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Commerce's Role in Administering the Defense Priorities and Allocation System Needs Strengthening

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TABLE OF CONTENTS

PAGE

EXECUTIVE SUMMARY i

INTRODUCTION 1

PURPOSE AND SCOPE 1

BACKGROUND 2

OBSERVATIONS AND CONCLUSIONS 5

I. DPAS Remains Relevant in Post-Cold War Environment, But The Extent of Priority Rating Usage Should Be Revisited 5

II. Improved Safeguards and Performance Measures Needed to Ensure Effective DPAS Operations 7

III. Improvements Needed in Handling of Special Priorities Assistance Cases 9

IV. Commerce Needs to Reassess Its Resources Commitment and Management Controls for DPAS Program 13

RECOMMENDATIONS 15

APPENDIX: Authorized Defense Program Categories 16

ATTACHMENT: Agency Response

COMMERCE'S ROLE IN ADMINISTERING THE DEFENSE PRIORITIES AND ALLOCATION SYSTEM NEEDS STRENGTHENING

EXECUTIVE SUMMARY

The Commerce Department, through its Bureau of Export Administration, is responsible for administering the Defense Priorities and Allocation System (DPAS), as provided for in Title I of the Defense Production Act of 1950. Under Title I, the President is authorized to require the priority performance of government contracts and purchase orders as necessary to meet approved national defense and emergency preparedness program requirements, and to allocate materials, services, and facilities as necessary to promote those programs. Commerce's involvement in defense procurement through DPAS was designed to ensure timely delivery of materials and equipment and minimize interference with commercial activity.

Title I has been used to support every U.S. military effort since the Korean War, including Operation Desert Storm and the Bosnia peacekeeping mission. The program is designed to provide for (1) defense preparedness through assured sources of supply and timely delivery of needed materials, supplies, and services; (2) military readiness through timely availability of spare and repair parts, and consumable items; and (3) a general "insurance policy" against barriers to access to needed supplies created by commercial competition for dual-use products and a shrinking industrial defense base.

As DPAS largely ensures timely delivery of needed materials, supplies, and services for defense programs, the Department of Defense (DOD) plays the primary role in the program. However, this 40-year old system was designed for the civilian part of government to maintain control over industrial resources while supporting the needs of defense-related programs and national emergencies. In carrying out this role, Commerce is expected to act as a broker for our nation's industrial sector by reviewing defense and approved program requests for special priority assistance, ensuring the timely availability of industrial resources, and providing a regulatory framework and operating system that can be expanded to support rapid industrial response in a national security emergency.

The purpose of our review was to evaluate BXA's role in administering the DPAS program and determine the effectiveness and relevance of DPAS in the post-Cold War era. Pursuant to an Executive Order requirement (E.O. 12919), Commerce has re-delegated to the Secretary of Defense and heads of other departments and agencies (such as the Department of Energy, the Federal Emergency Management Agency, and the General Services Administration) much of the day-to-day administrative responsibility for DPAS, authorizing them to apply "priority ratings" to contracts and orders that support approved national defense programs (including emergency preparedness activities).

Our review found that (1) DPAS continues to be an important component of our national security in the post-Cold War era, and that (2) Commerce—when needed—works to expedite orders and respond to requests for special priorities assistance. Our review also disclosed a few specific instances where Commerce's intervention precluded unjustified use of DPAS authority, therefore suggesting that Commerce's role is still valid. However, we also found areas that warrant BXA's management attention to strengthen the DPAS program.

- Instead of supporting only the most essential programs for our nation's defense, DPAS priority ratings have become an accepted and routine component of military procurement. As such, priority ratings are used not just to expeditiously acquire parts, supplies, and equipment that support weapon systems and other critical defense and emergency items, but also for the routine procurement of "everyday" goods and services. (See page 5.)

- Since neither Commerce nor DOD knows how many rated contracts or DPAS actions there are annually, it is difficult—if not impossible—to gauge the impact of rated orders on U.S. industry and individual American companies. Moreover, DOD does not require field contracting officers and managers to track DPAS actions. As a result, there is no reliable way for Commerce representatives or DOD managers to determine the number of DPAS cases resolved in the field, efforts made to achieve resolution, the specific nature of the problem, or the urgency of requests. (See page 7.)

- Commerce has not maintained adequate coordination with DOD to ensure that DPAS authority is used properly. For example, Commerce has not actively participated on DOD's DPAS Council for over two years. Commerce's lack of active involvement with DOD, the largest user of DPAS authority, potentially stifles coordination at the policy and management level and hampers communication of military and civilian needs for industrial resources. In addition, there are few existing performance measures or means to assess the effectiveness of DPAS operations. (See page 9.)

- Standard procurement practices are occasionally circumvented to expedite DPAS requests. We noted, for example, that Commerce has acted on special priority assistance requests *without* having the (requisite) completed contracts or purchase orders. (See page 11.)

- DPAS regulations should be revised and updated. We found, for example, that DPAS requirements for the controlled materials system consist of obsolete regulations that are no longer essential to our country's mobilization and preparedness efforts. Specifically, the four controlled materials are no longer required for these efforts. This part of the program should be discontinued. (See page 12.)

- Much of BXA's DPAS program operations depend on one individual. While acknowledging this person's expertise in DPAS matters, we are nonetheless concerned

that his authority to manage or negotiate industry contracts could become excessive without adequate management oversight. (See page 12.)

- Commerce has not provided the level of resources and management oversight to ensure that (1) DPAS regulations are updated, (2) DPAS authority and usage of priority ratings are independently verified, and (3) interagency coordination is consistently maintained. These management controls are necessary to ensure that DPAS works efficiently and effectively. (See page 12.)

On page 14, we provide a number of recommendations to address our concerns. A copy of this report has been provided to the DOD Inspector General to highlight our concerns about DPAS program activities.

In its February 20, 1997, written response to our draft report, BXA generally agreed with our observations and recommendations. Where appropriate, we have provided additional information to address BXA's comments in response to specific sections of our report. The actions taken, and those planned—when implemented—will satisfy the intent of our recommendations. A copy of BXA's complete response is included as an attachment to this report.

