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REPORT TO THE CONGRESS

UNITED STATES
GENERAL ACCOUNTING OFFICE

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BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

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Special Priorities Assistance Program: Its Shortfalls And Its Possibilities

Multiagency

The Special Priorities Assistance Program was designed to insure that businesses and industry accept and fill defense-related orders ahead of commercial orders in periods of mobilization readiness.

GAO found that the program:

- does not always work when needed,
- is used where it does not apply,
- lacks enforcement, and
- may not function effectively as a mobilization mechanism when the need arises.

GAO feels, however, that the program could be made more effective.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report identifies ways to improve the effectiveness of the Special Priorities Assistance Program to insure that businesses and industry accept and fill defense-related orders in accordance with title I of the Defense Production Act of 1950.

We made our examination pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of Defense; the Secretaries of the Army, Navy, and Air Force; the Secretary of Commerce; the Administrator, Energy Research and Development Administration; and the Administrator of General Services.

A handwritten signature in black ink, reading "James P. Shields".

Comptroller General
of the United States

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ABBREVIATIONS

GAO	General Accounting Office
OIM	Office of Industrial Mobilization
OBRA	Office of Business Research and Analysis

D I G E S T

The Special Priorities Assistance Program is intended to insure that essential defense-rated contracts and orders are filled ahead of commercial orders. GAO found, however, that the vast majority of defense contracts and orders did not require special priorities assistance.

In 73 out of 100 cases when special assistance was used, materials were not delivered when needed. (See p. 4.)

Fifty percent of the federally directed materials shipments were not delivered by the date specified. (See p. 4.)

Most special priorities assistance requests were not properly justified. They were:

- Used for low-priority items, such as latex paint and plastic hammer handles. (See p. 6.)
- Used by defense contractors and agencies as a substitute for good procurement practices. (See p. 6.)
- Used by defense contractors to gain special prices and other advantages. (See pp. 6 and 7.)

GAO also found that industrial mobilization readiness can be impaired and that problems exist in starting and processing special priorities assistance requests. (See pp. 7 and 8.)

- In 20 out of 100 cases, the requests were not made until after the required date. (See p. 10.)
- Most took much longer to resolve than necessary. (See p. 10.)
- Most could have been resolved before reaching the Department of Commerce. (See p. 12.)

Finally, there is noncompliance with procedures and requirements and little enforcement or followup action. Industry and Government officials lack knowledge of the program's procedures and requirements. (See pp. 13 and 16.)

GAO recommends that the Secretary of Commerce

/ --obtain compliance with Federal directives and enforce established procedures (see p. 23);

--eliminate unnecessary or improper use of special priorities assistance requests (see p. 23);

--emphasize that cognizant Government agencies have the authority to resolve many more priorities problems (see p. 24);

--make sure that one organizational unit has full authority and responsibility for complete request processing (see p. 24);

--work more closely with industry to insure better understanding of the Special Priorities Assistance Program (see p. 24); and

--include in the instructions more specific information on the proper use of the program (see p. 24).

GAO also recommends that the heads of the Department of Defense, General Services Administration, and the Energy Research and Development Administration:

--Require thorough attempts to resolve priorities problems and eliminate improper uses. (See p. 24.)

--Consider eliminating some processing levels. (See p. 24.)

--Report all violations. (See p. 24.)

--Complement Commerce efforts to improve industry understanding of the program. (See p. 24.)

GAO believes that Congress should amend the Defense Production Act to provide additional authority for the administrative assessment and collection of civil money penalties, subject to judicial review. (See p. 24.)

Commerce and the General Services Administration have started a review of the Defense Materials System and the Defense Priorities System regulations to provide a more extensive explanation of the Special Priorities Assistance Program. (See pp. 19 and 20.)

The Department of Defense has stated they will vigorously use their delegated authority to resolve special priorities assistance requests and eliminate unnecessary requests. (See p. 39.)

The General Services Administration and Commerce responded positively to the recommendation to amend the criminal penalty provisions of the Defense Production Act to provide additional authority for the administrative assessment and collection of civil penalties if Federal directives are not complied with. (See pp. 44 and 33.)

