The MWSS can also return any unused aviation fuel for credit. Creditable fuel returns will be credited at the standard price in effect for fuel within specification limits prescribed in Military Standard 3004 (STEP 5a) (DOD, 2018b, p. 17). If any excess aviation fuel is not accepted by DLA as a return, the aviation fuel charges will remain on the MWSS' account.

When the MWSS submits their completed DD Form 1898's to DLA-E, DLA-E ground re-issue transaction processors will then validate the seller's POC information by making contact and provide the processor's POC information to the seller (STEP 6). The processors will then review the DD Form 1898's for completeness and accuracy including all required signatures from both buyer and seller. The properly documented sales are then processed in FMD utilizing the "reissue" transaction screen within two business days. It is of note that the reissue transaction in FMD will automatically create a credit to the seller

(STEP 6.1) and a debit to the buyer (STEP 6.2) and does not change ledger inventories. The transaction processors then return any incomplete, illegible, or rejected documents to the seller POC within five days including a reason and/or cause of the rejection (DLA-E, 2018, p. 7). When all credits and debits have posted to the proper accounts in SABRS, the secondary sales process of aviation fuel is complete.

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IV. FINDINGS AND RECOMMENDATIONS

This chapter includes the findings and recommendations based directly on the research for this study. The main findings are related to required financial liability with custody transfers and compliance with the purpose statute and the ADA. Our analysis reveals process weaknesses that emerge when applying the fiscal law concepts introduced in the background chapter to the USMC secondary sales of aviation fuel process. The recommendations provided can be implemented to address the process weaknesses and are organized into the three categories; changes to the process, changes to authority, and changes to funding flows.

A. FINDINGS

The three findings of this study are the required financial liability with custody transfers and concerns about compliance with the purpose statute and the ADA. Required financial liability with custody transfers describes how the changes in policy, that occurred in 2018, have affected the secondary sales of the aviation fuel process. The following two findings detail how the current process complies with the appropriations law principles of the purpose statute and the ADA.

1. Required Financial Liability with Custody Transfers

In 2018, DLA published the DoDM 4140.25 presumably to create a more auditable process. Prior to the publishing of the DoDM 4140.25 in March 2018, there was no DLA policy in effect that outlined and established guidance on the receipt of asset and financial custody when issuing fuel. DLA-E, when authorizing secondary sales, could hold the initial aviation fuel charge until the re-issue receipts were submitted. When DD Form 1898's were submitted at the completion of the FARP/exercise, the appropriate charges were then posted directly to the buyers account (in this case, the O&M,N funded USMC aviation squadrons). By batch posting the charges at the end of the FARP/exercise, the financial records did not accurately record the actual custody of the fuel.

DoDM 4140.25, Vol 6, section 4.1a “*Receipt Custody Transfer Points and Risk of Loss*” states that “a DOD component or participating agency accepts the property at the point of custody unless specified differently by contract” (Department of Defense [DOD], 2019, p. 14). This means that as soon as the fuel is placed into another organization’s tank or truck, they own it, not DLA. This section ensured that auditability was inserted into the process by transferring the financial custody of the fuel to any unit receiving that fuel.

The pre-2018 financial records did not record custody of fuel; however, it did align with the purpose characteristics of the appropriations being used. The redesign of the process in 2018 in pursuit of better accountability of physical custody, unintentionally introduced a risk of fiscal law (purpose) violations for DLA’s customers. The challenge is the policy and process needs to be auditable and follow applicable laws, regulations, and policies while still being supportive of the operational mission.

2. Compliance with the Purpose Statute

USMC secondary sales of aviation fuel current practices likely violate the purpose statute (31 U.S.C. 1301). The Comptroller General has interpreted 31 U.S.C. 1301 to mean that there must be an affirmative authority in an appropriation for an expenditure to be proper, not that there is an absence of a prohibition (GAO, 2017). A statutory basis for using O&M,MC for aviation fuel does not appear to exist for the following reasons.

The language of an appropriation is the first place to look to understand its purpose. Another key indicator is the detail that is used in the budget exhibits that are developed for the President’s Budget request that result in the appropriation. Budget exhibits are broken down into classification codes that contain specific line items that define major purposes of the appropriation (Under Secretary of Defense, Comptroller, 2020a).