INTRODUCTION

The Office of Inspector General conducted an inspection of the Commerce Department's role in administering the Defense Priorities and Allocation System (DPAS) and the program's relevance and effectiveness in the post-Cold War era. The authority for DPAS is found in the priorities and allocations provisions of Title I of the Defense Production Act of 1950, as amended. This authority for industrial resources is delegated to the Department of Commerce under E.O. 12919. The Bureau of Export Administration's Office of Strategic Industries and Economic Security (SIES) is assigned responsibility for developing, implementing, and administering the DPAS.

Inspections are special reviews that the OIG undertakes to give agency managers timely information about operations, including current and foreseeable problems. By highlighting issues, the OIG hopes to help managers move quickly to address them and to avoid similar problems in the future. Inspections are also conducted to detect and prevent fraud, waste, and abuse and to encourage effective, efficient, and economical operations.

This inspection was conducted between March and August 1996, in accordance with the Inspector General Act of 1978, as amended, and the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

PURPOSE AND SCOPE

This inspection was conducted to assess Commerce's management of the DPAS program and determine its relevance in the post-Cold War era. The review was limited to DPAS operations in the Washington, D.C., area. We reviewed the Defense Production Act, the Stafford Act, DPAS regulations, and other applicable statutes. We interviewed Commerce officials in SIES, and obtained information from DOD, the Department of the Army, the Department of the Navy, the Defense Logistics Agency, and the Department of the Air Force. We held discussions with cognizant officials from the National Security Council, Department of Energy, Department of Transportation, and the Federal Emergency Management Agency. Field visits and telephone contacts were made to several private businesses and defense contractors: Motorola, 3 Com Corporation, Government Technology Services, Inc., Optical Coating Laboratory, Inc., and Zenith Corporation.

We evaluated management controls employed within SIES to determine compliance with applicable regulations and policies and program vulnerabilities to fraud, waste, and mismanagement. We also assessed the accuracy and reliability of DPAS records and accounting data, and reviewed adherence to prescribed managerial policies.

We did not perform statistical samples of rated defense contracts and purchase orders to assess delivery date compliance rates or evaluate the appropriateness or urgency of requests. However,

we reviewed all SPA requests forwarded to Commerce from 1990 through 1995. Our work centered on requests submitted by DOD, NATO, or industry because they generally involved cases that were the most urgent or hardest to resolve. A sample of 56 SPA cases were reviewed to gain a perspective on DPAS requests, nature of conflicts, items requested, rating classification, and method of resolution. These cases included 31 requests submitted to Commerce in 1995, involving materials and supplies totaling more than $10.9 million. Most of these requests were for assistance in obtaining communications and computer equipment for NATO and U.S. forces in Bosnia.

BACKGROUND

DPA[1] ensures the timely availability of materials, services, and facilities needed for national defense programs. Title I, *Priorities and Allocations*, authorizes the President to: (1) require priority performance of contracts and orders necessary for the national defense over other contracts and orders; (2) allocate materials, services, and facilities as necessary for the national defense; and (3) require the allocation of or the priority performance under contracts or orders relating to suppliers of materials, equipment, and services in order to maximize domestic energy supplies. The DPA authority is not permanent and has been renewed by Congress every 2 or 3 years.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, amended by the National Defense Authorization Act in FY 1995 (P.L. 103-337), expands the definition of "national defense" and "defense" as used in the DPA to include "emergency preparedness activities." Emergency preparedness is defined to include all activities and measures designed or undertaken to prepare for or to minimize the effects of a natural disaster or an accidental or human-caused event upon the civilian population. A natural disaster means any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mud slide, snowstorm, drought, fire, or other catastrophe in any part of the United States that may cause substantial damage or injury to civilian property or persons.

Commerce's Role in Administering DPAS

Under Executive Order 10480 (1953), the responsibility for carrying out Title I authority for industrial resources was given to the Department of Commerce.[2] Within Commerce, BXA's Office of Strategic Industries and Economic Security (SIES) administers the DPAS program. As required by Section 201(b) of E.O. 12919, Commerce has re-delegated its authority to place

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[1]The Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.)*, was first enacted during the Korean Conflict.

[2]E.O. 12919 superseded E.O. 10480 on June 3, 1994.

priority ratings on certain contracts and orders to the Department of Defense (DOD) and other government agencies that support approved national defense programs. Commerce does, however, exercise its own authority to ensure that industry is responsive to national defense and civil emergency requirements and to minimize the program's adverse impacts on American industries. The goals of DPAS are to (1) ensure the timely availability of industrial resources to meet current national defense requirements and (2) provide a framework for rapid industrial mobilization in a national emergency.

The delegation of priorities and allocation authority for industrial resources to Commerce under E.O. 12919, as well as the delegation of other infrastructure economic resources to other civilian departments (e.g. energy resources to DOE, transportation services to DOT) implements long-standing public policy favoring civilian management of these resources. While pursuing the DPAS goals, Commerce also acts as an "honest" broker for our nation's industrial sector, attempting to ensure the least possible disruption to normal commercial activities.

Commerce has authorized the Departments of Defense and Energy, the Federal Emergency Management Agency, and the General Services Administration to apply "priority ratings" to contracts and orders that support approved national defense programs (including emergency preparedness activities). As defined in the DPA, national defense program categories include: military or energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity. DOD is the largest user of priority ratings.

A rating indicating one of two levels of priority is applied to authorized programs (examples listed below). The level of priority may be either "DX" or "DO." DX, the highest level of priority, is used on contracts and orders that support specific national defense programs approved by the President (highest national priority). Currently, about 22 programs (e.g., M-1 tank, C-17 aircraft) are supported by DX priority ratings. DX-rated contracts and orders take production and delivery preference over DO priority rated contracts and orders, as necessary, to meet delivery requirements.

DO priority ratings are used on contracts and orders to support national defense programs approved by the Secretary of Defense (highest defense urgency). DO-rated contracts take production and delivery precedence over unrated or commercial contracts and orders, as necessary to meet delivery requirements. The DO ratings support about 85 programs (e.g., Patriot missile, F-16 and F-18 aircraft, Bradley Fighting Vehicle, Aegis ship defense system).

Contractors receiving priority rated contracts and orders are obligated to (1) accept the contract or order except as otherwise provided in DPAS (Mandatory Acceptance); (2) schedule production or performance to meet the required contract delivery date or dates (Preferential Scheduling); and (3) extend the priority rating on the customer's contract or order, with certain exceptions, to the contractor's or subcontractor's vendor base to acquire needed production materials or services (Mandatory Extension).