The Energy Research and Development Administration, however, took a more reserved stand, saying it is not clear to them whether the use of civil money penalties would make the Special Priorities Assistance Program more effective. (See p. 46.)

CHAPTER 1

BACKGROUND

As part of our concern over past shortages of processed materials such as steel, aluminum, castings, forgings, and electrical parts, we made a report to the Congress entitled "Impact of Shortages of Processed Materials on Programs of Vital National Interest," (PSAD-76-14), February 27, 1976. One of the matters for congressional consideration was whether the Defense Production Act should be amended to broaden application of the priority and allocation authority to include nondefense programs of vital national interest and whether one agency should be authorized to administer all priority programs.

This prior work identified a need to examine the effectiveness of the Special Priorities Assistance Program, a feature of the Defense Priorities and the Defense Materials Systems. This report addresses the effectiveness of the Special Priorities Assistance Program.

INTRODUCTION

Title I of the Defense Production Act of 1950 (50 U.S.C., APP. 2061 et. seq., as amended) (1) requires that contracts or purchase orders for defense-related programs be accepted and performed; (2) authorizes the allocation of certain controlled materials to promote the national defense; and (3) requires preparedness programs to reduce mobilization time in a national emergency.

Executive Order 10480 provides for the delegation of these title I authorities to the Director of the Federal Preparedness Agency, General Services Administration (formerly the Office of Emergency Planning) and for redelegation to (1) the Secretary of the Interior with respect to petroleum, gas, solid fuels, and electric power; (2) the Secretary of Agriculture with respect to food and domestic distribution of farm equipment and commercial fertilizer; (3) the Commissioner of the Interstate Commerce Commission with respect to domestic transportation, storage, and port facilities, or the use thereof, but excluding air transport, coastwise, intercoastal, and overseas shipping; and (4) the Secretary of Commerce with respect to all other materials and facilities. The General Services Administrative Defense Mobilization Order 8400.1 accomplishes the redelegation to the Department of Commerce as provided for in Executive Order 10480.

Commerce administers title I priorities and allocation functions through regulations, orders, and delegations known

as the Defense Priorities System and the Defense Materials System. These systems are designed to accomplish two purposes. First, they direct the flow of materials and products to the Nation's military, atomic energy and space, production, construction, and research and development programs and help maintain defense program schedules by providing a priority rating for the purchase of materials by contractors, subcontractors, and their suppliers. Second, the Systems' operation presents an administrative means of promptly mobilizing the total economic resources of the country in the event of a national emergency.

DEFENSE PRIORITIES AND MATERIALS SYSTEMS

The Defense Priorities and Materials Systems are primarily a standby mechanism for mobilization. They are operated in peacetime to assist defense and defense-related agencies (hereafter referred to only as defense-related) and contractors in obtaining preferential delivery of materials needed to meet production and delivery schedules and to allow for a smooth transition to wartime production. These Systems, in essence, mandate that defense-related orders get first pick of scarce materials and productive capacity before other national and civilian orders. Under these Systems, it is mandatory that defense-related agencies show a defense priority rating notation of "DX" or "DO" on contracts and purchase orders in support of military, atomic energy, and space programs for research and development, construction, and hardware procurement which promotes national defense. DX ratings are used on contracts and purchase orders for the most urgent defense programs, are approved by the President, and have the highest priority. DO ratings are used on other ratable defense-related procurement.

Commerce maintains that all contracts and purchase orders are rated to (1) have a system of regulations in operation that is known and understood by industry and Government, (2) preclude establishing a bureaucracy to select those contracts and purchase orders which should be rated, and (3) insure that if a local disaster destroys a plant (as Hurricane Agnes did in 1972) rated orders can be quickly identified and moved to other plants.

x. Rated contracts and purchase orders for authorized items within approved programs, with few exceptions, must be accepted and the material delivered by the contractor or supplier in preference to nonrated or commercial orders. Each contractor or supplier receiving rated contracts or purchase orders is required to put the rating notation on subsequent

orders for materials for the contract or order. The law provides criminal penalties against those who violate these requirements.