When examining budget line items for fuel within the O&M,MC appropriation, no mention of aviation fuel appears throughout the exhibit. The USMC appropriations section in the background chapter of this study explained how the O&M,MC budget does not contain any mention of aviation fuel, which would be found in the ACE AG/SAG. The O&M,N appropriation however, contains budget line items for fuel that appear under the Air Operations AG/SAG. The description of the Mission and Other Flight Operations sub-

activity group contained in Air Operations of the DON President’s Budget Exhibit 2020 for the O&M,N appropriation provides: “Mission and Other Flight Operations include all Navy and Marine Corps Tactical Air (TACAIR) and Anti-Submarine Warfare forces, shore-based Fleet Air Support, and irregular warfare. Funding provides flying hours to maintain required levels of readiness enabling Navy and Marine Corps aviation forces to perform their primary missions as required in support of national objectives” (Department of the Navy, 2020, p. 31). The analysis of O&M,MC and O&M,N budget exhibits appears to support the BISOG relationship described in the FHP and that O&M,N is the appropriate appropriation for purchasing USMC aviation fuel requirements.

The three-part necessary expense test can help determine whether funding from an appropriation is legally available for a particular purpose. First, “The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function” (Government Accountability Office [GAO], 2017, p. 3–16). In this case, justification exists that the USMC’s mission requires operational FARPs in order to be combat ready. Next, “The expenditure must not be prohibited by law.” (GAO, 2017, p. 3–16). There is no written policy that O&M,MC cannot be used for aviation fuel. The final part of the three-part test is “The expenditure must not be otherwise provided for, that is, it must not be an item that falls within the scope of some other appropriation” (GAO, 2017, p. 3–17).

O&M,N specifically budgets for aviation fuel for both USN and USMC aircraft, which is consistent with actual practice. The GAO Redbook describes: “Transfer between appropriations is prohibited without specific statutory authority, even where reimbursement is contemplated. It follows that deliberately charging the wrong appropriation for purposes of expediency or administrative convenience, with the expectation of rectifying the situation by a subsequent transfer from the right appropriation, violates the purpose statute” (GAO, 2017, p. 3–12). The fact that the initial transactions in the secondary sales process operate as an almost immediate place holder to the Navy and that the fuel is purchased in each instance specifically for O&M,N funded aircraft, also weighs against O&M,MC being the valid appropriation.

Figure 3 is an updated swimlane that illustrates the points in the process where the potential violations occur. During step 3, the MWSS’ request for secondary sales is approved by DLA, and non-capitalized fuel is transferred to MWSS tanks. At this point, aviation fuel is purchased with “green” O&M,MC funding rather than O&M,N “blue” funding so a potential purpose violation occurs (RED STAR) because O&M,MC is not provided for aviation fuel. During step 5a, if any residual aviation fuel is not accepted by DLA as a return, there could potentially be an issue. The charge for that fuel remains on the MWSS’ account, paid for with O&M,MC, and also potentially incurs a purpose violation (ORANGE STAR), unless the MWSS can use the fuel for an authorized, non-flying, purpose.