If problems develop in the acceptance or delivery of requested items, Commerce may be requested to provide Special Priorities Assistance (SPA). Such assistance may be provided for any reason in support of DPAS. For example, assistance can be provided to expedite deliveries, locate supplies, obtain production equipment, expand plant facilities, or rebuild or repair facilities after a natural disaster.

According to BXA, Commerce can take several kinds of official actions to resolve or enforce rated order acceptance or delivery problems. These actions include issuing (1) directives (ordering that certain actions be taken or not taken), (2) letters of understanding (setting forth an agreement among all involved parties), or (3) rating authorizations (authorizing the use of a priority rating). Other official actions available to Commerce under DPAS include administrative subpoenas, demands for information, and inspection authorizations. However, official action is generally taken only after negotiation with all involved parties has been unsuccessful. Directives and Letters of Understanding are often used to summarize and document the agreement reached between parties or to grant priority rating authority (Rating Authorization). If negotiations are unsuccessful, it may be necessary to issue a "forcing" Directive. Other official actions available to Commerce under DPAS, such as Administrative Subpoenas, Demands for Information, and Inspection authorizations, are used when compliance and/or enforcement action is required.

OBSERVATIONS AND CONCLUSIONS

I. DPAS REMAINS RELEVANT IN THE POST-COLD WAR ENVIRONMENT, BUT THE EXTENT OF PRIORITY RATING USAGE SHOULD BE REVISITED

In 1995, the Congress instructed the National Security Council (NSC) to review the post-Cold War relevance of the Defense Production Act authority. Although the DPA has been subject to renewal every two to three years and is occasionally amended, the basic language and intent of the Title I priorities and allocations authority has remained basically unchanged since 1950. The NSC review, with the submission of any proposed amendments, must be completed by October 1997.

Since DPA's enactment during the Korean War, priorities and allocation regulations have supported our armed forces' military preparedness and readiness efforts during times of peace, the Vietnam conflict, the Operation Desert Storm mission, and Allied operations in Bosnia. Commerce and DOD officials have cited the following benefits of DPAS in the post-Cold War era:

- Defense preparedness through assured source of supply and timely delivery of materials, equipment, and services.
- Military readiness in terms of spare and repair parts, and consumables.
- Insurance against the shrinking defense industrial base, just-in-time production and inventory practices, and decreased DOD budgets.
- Support for Allied nations' defense procurements.

As noted earlier, in 1995, an amendment to the Stafford Act extended DPA's definition of "national defense" and "defense" to include "emergency preparedness activities." Emergency preparedness includes all activities and measures designed or undertaken to prepare for or to minimize the effects of a natural disaster or an accidental or human-caused event upon the civilian population.

NSC officials support DPAS's explicit and broad priorities and allocation authority. Although the threat of Communist expansion is gone, they cite terrorism, international crime and drug trafficking, ethnic conflicts posing regional instability in many corners of the world, the proliferation of weapons of mass destruction, and large-scale environmental degradation, exacerbated by rapid population growth, as continuing threats both to the United States and to political stability in many countries and regions of the world. DPAS is viewed as still necessary to help keep the United States ready to combat these remaining dangers.

Our review disclosed, however, that DPAS may be supporting activities other than high-priority defense-related programs. Priority ratings are used by the military to procure paints, adhesives, furniture, paper, and other common-use supplies through the General Services Administration's Federal Supply Service. During the mid 1970s, GSA and Commerce acted to limit common service items procured with priority ratings, e.g., laundry and dry-cleaning equipment, musical instruments, toiletries, Office supplies, and furniture. Purchasing these items with priority ratings was deemed not within the intent of the statute.

Our review also disclosed that priority ratings are automatically placed on textile, clothing, and footwear contracts and purchase orders. Defense Logistics Agency officials stated that textile, clothing and footwear requisitions for FY 1996 will total approximately $700 million. In addition to finding that priority ratings are routinely used to acquire common-use items, our review of SPA requests sent to Commerce in 1995 disclosed five SPA requests that were satisfied with off-the-shelf, common-use items.

DPAS has become a mechanism for the military to obtain preferential acceptance of contracts and orders and the delivery of materials and supplies for most of its tactical, logistical, and operational needs. In fact, we were told that the vast majority of Defense procurements receive priority ratings. (See the Appendix for authorized DPAS program categories.) However, when the Congress originally approved the DPA, its purpose was the economic management of mobilization to support *active* conflict. The original DPA made reference to "acts of aggression" and to "collective action through the United Nations and through regional arrangements for mutual defense in conformity with the Charter of the United Nations." BXA officials stated that Congress' removal of these references may have been done so that DPA was not limited to supporting active combat only.

The Congress has questioned DOD's broad application of priority ratings for many years. In 1995, the Assistant Secretary of Defense for Economic Security had to justify the military's use of priority ratings to members of Congress who had questions about whether DOD was substituting military preferences over the needs of the commercial economy. In the mid-1970s, the Vice Chairman of the Joint Committee on Defense Production stated that he believed that the general use of priority ratings "represents a subversion of the system regulations on grounds of convenience." In addition, the former director of GSA's Office of Preparedness, stated that overuse of the priorities system in peacetime might be counterproductive. He suggested that priority ratings should be applied to a more rigid standard, and blanket application should be prohibited.

Items deemed "necessary and appropriate" to the national defense are considered acceptable priority procurements. In the mid 1970s, the following guidance was provided pursuant to congressional hearings.

> "Priority ratings under Title I of the Defense Production Act of 1950, as amended, are not authorized for certain Federal Supply Classification Groups (FSC) and Items (1) which are of the type commonly available in commercial markets for general consumption, (2) which do not require major modification when purchased for military or other government use, and (3) which are in sufficient supply as to cause no hindrance to the accomplishment of military or other national security objectives."

The increased use of priority ratings to acquire common-use items should be revisited by both Commerce and DOD. More specifically, BXA needs to work more closely with DOD to redefine DPAS priority ratings usage. It needs to work with DOD and the other DPAS agencies to redesign the program to ensure that it continues to play a vital role in military readiness and civil emergency preparedness but is not overly intrusive in the commercial market and is limited to use for stated national security program priorities. In addition, any necessary amendments to Title I authorities identified should be submitted to the NSC for inclusion in its October 1997 report.