SPECIAL PRIORITIES ASSISTANCE PROGRAM

Usually, rated contracts and orders are accepted and the materials routinely provided to meet the delivery dates. However, when a defense-related contract or order is refused or the required delivery date is not met, special priorities assistance is provided to resolve the conflict. This is where the Defense Production Act's powers are most visible. Special priorities assistance is to be requested only when a program will be delayed because of a late delivery or a refusal of a purchase order.

The request for special priorities assistance is initiated by the Government agency, contractor, or supplier having delivery or order refusal problems. The sponsoring agency attempts to resolve these problems. If the agency fails, the assistance request is sent to Commerce for final resolution. Commerce acts on the requests by (1) issuing Federal directives, which order a supplier to accept and/or deliver on a rated order, (2) issuing a Letter of Understanding outlining a delivery schedule agreed to by the supplier, (3) closing the request without action, or (4) returning the request to the sponsoring agency.'

SPECIAL PRIORITIES ASSISTANCE REQUESTS

Each year defense-related agencies, contractors, and suppliers issue millions of rated defense contracts and related purchase orders for national defense items. Only a small fraction, however, require special priorities assistance.

Agency records showed that about 4,200 assistance requests were initiated during fiscal year 1974. The sponsoring agencies resolved many of these but forwarded 1,547 to Commerce for final resolution. In contrast, Commerce received only 491 the previous year. Commerce resolved about 70 percent through use of a Federal directive, and the remainder by Letters of Understanding, by returning them to the sponsoring agencies, or by closing them with no action.

The agencies and Commerce spent about \$2.5 million operating the Special Priorities Assistance Program in fiscal year 1974. They spent over 152 staff years-- administrative and professional. Commerce accounted for 23 of the staff years and \$581,000 of the cost.

CHAPTER 2

SPECIAL PRIORITIES ASSISTANCE PROGRAM COULD BE MORE EFFECTIVE IN MEETING ESTABLISHED GOALS

The Special Priorities Assistance Program is designed to provide special priorities assistance in obtaining materials needed when a program will be delayed because of a late delivery or a refusal of a purchase order. In our sample of 100 requests for special priorities assistance, we found that 73 did not result in delivery of materials by the requested dates or in the amounts specified by the Government agency or contractor. In some cases, however, delivery improvements were obtained, but in 43 cases Commerce did not receive the assistance request in time to meet the required date. We also found that contractors or suppliers did not comply with 50 percent of the Federal directives issued by Commerce. Materials shipping dates in the directives were delayed by as much as 4 months. A Federal directive is the final and most legally binding step used to resolve an assistance request.

Since we were concerned with the effectiveness of the Special Priorities Assistance Program, we did not specifically determine whether late deliveries always resulted in program delays. Also, we could not attribute actual or potential delays solely to the ineffectiveness of the program. We found that technical or procurement problems or manufacturing capacity shortages were often the reasons special priorities assistance was needed. However, information available in some cases showed that:

--Army combat helicopters and Air Force F-4 jet planes were grounded because spare parts were not obtained on schedule.

--An aircraft carrier overhaul was delayed for at least 1 month because the procuring activity failed to award the contract in a timely manner and several pumps could not be obtained on schedule. The Navy estimates that each day the ship was delayed it cost the Government \$100,000.

In some instances we noted where assistance requests were instrumental in obtaining timely delivery of critical materials. In 31 percent of the instances the suppliers' original quoted shipment date was improved by weeks or months, although not necessarily meeting the contractors' required dates. We also noted instances where defense orders for urgently needed materials, initially refused by

industry, were effectively placed by Commerce with selected suppliers.

MOST ASSISTANCE REQUESTS
DID NOT WARRANT PRIORITY ACTION

Most assistance requests received by Commerce during fiscal year 1974, that we reviewed, did not appear to be urgent requests warranting special priority action:

- Twenty percent appeared to be valid assistance requests.
- Fifty percent appeared to be questionable priorities problems.
- Thirty percent did not appear to involve priorities problems.