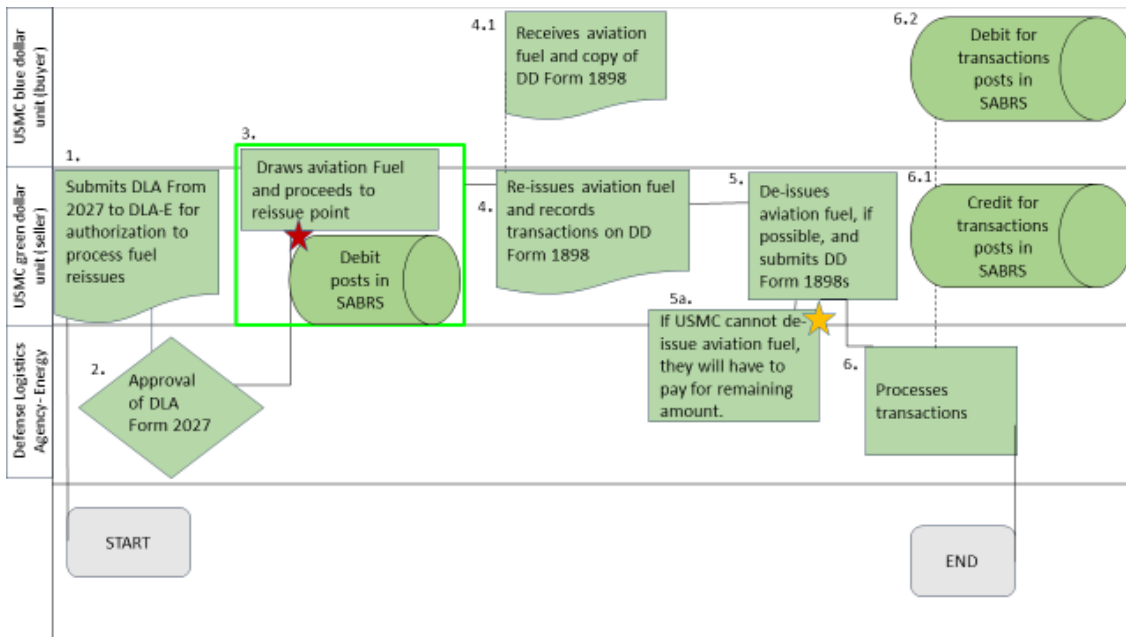


Figure 3. Existing process swimlane for aviation fuel with findings

The pre-2018 DLA policy did not require the USMC ground unit to purchase the aviation fuel with O&M,MC, and that avoided purpose statute violation scenarios. If USMC ground units were unable to return the aviation fuel, they could use residual aviation fuel to fuel their trucks or equipment, and then the fuel would be charged to O&M,MC.

This would not be a purpose violation because the purpose of the excess aviation fuel charge is for a USMC ground expense that is properly charged to O&M,MC.

The current DLA-E policy regarding secondary sales does not recognize that multiple appropriations may be involved. Based on the verbiage of the DoDM 4140.25, we believe that DLA did not consider the impact their changes would have on this unique situation in the DON, rather they followed the current laws and regulations that pertained to them as a DWCF. A DWCF has no effect on statutory authority required for a military service that executes based on a different, congressionally mandated, annual appropriation legislation.

The current process for secondary sales of aviation fuel creates an environment in which the USMC could potentially violate the purpose statute. Per DoDM 4140.25, DLA requires payment for the aviation fuel when the USMC receives custody, even if the aviation fuel is going to be re-issued. In the case of the secondary sales process, the receiving equipment is the USMC ground unit fuel truck. Since the USMC ground unit truck is accepting the aviation fuel, the USMC provides payment with O&M,MC, which is the only funding provided to USMC ground units.

The aviation fuel in this study was used by USMC aircraft operations. The aviation fuel was intended for that use from the beginning of the secondary sales of aviation fuel process. No statutory authority has been found that would allow for the aviation fuel requirement to be purchased initially with O&M,MC. In the absence of statutory authority, the purchases are likely to be violations of the purpose statute.

3. Compliance with the Antideficiency Act

Although the USMC secondary sales of aviation fuel process appears to violate the purpose statute (31 U.S.C. 1301), the process does not appear to violate the ADA. “A violation of the purpose statute (31 U.S.C. 1301) does not itself constitute a violation of the ADA because it can be cured through an accounting adjustment if there are sufficient funds in the proper appropriation” (Candrea, 2019, p. 77). A violation of the purpose statute is capable of leading to an ADA violation, but the ADA doesn’t occur until the amount statute is violated (Under Secretary of Defense, Comptroller, 2020b). If either the

purpose or time statutes are violated, it is possible to avoid an ADA violation if sufficient and proper funding had been available at all times from the moment the mistake occurred until it was remedied (Under Secretary of Defense, Comptroller, 2020b).