II. IMPROVED SAFEGUARDS AND PERFORMANCE MEASURES NEEDED TO ENSURE EFFECTIVE DPAS OPERATIONS

Although it governs billions of dollars of annual procurements, the DPAS program has not received periodic internal audits or compliance reviews to trace how agencies, contractors, subcontractors, and suppliers are using ratings or being affected by system requirements. Furthermore, the military does not require its field officers to provide feedback on DPAS matters unless problems arise in contract or purchase acceptance or delivery of required items. In effect, DPAS is administered on a management-by-exception basis; it is presumed to be functioning effectively in the absence of industry complaints.

Under the Commerce delegation of authority, DOD is required to "ensure that both DOD personnel and defense contractors are in full compliance with DPAS regulations." Accordingly, the Secretary of Defense must (1) review the implementation of DPAS by persons who are in receipt of rated orders supporting DOD programs, (2) notify Commerce of any alleged violations of the priorities and allocations provisions of the DPA or DPAS regulations, and (3) conduct continuing training programs to ensure that appropriate DOD contractor personnel are thoroughly familiar with DPAS provisions.

Although DOD handles day-to-day administration of DPAS activities, it is Commerce's role to ensure that DPAS is managed effectively. Our review disclosed the following barriers to determining how DPAS is actually being administered:

- The specific volume of DPAS cases can only be estimated because so many contracts and purchase orders involve combinations of prime contractors, subcontractors, and suppliers. A Defense Logistics Agency official estimated that DOD issued over 58,000 contracts and purchase orders totaling over $118 billion (transactions over $25,000) in FY 1995. About 99 percent of these transactions were rated.

- Neither Commerce nor DOD requires feedback (e.g., documented information) on the rate of compliance with DPAS provisions or accounting for routine DPAS matters. For example, DOD, the largest user of priority ratings, requires only that unresolved and/or problematic DPAS matters are reported up the chain of command. As a result, the military does not keep records on (1) the number of DPAS cases resolved in the field, (2) the nature of the contract or purchase order problem (e.g., contract acceptance or timely delivery), or (3) the efforts employed to achieve resolution.

- Neither Commerce nor DOD has performed audits or compliance reviews since Operation Desert Storm to ensure proper application of DPAS ratings. Since priority ratings are automatically applied to many defense and civilian contracts and purchase orders, occasional audits and reviews should be performed to ensure that ratings are appropriately applied, management objectives are met, and the system is functioning properly.

Commerce's DPAS Program Manager stated that no program audits or investigations have been conducted since 1991 because of limited resources for such proactive verifications. In addition, almost all SPA requests have been resolved through informal discussion with related parties or through official actions. Our review disclosed that between 1990 and 1995, Commerce has issued 35 letters of understanding, 126 directives, and 60 rating authorizations to resolve SPA cases. Ninety-three SPA requests were resolved through unofficial means, such as letters, telephone calls, or rescinded requests.

In several cases, Commerce's intervention precluded unjustified or improper DPAS application. For example, Commerce received one SPA request that involved a DOD prime contractor who was attempting to force unacceptable contractual terms and conditions onto a vendor using a rated order, including refusal to accept the vendor's price and terms of delivery. After attempts to resolve differences failed, Commerce requested an audit to determine if there was any price and/or contractual discrimination. Based on the audit, Commerce determined that the prime contractor's demand for price and delivery time were not justified and the contractor was cautioned on the infraction.

Our review also found that several civilian and defense DPAS headquarters officers had not received formal DPAS training and that industry representatives were unsure of their DPAS responsibilities. A DOD official reported that during Operation Desert Shield the DPAS system worked extremely well, but stated that because many individuals within both industry and DOD services lack knowledge of DPAS requirements and procedures, ongoing training is warranted.

To correct this situation, the Army developed a DPAS training videotape and a CD-ROM training module that was distributed to the Office of the Secretary of Defense, the Defense Logistics Agency, and the other service components in June 1996. Furthermore, DPAS conferences for federal managers and industry were held in 1995 and 1996.

Better coordination between Commerce, DOD, and other agencies that use priorities and allocations authority to support defense procurement activities may improve safeguards and ensure more efficient and effective oversight of DPAS operations. For example, DOD formed a council to discuss DPAS issues and administrative matters and to assist in the implementation of the DPAS authority delegated from Commerce. The DPAS Council is chaired by a representative from the Office of the Secretary of Defense, and composed of the chief DPAS officer from each military service component and the Defense Logistics Agency.

When the council was formed several years ago, the Commerce DPAS program manager was designated as an ex-officio member. Unfortunately, the program manager has not actively participated in the DPAS Council in the past two years, in part because DOD has not invited Commerce's participation. If Commerce became more involved in the council, it could better influence DPAS policies and operations by working closely with the top DPAS officers in each military unit. Through participation, BXA can expand cooperation and communication with DOD to ensure that appropriate defense procurement needs are being met without placing undue burdens on industry. Such cooperation should also improve DOC's ability to provide more effective oversight of DPAS operations.

Our review also identified few existing performance measures or means to assess DPAS operations. In lieu of internal audits, documented reports, or other internal controls, DPAS managers at Commerce and DOD essentially measure DPAS effectiveness by the number of contract or purchase order problems that are reported in SPA cases. This is not an effective way to measure DPAS program performance. In coordination with DOD and other government agency DPAS users, BXA needs to develop measurable indicators to assess DPAS effectiveness and compliance.

III. IMPROVEMENTS NEEDED IN HANDLING OF SPECIAL PRIORITIES ASSISTANCE CASES

Although DPAS has essentially evolved into a self-executing system, occasionally government buying activities, prime contractors, subcontractors, or suppliers need special assistance to (1) obtain timely deliveries, (2) request authority to use priority ratings on items not normally rateable, (3) prevent unnecessary acceleration of delivery, or (4) preclude acceptance of objectionable terms or conditions of sale. Special priorities assistance is available from Commerce and DOD to assist any person or entity that places or receives a rated order. SPA cases have become the unofficial indicator of such variables as industry compliance, industry understanding of DPAS authority and associated responsibilities, and DPAS efficiency and

effectiveness. The following table details SPA cases forwarded to Commerce between 1990 and 1995:

YEAR	SPA Cases		Rating Classification		
	Total	Military Sponsored	DX	DO	Unrated
1990	88	66	2	80	6
1991	120	93	15	104	1
1992	35	25	4	29	2
1993	20	19	0	20	0
1994	5	3	2	2	1
1995	31	24	1	20	10
Total	299	230	24	255	20

As shown, the number of SPA cases forwarded to Commerce has dropped significantly since the end of Operation Desert Storm in 1991.