Special priorities assistance for
actual priorities problems

Of the assistance requests reviewed, 20 percent appeared to involve actual priorities problems. For example, one procuring agency needed some electrical components for a high-priority program. The supplier quoted a shipment date 2 months later than the agency's required date and did not give a valid reason why delivery could not be made on time. A Federal directive was issued and the supplier delivered 8 days before the agency's required date, eliminating program delay.

In another case, a supplier refused a DX-rated purchase order for steel because the supplier's production set-aside quota for defense was filled. Defense Materials System regulations state that steel producers must accept a DX-rated purchase order even though the production set-aside has been committed. Also, in this case it had been estimated that the supplier had over 75 percent commercial work. A Federal directive was issued and the supplier delivered by the contractor's required date.

Assistance requests for
questionable priority problems

Fifty percent of the requests reviewed appeared to be questionable on the basis of the information available. Many requests involved a combination of priorities and nonpriorities problems.

Twenty-seven assistance requests in our sample did not contain statements adequately justifying the urgency of the

materials or programs. Some were for items such as latex paint, plastic hammer handles, and mattresses. Most of the requests were for stock items. Agency criteria requires that an assistance request be processed only for essential quantities of materials for a program of "high relative military urgency" and that production actually be interrupted if the material is not obtained by the date specified. Recently, the General Services Administration, Office of Preparedness, requested a study of the use of defense ratings for standard stock items procured by the General Services Administration and the Defense Supply Agency. Furthermore, Commerce has issued revised delegations which should restrict the use of priority ratings for common-use items. (See p. 33.)

Contractors or agencies in 29 instances delayed placing orders for production items with long leadtimes. They then used special priorities assistance to speed up delivery. There is little Commerce can do to accelerate delivery when commercial orders are not interfering with the defense orders because production leadtimes are usually fixed. One request in our sample concerned airplane parts described as a safety of flight item which had an 18-month production leadtime schedule. The Government agency needing the item awarded the contract only 4 months before delivery was required. An assistance request was sent to Commerce. Commerce determined, after discussing the problem with the supplier, that the supplier's 18-month leadtime was justified and the supplier was putting forth his best effort to produce the material. No Federal directive was issued and the case was closed. Earlier awarding of the contract would have eliminated the need for this assistance request.

Contractors and suppliers were not putting the required information on purchase orders. For instance, they would issue purchase orders without priority ratings, thus giving the recipient no knowledge of the priority status of the order. Furthermore, if a purchase order was not properly rated for defense purposes, the recipient could legally refuse to accept it. We reviewed 80 purchase orders relating to the assistance requests in our sample; 56 were not properly rated.

Assistance requests for nonpriority problems

Thirty percent of the assistance requests reviewed appeared to be invalid because the contractor or agency was using special priorities assistance authority to resolve problems that were not within the scope of the program:

- Two contractors procured excess materials to gain a price advantage, even though Commerce officials said that special priorities assistance was not to be used for matters involving prices. In these cases Commerce acted to get the requested materials.
- Six contractors placed orders with suppliers quoting the lowest price and then requested special priorities assistance to get faster delivery when other suppliers could have delivered sooner--but at a higher price. Commerce issued Federal directives to the suppliers in five of the six cases. However, a Commerce official stated that it was Commerce and Department of Defense policy to advise contractors to get their purchase orders accepted even though the supplier's delivery date will not meet the required date. The contractors, after placing the order, are then encouraged to request special priorities assistance to speed up the delivery.
- Eight contractors initiated assistance requests against suppliers who refused to deliver because the contractors could not or would not meet the suppliers' payment terms. Contractors must be able and willing to meet suppliers' terms and conditions of sale. For example, a contractor stated that a supplier would not deliver the requested item because it was unprofitable for the supplier. Commerce, however, found the supplier would not deliver because the contractor owed the supplier \$85,000. Commerce issued a Federal directive to this supplier who initially refused to comply but made delivery after the contractor paid its debt.
- Two Defense Contract Administration Service officials stated that contractors used assistance requests to avoid alienating suppliers that they relied on for commercial production material. Contractors needing materials for defense contracts would issue commercial purchase orders to their suppliers of materials for nondefense work and then request special priorities assistance. If the Government took action against the supplier, the contractor could claim he had nothing to do with the matter and hopefully avoid alienating his supplier.