In the case of the secondary sales of aviation fuel process being studied, a sufficient amount of O&M,N had been available at the time the original obligations were made by USMC units that were charging the O&M,MC appropriation. Enough O&M,N is again available at the end of the secondary sales process when the aviation fuel is reimbursed by the O&M,N appropriations. Given that a sufficient amount of the correct appropriation was available for the obligations of concern at all times, any violation of the purpose statute would not lead to an ADA violation.

The Comptroller General ruled in 63 COMP.GEN. 422 “the anti-deficiency acts prohibition against incurring obligations in excess or in advance of available appropriations is not so violated unless no other funds were available for that expenditure” (B-213137, 1984). The correct appropriation of O&M,N was available in sufficient amounts at all pertinent times, and swiftly applied to cover the fuel purchases of concern. The likely violation of the purpose statute occurs as a result of the revised practices and is also corrected within the same process. Even though an ADA violation is not present in the current process, does not mean these established practices are appropriate. The systemic unauthorized reimbursement is not fully consistent with the requirements of appropriations law.

B. RECOMMENDATIONS

Based off the above findings, we have developed recommendations to improve the process. By implementing one or a combination of our recommendations, the secondary sales of aviation fuel process meets the three major requirements of support to the operating forces, auditable financials, and compliance with fiscal law. We believe this can be accomplished in one, all, or a combination of three ways; making changes to authority, the process, and funding flows.

1. Changes to the Process

We see three possible ways to modify the process to ensure operational support, real-time custody accounting, and full fiscal law compliance. Our first recommendation is for reimbursable (NAVCOMPT Form 2275 order for work and services) transactions to be established between the Navy and USMC for aviation fuel in support of secondary sales. This will provide the USMC ground unit authority to execute O&M,N funding for aviation fuel. This would be completed at the Marine Aircraft Wing level and require the blue dollar budget team (O&M,N) to establish a reimbursable work order with the green dollar budget team (O&M,MC) for aviation fuel services. Once accepted, the green dollar budget team (O&M,MC) can create a Reimbursable Order Number (RON) for all USMC ground units to utilize when purchasing aviation fuel for the purpose of re-issuing it to USMC aviation units.

A reimbursable can be established relatively quickly and would mitigate the impacts to mission readiness if aviation fuel re-issue operations could not continue until a solution is developed. Implementing this recommendation would be a short-term (1-5 years) solution in our opinion because although reimbursable orders can be reestablished annually, a more permanent, long-term solution should be sought to address the problem. This reimbursable would be an Economy Act Order and limited to the current FY, requiring it to be reestablished annually.

There will be second and third order of effects with this course of action such as additional accounting structure that would need to be established to ensure proper burn rates can be calculated for each Type/Model/Series (TMS) of aircraft, however that is outside the scope of this study as this recommendation would avoid the USMC ground unit from violating the purpose statute. The reimbursable authority would comply with fiscal law, the charges would post to the reimbursable allowing for the process to remain auditable, and the mission will still be accomplished (Candrea, 2017).

Our second recommendation to change the process is that the Navy could provide the USMC with a Department of Defense Activity Address Code (DoDAAC) that is used for purchasing the aviation fuel. Our recommendation would require authorization to be

given either to the USMC as a whole or to individual units to utilize the Navy's DoDAAC for the purposes of secondary sales. Another possible way to accomplish this would be the Navy authorizing the USMC ground unit as a custodian under the Navy's DoDAAC for DLA-E fuels which would allow the USMC ground unit to draw fuel and accept custody, while the billing DoDAAC would be charged for the purchase of the aviation fuel. Receipts will still be provided to the USMC aviation squadrons which will allow the aviation fuel charges to be reconciled with the actual charges to ensure proper billing is achieved.

Our final process change recommendation is DLA, as the EA for bulk petroleum, can change their DoDM 4140.25 to update the language in regards to financial liability and fuel custody as it pertains to the secondary sales process. We recommend that changes be made to retain the initial charges at DLA-E until the DD Form 1898 aviation fuel receipts are submitted for processing. At that time, the aviation fuel transactions would create a debit directly to the USMC aviation units. If any aviation fuel remains that cannot be de-issued due to the fuel being out of standard, those charges can be debited from the USMC ground unit. The USMC ground unit could utilize the excess aviation fuel in ways that are acceptable within the limits of their appropriation (O&M,MC), avoiding a potential purpose violation. The process can remain auditable because the system can be updated with which units have drawn fuel and custody can be transferred to those units with a billing DoDAAC on file. If anything were to happen to the fuel between accepting custody from DLA and conducting refueling operations, the unit can be financially held responsible.