Our review of SPA cases submitted to Commerce disclosed one company that had to adjust its operations to accommodate DPAS rated orders. Depending on the year, this company receives between 25 and 50 rated orders from DOD or other U.S. defense agencies. This is a small portion of the approximate 4,000 total commercial orders received by the company annually. The Company reportedly has to reconfigure tools and machinery to accommodate priority rated orders. Furthermore, rated orders require rescheduling normal operations and deliveries. For example, at the end of 1995, the company mistakenly received a DX priority rated contract that conflicted with an existing DO rated order. The matter was resolved with the withdrawal of the DX rated contract. However, the contract manager stated that the company would have lost approximately $500,000 accommodating the DX rated order. He also stated that at least two other companies and one government agency would have been adversely affected by the order.

Our review of the 31 SPA cases forwarded to Commerce in 1995 disclosed that 12 were initiated to expedite delivery, 7 involved the supplier's limited production capabilities, and 12 other cases involved requests for priority ratings or contract acceptance and compliance issues. However, our review of these cases disclosed examples of unconventional practices or errors in priority ratings application:

- Commerce received and expedited five NATO cases that did not have completed contracts or purchase orders. DPAS regulations require that the preferential scheduling of

defense contracts and orders cannot take place until a rated contract is placed with the contractor. SPA requests should not be a mechanism to circumvent normal proper procurement procedures.

- Commerce had to intervene in one case where the rated order was not passed on to the subcontractor and the request was mistakenly treated as a commercial order. The prime contractor is required by DPAS to extend the priority rating to lower tier contractors and suppliers. Mandatory acceptance and preferential treatment of orders cannot be enforced by Commerce unless contracts are properly labeled and passed down the vendor/supply chain.

- Commerce received two cases that involved misapplication of the DX priority rating. In one case, the Air Force did not get proper authority to use the DX priority rating. In the second case, the Army applied a DX rating for items associated with a Secretary of Defense visit to Korea. The DX rating connotes the highest level of priority and should be used only on contracts and orders that support specific national defense programs approved by the President ("highest national priority"). The validity of priority ratings must be assured to maintain the integrity of the system.

The Commerce DPAS Manager acknowledged that some SPA requests were not handled exactly according to standard methods of procurement, but he stated that the need to satisfy urgent military requirements, sometimes made it necessary to provide SPA assistance even in those cases. For example, he stated that NATO has requested special priority assistance before actually placing a contract with the U.S. contractor because of the urgency involved with Bosnia troop deployment. He also noted that NATO's bureaucratic inefficiencies often prohibit the timely placement of contracts and orders with contractors in order to provide a reasonable lead time for the needed delivery date. Furthermore, he noted that depending on customer need, many companies will initiate SPA requests before the contract is formally signed or submitted, especially when the company is the sole source provider for the item.

Despite the DPAS manager's assertions that it is sometimes necessary to ignore proper procurement procedures, we believe that there is sufficient flexibility in the emergency procurement regulations to avoid having to handle SPA requests outside the system. The OIG's concerns with these actions are that SPA requests are not intended to be an "all-purpose tool" to be used in expediting every rated order, and SPA should not be used to compensate for poor procurement practices. Commerce guidance states that requests for assistance (1) should be timely, that is submitted with enough lead time for the delegate agency or Commerce to achieve a meaningful resolution, and (2) must establish that the item is urgently needed and the applicant has made a reasonable effort to resolve the problems.

When used properly, SPA requests can be valuable in obtaining timely delivery of materials, thus helping to keep defense programs on schedule. For example, in support of the Bosnia troop deployment, DPAS was reportedly used to accelerate the delivery of Motorola search and rescue

radios and satellite communications radio systems produced by both Motorola and Harris Corporation.

Working closely with contractors and suppliers, Commerce was able to shorten normal production and delivery from several months to several weeks. The radios were urgently required for both data and voice communications between headquarters and field units deployed in Bosnia. The search and rescue radio facilitated the impressive rescue of Captain Scott Grady, an Air Force pilot shot down over Bosnia.

We believe that Commerce should not in any way condone, or give the appearance of condoning, unconventional procurement procedures that potentially conflict with federal acquisition regulations (e.g. expedite requests without completed contracts and/or purchase orders). It has been suggested that the questionable use of special priorities assistance to expedite requests may be caused by the lack of specific processing guidelines or internal controls by delegate agencies. If this is the case, Commerce and delegate agencies should develop sufficient management controls to oversee the application of DPAS authority and provide adequate training to DPAS officials to prohibit potential conflicts and abuses in the use of SPA requests. Additionally, Commerce should work closely with DOD, and the other DPAS agencies, to develop measurable performance indicators to assess DPAS effectiveness and compliance.

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In responding to our draft report, BXA stated that our discussion of SPA requests that were not handled properly and our examples of poor procurement practices or errors in priority ratings application were somewhat misleading. BXA stated that "it implies that the handling of these SPA cases was inconsistent with the DPAS regulations and procurement procedures. These cases were handled consistent with the DPAS regulations, which do not preclude informal SPA action prior to formal SPA action." BXA also stated that "it also implies that informal SPA action ignores proper procurement procedures." And, as BXA representatives confirmed during our review, it was highlighted in the written response that:

> ". . . it may be necessary to expedite a request for SPA *prior* to receipt of all necessary paperwork, a type of informal SPA, if we are to achieve timely resolution of the problem. This activity generally would include developing background information and having informal discussions with relevant parties. However, no formal action will be taken, including an official action, to influence or modify a production and/or delivery schedule until all necessary documentation is received and an official SPA case file is established."
> [Emphasis added]

During our review, we discussed this issue at length with the DPAS manager who did, in fact, confirm that some SPA requests were not handled according to standard methods of procurement. He defended such actions as rare, but necessary to support urgent military

requirements. He also shared with us specific examples of when this happened, including those mentioned above.

Our objective was not to imply wide-spread abuses or pervasive questionable procurement actions. Rather, we sought to highlight the need for BXA to ensure that it, as Commerce's DPAS representative, does not support any actions that condone, or give the appearance of condoning, any actions that are not in compliance with the effective implementation of the FAR. Where appropriate, we have made some minor changes to this section to put our concerns in perspective. At the same time, we reaffirm our position that even in emergencies, agencies still are required to consistently and fully comply with the FAR, and ensure that the required contracts, purchase orders, and documentation be completed *before* SPA requests are processed.