INDUSTRIAL MOBILIZATION
READINESS MAY BE IMPAIRED

The Defense Priorities and Materials Systems are used to maintain an adequate industrial mobilization mechanism

to meet a national emergency. To satisfy this goal, the Office of Preparedness maintains that it is necessary to operate the Systems in peacetime. According to Commerce officials, peacetime operations provide (1) a basic program and mechanism which would maintain Government and industry officials' familiarity with the Systems and (2) the basis for rapid and efficient establishment of the extensive priorities and allocations systems that would be needed for any future industrial mobilization.

We found that an adequate mechanism to mobilize industrial resources was not being maintained. In many cases industry officials were unaware of their responsibilities. Further, some Government and industry officials did not have a working knowledge of the Systems to fulfill mobilization objectives specified by the Office of Preparedness and Commerce.

CHAPTER 3

OPERATIONAL PROBLEMS OF THE

SPECIAL PRIORITIES ASSISTANCE PROGRAM

The basic regulations and procedures for the operation of the Special Priorities Assistance Program were generally sound, but problems arose in their implementation. We found many instances where suppliers did not accept properly rated defense orders for invalid reasons. Assistance requests were not initiated or resolved in a timely manner and agencies' processing times and the resolution rates varied greatly. Most requests could have been resolved without Commerce intervention. We also found Commerce regulations and agency implementing instructions were poorly understood and when Commerce, agencies, and industry did understand, they were unwilling to follow the regulations and instructions. Commerce and Defense officials told us that replacing experienced defense priorities employees, who have left Government service, had been a key factor contributing to the problems we identified in the management and operation of the Systems.

SUPPLIERS DID NOT ACCEPT RATED DEFENSE ORDERS

Twenty-one suppliers rejected defense-rated purchase orders for invalid reasons. Of these, four suppliers refused to accept rated orders because the contractors were not regular customers, and five suppliers refused because the contractor was not on the supplier's allocation plan. In addition, 20 suppliers appeared to be processing commercial work before defense-rated orders.

Although Commerce and sponsoring agencies had issued joint letters to thousands of firms describing use of the Defense Priorities and Materials Systems, some agency officials stated that suppliers did not really want to know about the Systems. The only real contact suppliers have with the Systems occurs when delivery delays cause a contractor or agency to request special priorities assistance.

PROBLEMS IN PROCESSING ASSISTANCE REQUESTS

A major problem in the Special Priorities Assistance Program was in the initiation and processing of the assistance requests. Specifically, we found that

--defense contractors, suppliers, or agencies were not requesting priorities assistance in a timely manner,

--Commerce and agency processing times and resolution rates varied greatly, and

--most assistance requests Commerce received could have been resolved by the contractor or agency sponsoring the request.

Untimely assistance requests

The effectiveness of special priorities assistance in insuring timely material deliveries depends on the contractor or agency promptly submitting the assistance request, in advance of the required delivery date. Of the 100 assistance requests in our sample, contractors or agencies initiated 20 requests after the required delivery date and 23 requests from 1 to 7 days before the required delivery date.

Commerce and the agencies should insure that assistance requests are submitted in time to meet desired delivery dates. The agencies did not submit the requests early, and except in few instances, Commerce failed to remind the agencies that assistance requests must be submitted as soon as possible. Only one request in our sample was returned because the applicant had submitted it after the required date.

Variance in processing times and resolution rates

The time required to process assistance requests contributed to delays in meeting contractors' requested delivery schedules. Commerce and most Government agencies involved in processing requests have "turn-around-time" policies of 10 days or less. We found that, on the average, it took 61 days to process a request from the time the applicant (a Government contractor or agency) signed the request until Commerce took action. The agencies' average processing time was 37 days, and Commerce's was 24 days.