2. Changes to Authority

Our recommendation for changes to authority is for the USMC to request that a statutory change be made to the appropriation for O&M,MC to allow for the temporary purchase of aviation fuel in support of secondary sales with anticipated reimbursement. Due to the METLs that exist for USMC ground units that require aviation ground support and FARP operations, a case can be made that the ability to purchase this support in a limited capacity is needed when conducting secondary sales (USMC, 2014b). By requesting a statutory language change, the USMC can avoid a purpose violation every time aviation fuel is purchased with O&M,MC.

3. Changes to Funding Flows

One possible long-term solution would be to restructure the Marine Aircraft Wing to place the aviation ground support capabilities of the MWSS that are in direct support to the FHP, underneath the Marine Aviation Logistics Squadron (MALS). Certain METs that are required for the appropriate readiness level of a MWSS involve directly supporting the FHP and are not utilized for any other purpose. By restructuring the MAW, the capability to conduct FARP operations in direct support of the FHP would be accomplished and no purpose violation would occur due to the unit having access to O&M,N appropriations (USMC, 2014b).

Another recommendation for changes to the funding flows is the Navy could allocate an operating budget of O&M,N to the USMC commands (MARFORCOM, MARFORPAC, MARFOREUR, and MARFORRES) to allow the USMC to actively manage the appropriation. Through this recommendation, the USMC can authorize a portion of O&M,N to USMC ground units that conduct operations in direct support of the FHP, in accordance to the O&M,N Budget Exhibit (DON, 2019b).

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V. CONCLUSION

A legitimate ADA violation in the USMC secondary sales of aviation fuel process appears to be avoided because the correct appropriation of O&M,N has been promptly applied to the aviation fuel charges by the blue dollar units at the end of the process. O&M,N is known to be available both when the original purchase with O&M,MC occurs and when the secondary transaction to O&M,N takes place. However, even without an ADA violation, the current process likely violates the purpose statute (31 U.S.C. 1301). The purpose violation indicates that the USMC secondary sales of aviation fuel is not in line with appropriations law and it should be addressed.

Many DOD processes are quite complex and can be challenged to abide by all laws, regulations, and policies, especially when multiple organizations are involved. Violations can occur similar to the USMC secondary sales of aviation fuel process in this study. Implementing preventative measures can help avoid comparable violations of the law. One example is to ensure policies that affect multiple agencies go through cross functional checks across organizations involving all stakeholders. Another example is for enterprise level leadership to emphasize education and training, which is increasingly more important as our control environment becomes more advanced. Using preventative measures like those recommended in this study creates a control environment with strong internal controls and can ultimately lead to higher rates of laws, regulations, and policies compliance.

O&M,MC is not intended nor budgeted to be applied to USMC aviation fuel requirements. O&M,N is the proper appropriation to be used throughout the secondary sales of aviation fuel process. When DLA adjusted its process in pursuit of greater financial auditability and accountability of fuel custody, no one at DLA or within DON anticipated that a corresponding change to procedures on the ground were needed to avoid a fiscal law violation. A working group comprised of all affected parties should consider the recommendations offered in this study to determine what changes will best support operational requirements, financial auditability, and accounting requirements, while remaining within the confines of fiscal law.

The secondary sales process for aviation fuel should be changed in order to better align with current budget policy and underlying statutory authorities. A solution can be implemented through the adjustment of statutory language or through policy restructure from the USMC, the Navy, or DLA. Though there are multiple ways to solve the problem, the best path forward will include the USMC, the Navy, and DLA working together to find the best plan for all stakeholders. Making a change at the enterprise level will ensure the process is in line with appropriations law while still accomplishing the operational mission requirements surrounding aviation fuel in support of our nation's warfighters.

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