IV. COMMERCE NEEDS TO REASSESS ITS RESOURCE COMMITMENT AND MANAGEMENT CONTROLS FOR THE DPAS PROGRAM

Commerce has not provided the level of resources and management oversight necessary to ensure that (1) DPAS regulations are updated, (2) DPAS authority and use of priority ratings are independently verified, and (3) interagency coordination is maintained. These controls are necessary to ensure that DPAS works efficiently and effectively.

Our review disclosed that the DPAS regulations have not been revised since their publication in 1984. The regulations combined and superseded regulations and orders of the Defense Materials System and the Defense Priorities System. However, 12 years after their adoption, the DPAS regulations are outdated and need to be revised. For example, officials at Commerce and DOD have confirmed that the DPAS requirements for controlled materials consist of obsolete regulations because the four controlled materials (nickel, copper, steel, and aluminum) are no longer required for our national defense or for national emergency requirements.

Our office previously reported in 1985 that the controlled materials program was designed for 1950s and 1960s mobilization efforts. Since then, rapid technological advances have altered the mix of materials needed for our nation's defense. Furthermore, since the early 1990s, neither Commerce nor DOD has required business firms to report on rated orders for the four controlled materials.

We evaluated management controls employed within SIES to determine compliance with applicable regulations and policies and program vulnerabilities to fraud, waste, and mismanagement. We also assessed the accuracy and reliability of DPAS records and accounting data, and reviewed adherence to prescribed managerial policies. Our review disclosed the following management control problems within SIES:

- There are no standard procedures or guidelines for SPA processing or resolution. DPAS has simple objectives, but its administration is complex. Where practical, procedures should be established to ensure that DPAS objectives are being achieved.

- Special priority case files are not uniform or always complete. Such information as formal requests for special priorities assistance, dates, and manner of resolution, were not uniformly maintained in case files. SPA files provide valuable information for resolving current and future cases.

- There are insufficient management controls for the DPAS program manager position. In general, adequate management controls exist when no one person or entity is able to operate without sufficient oversight. This is not the case here. The current program manager has been in this position for over 10 years, and management has placed a great deal of responsibility on him. Although he is an expert on DPAS, we think there should be more BXA oversight of his operations. We also believe that management should not depend on one individual for all DPAS matters. Program operations might suffer if the lone program manager is absent for a prolonged period and there is no one readily capable of handling his responsibilities.

The number of positions that Commerce/SIES has devoted to DPAS management and operations declined from five in 1991 (during Operation Desert Storm) to one in 1996, with occasional part-time assistance. This sole position is now responsible for a host of duties, including (1) resolving and expediting SPA requests from industry, DOD, NATO and other specified allied nations, and other government agencies (including requests for priority rating authority), (2) establishing DPAS policies and procedures, (3) DPAS administration and enforcement (e.g., directives, letters of understanding, and requests for priority rating authorization), (4) DPAS training and education, and (5) interagency coordination on DPA matters. We believe that BXA should reassess the level of resources and oversight it is providing to DPAS matters with an eye to increasing its resource commitment to ensure that the program deficiencies are addressed and that appropriate internal controls are in place.

RECOMMENDATIONS

We recommend that the Under Secretary for Export Administration take the necessary actions to:

1. Update and maintain current DPAS regulations and develop formal guidelines and/or procedures for SPA resolution and internal operations. Propose any necessary amendments to Title I authorities to the National Security Council for inclusion in its October 1997 report.

2. Expand Commerce's coordination with and participation on the DOD DPAS Council or develop other ways to promote communication and cooperation between DOD and Commerce on issues of DPAS implementation, administration, training, and compliance. Also, pursue similar coordination with other federal agencies involved in DPAS implementation.

3. Provide updated DPAS and SPA information and training materials to all relevant government and industry users. Encourage DOD and other government agency users of the DPAS authority to provide DPAS training for program managers, contracting officers, and contract administration personnel.

4. In coordination with DOD and other government agency DPAS users, develop measurable indicators to assess DPAS effectiveness and compliance.

5. Reassess the level of BXA resources and management oversight provided to the DPAS program and, as appropriate, make necessary adjustments to address identified inadequacies. Special attention should be paid to determining whether additional resources are needed to provide up-to-date DPAS regulations and operating procedures, to improve interagency coordination with DOD and other agencies, to provide effective internal controls and management oversight to operate and/or redesign the program to better match post-Cold War requirements.

APPENDIX

AUTHORIZED DEFENSE PROGRAM CATEGORIES

DEFENSE PRIORITIES AND ALLOCATION SYSTEM		
Program Identification Symbol	**Authorized Program**	**Delegate Agency**
A1	Aircraft	Department of Defense
A2	Missiles	Department of Defense
A3	Ships	Department of Defense
A4	Tanks - Automotive	Department of Defense
A5	Weapons	Department of Defense
A6	Ammunition	Department of Defense
A7	Electronic & Communication Equip	Department of Defense
B1	Military Building Supplies	Department of Defense
B8	Production Equipment (Def. Contractor)	Department of Defense
B9	Production Equipment (Gov't Owned)	Department of Defense
C2	Department of Defense Construction	Department of Defense
C3	Maintenance, Repair, & Operating Supp.	Department of Defense
C8	Controlled Materials for DISC	Department of Defense
C9	Miscellaneous	Department of Defense
D1	Canadian Military Programs	Dept of Commerce
D2	Canadian Production & Construction	Dept of Commerce
D3	Canadian Atomic Energy Program	Dept of Commerce
G1	Certain Munitions Items Purchased by Foreign Governments through Domestic Commercial Channels for Export	Dept of Commerce
G2	Certain Direct Defense Needs of Foreign Governments (other than Canada)	Dept of Commerce
G3	Foreign Nations Production & Construction (other than Canada)	Dept of Commerce
J1	F-16 Co-Production	Dept (s) Defense and Commerce
E1	Construction	Department of Energy

Program Identification Symbol	Authorized Program	Delegate Agency
E3	Privately Owned Facilities	Department of Energy
F1	Exploration, Production, Refining & Transportation	Department of Energy
F2	Conservation	Department of Energy
F3	Construction and Maintenance	Department of Energy
H1	Certain Combined Orders (350.17c)	Dept of Commerce
H2	Controlled Materials Producers	Dept of Commerce
H3	Further Converters - controlled material	Dept of Commerce
H4	Distributors of Controlled Materials	Dept of Commerce
H5	Private Domestic Production	Dept of Commerce
H6	Private Domestic Construction	Dept of Commerce
H7	Maintenance, Repair & Operating Supp	Dept of Commerce
K1	Federal Supply Items	General Service Adm
N1	Approved Civil Defense Programs	FEMA

Source: DPAS Manual, Schedule I, Part 350. BXA, Office of Industrial Resource Administration, October 1984.

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Export Administration
Washington, D.C. 20230

February 20, 1997

MEMORANDUM FOR FRANK DEGEORGE
THE INSPECTOR GENERAL

FROM: William A. Reinsch

SUBJECT: Response to Draft Report: Commerce's Role in Administering the Defense Priorities and Allocations System (DPAS) Needs Strengthening (IPE-8617)

Thank you for the opportunity to review the Draft Report on your assessment of the DPAS. Actions we have taken or propose to take in response to your observations and recommendations are as follows:

1. Update and maintain current DPAS regulations and develop formal guidelines and/or procedures for SPA resolution and internal operations.

A draft Federal Register notice proposing to revise and update the DPAS has been drafted and is currently under review within BXA. It will shortly be submitted for publication in the Federal Register with a request for public comment. The public will also be requested to comment on any issue pertaining to the effectiveness and efficiency of the DPAS in the post-Cold war era.

Following the public comment period and consultation with interested Government agencies, necessary changes will be made to ensure that the regulation will continue to adequately support post Cold War national defense and emergency preparedness requirements. A restriction on the use of the DPAS for "routine" procurement is under consideration. The revised DPAS will then be published in final form, accompanied by revised and updated DPAS supporting documents. Immediately thereafter, we will develop formal guidelines and procedures for management and operation of the DPAS program, including Special Priorities Assistance (SPA) resolution.

As to your recommendation for proposing necessary amendments to the Defense Production Act (DPA) Title I authorities, this issue has already been addressed during meetings of the National Security Council chaired Interagency Working Group (IWG) on the Modernization of the DPA. It is the consensus of the IWG that no changes to the Title I authority are needed and none will be recommended in the October 1997 report to Congress. We believe that all necessary improvements to the DPAS can be achieved by revisions to the regulation and the supporting DPAS documents.

2. Expand Commerce's coordination with and participation on the Department of Defense's (DOD) DPAS Council. Pursue similar coordination with other federal agencies involved in DPAS implementation.

I have written to the appropriate official at DOD requesting that the Commerce DPAS Program Manager be notified of and invited to all meetings of DOD's DPAS Council. This Council would be the focal point for promoting better communication and cooperation on issues of DPAS implementation, administration, training, and compliance between Commerce and DOD. The DPAS Program Manager will also develop plans to meet periodically with the other federal agencies.

3. Provide updated DPAS and SPA information and training materials to all relevant government and industry users. Encourage DOD and other government agency users to provide DPAS training.

Providing updated DPAS and SPA information and training materials to government and industry users will follow publication of the DPAS revisions as a final rule in the Federal Register. In addition to availability of a printed regulation booklet, the DPAS and SPA information will be available electronically along with other briefing and training materials. Encouragement for DOD and other government agency users to provide DPAS training will be accomplished through the DOD DPAS Council and the periodic meetings with the other government agency users.

4. In coordination with DOD and other government agency users, develop measurable indicators to assess DPAS effectiveness and compliance.

Working closely with the DOD DPAS Council and with the other government agency DPAS users, the DPAS Program Manager will seek to develop procedures for assessing DPAS effectiveness and compliance both within industry and the government agencies, especially DOD.

Please also note when the proposed DPAS revisions are published in the Federal Register for public comment as mentioned above, the public will also be asked to comment on the effectiveness of the regulation and to make any suggestions for other improvements.

5. Reassess the level of BXA resources and management oversight provided to the DPAS program and, as appropriate, make necessary adjustments to address identified inadequacies.

In addition to the development of formal guidelines and procedures for management and operation of the DPAS program, I have directed the Director of the Office of Strategic Industries and Economic Security (SIES) to institute a procedure for co-signing official actions by the immediate supervisor of the DPAS Program Manager (Director, Defense Programs Division) or by the SIES Director.

We recognize the responsibility placed upon the DPAS Program Manager as the only staff member of the DPAS Program. Accordingly, several other SIES staff members are trained and prepared to provide back-up support for DPAS program activities.

Furthermore, in the event that additional staff support is required to meet an increasing SPA case load requirement (e.g., during a defense crisis similar to the 1990-91 Operation Desert Shield/Storm), other SIES staff will be trained to provide support.

While your Draft Report presents a fair assessment of the DPAS Program, there are several inaccuracies that should be corrected for the Final Report as discussed in the attachment to this memorandum.

Again, thank you for the opportunity to review the Draft Report. I look forward to the issuance of the Final Report.

Suggested Corrections to the Draft Report (IPE-8716)

o EXECUTIVE SUMMARY

The bottom paragraph on page i states that the "purpose of our review was to evaluate BXA's role--albeit small--in administering the DPAS program . . ." This is an inaccurate characterization of our delegated authority and responsibility. Appropriate implementation of delegated priorities and allocations authority under the Defense Production Act and other related statutes, the effective and efficient administration of the DPAS, delegating authority under the DPAS to DOD and other government agency users, and user compliance with the DPAS, is not a small role. The government user agencies (such as DOD) are authorized to use DPAS priority ratings under delegated authority from Commerce to support their authorized national defense program procurement activities. Moreover, the report, on page 13, notes the "host of duties" Commerce is responsible for under DPAS.

In addition, *the second sentence in this paragraph* fails to reflect that Executive Order 12919 (section 201(b)) requires the Secretary of Commerce to "redelegate to the Secretary of Defense, and the heads of other departments and agencies as appropriate, authority for the priority rating of contracts and orders" that support approved national defense programs (including emergency preparedness activities).

o INTRODUCTION

On page 1 in the first paragraph of this section, it states that "The Bureau of Export Administration's Office of Strategic Industries and Economic Security (SIES) administers the [DPAS] program, as provided for in Title I of the Defense Production Act of 1950 (DPA)". The DPAS is not provided for in the DPA. It is a regulatory program (15 CFR 700), developed under an executive order delegation of priorities and allocations authority for industrial resources (E.O. 12919). Title I of the DPA provides the President with broad priorities and allocations authority to "promote the national defense". Title VII of the DPA provides the President with the authority to develop implementing rules and regulations.

o BACKGROUND

On page 1 in the first paragraph of this section, addressing the Defense Production Act Title I priorities and allocations authority, it states that the President is authorized to ". . . (3) allocate contracts or orders for materials, equipment, and services to ensure domestic energy supplies." Contracts or orders are not allocated. It is materials, equipment, and services that may be allocated. The statute authorizes the President to " . . . (3) require the allocation of, or the priority performance under contracts or orders relating to supplies of materials, equipment, and services in order to maximize domestic energy supplies".

In addition, the Robert T. Stafford Disaster Relief and Emergency Assistance Act is not P.L. 93-288. The Disaster Relief Act of 1974, the predecessor to the Stafford Act, is P.L. 93-288. The Stafford Act was amended by the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103-337) to expand the definition of "national defense" and "defense" as used in the DPA to include "emergency preparedness activities."

o BACKGROUND, Commerce's Role in Administering DPAS

On page 2 in the first paragraph, first sentence, of this subsection, the citation to Executive

Order 10480 (1953) is incorrect. The executive order delegating priorities and allocations for industrial resources to Commerce is E.O. 12919. This order superseded E.O. 10480 on June 3, 1994.

The third sentence in this paragraph fails to reflect that Executive Order 12919 (section 201(b)) requires the Secretary of Commerce to "redelegate to the Secretary of Defense, and the heads of other departments and agencies as appropriate, authority for the priority rating of contracts and orders" that support approved national defense programs (including emergency preparedness activities).

On page 2 in the second paragraph, first sentence, of this subsection, it states that "While pursuing these [DPAS] goals, Commerce must ensure civilian control over industrial resources while meeting the needs of our nation's defense." It is the delegation of statutory authority to Commerce under E.O. 12919 that ensures civilian control over industrial resources. While pursuing the DPAS goals referenced at the end of the first paragraph, "Commerce attempts to minimize disruptions to normal commercial activities".

In the third paragraph on page 2, the third sentence incorrectly states that national defense programs include "military and atomic energy production or construction, . . .". The DPA defines national defense programs as including "military or energy production or construction, . . ."

On page 3 in the third full paragraph of this subsection, the last sentence of the paragraph ["However, absent an extraordinary situation or circumstance, official action is taken only after negotiation with all involved parties has been unsuccessful."] is an incorrect statement about the procedure for taking an official action. Directives, Letters of Understanding, and Rating Authorizations are official actions taken to resolve a request for special priorities assistance. They will be issued as necessary and appropriate only after negotiation or discussion with all involved parties to summarize and document the agreement reached between or among the parties. If negotiation is unsuccessful, a "forcing" Directive may be issued to require compliance. Administrative Subpoenas, Demands for Information, and Inspection Authorizations are compliance and/or enforcement official actions which may be taken either based on negotiation with the involved party or not, depending on the situation, facts, circumstances, and allegations of wrongdoing.

o SCOPE AND METHODOLOGY

On page 3 in the first paragraph of this section, the reference in the middle of the paragraph to "Wright Patterson Air Force Base" should changed to Department of the Air Force.

o OBSERVATIONS AND CONCLUSIONS

On page 5 under the first Observation and Conclusion (Relevance of the DPAS in the Post Cold War Environment), *the first bullet under the second paragraph* should read as follows:

> Defense preparedness through assured source of supply and timely delivery of materials, equipment, and services.

Also *on page 5, in the paragraph beginning, "As noted earlier, . . .",* it was the 1995 amendment of the Stafford Act that extended the DPA's definition of national defense.

On page 6 in the third full paragraph, while Congress may have initially intended the priorities

and allocations authority of the DPA to support active conflict, Congress removed the references cited from the DPA, indicating that it was not to be limited to use to support active conflict.

On page 6 in the last paragraph at the bottom of the page, the Executive Order 10480 (1953) citation to the guidance provided pursuant to the DPA appears to be incorrect. No such guidance is provided in Section 201 of this Order, which has been superseded by Executive Order 12919 anyway. However, the DPAS Delegation of Authority to each of the DPAS user agencies (Delegate Agencies), includes restrictions on use of the DPAS authority to procure: (1) material from exclusively retail establishments; (2) items to be used primarily for administrative purposes; (3) items listed in a Statement of Conditions that was developed in 1975 but not published in 1984 with the DPAS; and (4) [to DOD] civilian items for resale in Military Exchanges or the packaging of such items.

However, consideration will be given to the cited guidance restriction language for inclusion in the DPAS revision as a way to limit the use of priority ratings for stated national security program priorities and prevent it from being used for "routine procurement".

On page 11, the discussion of SPA requests that "were not handled properly" under the three bullets describing examples of poor procurement practices or errors in priority ratings application is somewhat misleading. It implies that the handling of these SPA cases was inconsistent with the DPAS regulations and procurement procedures. These cases were handled consistent with the DPAS regulations, which do not preclude informal SPA action prior to formal SPA action. It also implies that informal SPA action ignores proper procurement procedures. The report fails, however, to describe how proper procurement procedures were ignored. In particular, during a defense crisis situation such as the Bosnia troop deployment, it may be necessary to expedite a request for SPA prior to receipt of all necessary paperwork , a type of informal SPR, if we are to achieve timely resolution of the problem. This activity generally would include developing background information and having informal discussions with relevant parties. However, no formal action will be taken, including an official action, to influence or modify a production and/or delivery schedule until all necessary documentation is received and an official SPA case file is established.

On page 12, the report again raises the issue of use of DPAS circumventing the federal acquisitions regulations (FAR) without describing in what way those regulations might be circumvented. Subpart 12.3 (Priorities and Allocations) sets forth the FAR provisions pertaining to the DPAS. Section 12.300 of the FAR states that:

> This subpart implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DOC) regulation in support of authorized national defense programs (15 CFR 350).]

On page 16, in the Appendix, in the second column of the fourth line of table (F2 Program Identification Symbol), the Authorized Program, "Conversation", should read <u>Conservation</u>.