The percentage of assistance requests each agency resolved varied greatly. One agency resolved 86 percent of its requests while the majority resolved less than half. The following table shows the percent of requests resolved by each agency and the average processing times during fiscal year 1974.

<u>Agency</u>	<u>Number of requests received</u>	<u>Number of requests resolved</u>	<u>Percent requests resolved</u>	<u>Average processing time</u> (days)
Energy Research and Development Administration	434	377	87	21
General Services Administration	131	0	0	43
Army	1,249	466	37	25
Navy	619	304	49	32
Air Force (note a)	106	3	3	6
Defense Supply Agency	271	172	63	67
Joint Aeronautical Material Activity Command	712	602	85	32
Maritime Administration	23	4	17	(b)
Defense Contract Administration Service	2,278	736	32	(b)

a/Data for Headquarters only.

b/Data not obtained.

Contributing to the long processing times were the varying number of processing levels within the agencies. One agency with only two processing levels--an initial receipt level having direct contact with industry and a headquarters level where authority and responsibility are concentrated--processed assistance requests within 21 days. Other agencies with as many as four processing levels took from 25 to 67 days to process a request.

In most agencies higher levels made little attempt to identify and correct the inadequate processing occurring at lower levels. Thirty-two assistance requests in our sample did not contain the information needed to resolve the problem. Commerce had to go back to the agency for the information.

Although not specifically required in agency instructions, records on most of the work that was done on requests at lower levels were not forwarded to the higher levels.

From our sample we noted that in 29 requests the agency had not verified the information which had to be corrected by Commerce while being processed and in 13 requests the real problem was not identified until Commerce started processing the request. In some of these instances, Commerce found that the real problem involved components for the end-item when the request showed that the end-item, itself, was the problem.

At Commerce, the Special Priorities Assistance Program is handled by two offices: the Office of Business Research and Analysis (OBRA) and the Office of Industrial Mobilization (OIM). OBRA collects and analyzes information from business and industry, processes assistance requests, and provides preliminary resolution decisions that are used in issuing the Federal directives. OIM, if it concurs with the OBRA decision, will issue the Federal directive and followup for compliance. If OIM does not concur with the OBRA decision the case is returned to be reworked.

OIM, however, does not have direct control over OBRA's processing of assistance requests. As a result, OIM returned many requests to OBRA for additional work because the requests were not satisfactorily resolved the first time. OIM's inability to control the processing of the requests has caused delays in the final action taken on many. According to a Commerce official, this separation of functions has led to coordination problems and to lengthening the processing time.

Contractors or agencies could have resolved most problems

We found that 85 of the 100 assistance requests we reviewed could have been resolved by the sponsoring agency or defense contractor and should not have been forwarded to Commerce. For example, one supplier's production set-aside was used up for the month the contractor wanted delivery. Since the program was DO-rated, the supplier was justified in not delivering during the quarter his set-aside was filled. The agency should have had the contractor place the purchase order with another supplier who had set-aside material available. These situations resulted because

--agency officials generally did not exercise the authority provided in the regulations to resolve assistance requests and

--Commerce did not inform agency officials of their authority to resolve assistance requests.

Agency officials told us they deferred resolution of many of the requests sent to Commerce, believing that Commerce was the only organization with the authority and responsibility for resolving such requests. A Commerce official told us that, except for issuing Federal directives, the agencies have as much authority to resolve requests as Commerce.

Although the agencies have almost as much authority as Commerce, a Commerce official said the agencies were told that only Commerce had the authority to force a supplier to alter his production schedule to meet the delivery dates in a defense-rated purchase order. Also the agencies were told that they could resolve shipping schedule conflicts when a supplier had more than one rated order for the same item. Commerce officials said that misconceptions regarding what agencies can and cannot do to resolve assistance requests would be corrected.

LACK OF ENFORCEMENT OF THE SYSTEMS REGULATIONS

The Defense Priorities and Materials Systems are primarily a body of regulations and orders which are largely self-operated and self-policed by their users. The regulations provide for criminal sanctions against any person who willfully violates any provision or furnishes false information or conceals any material fact.

Commerce is responsible for insuring compliance with the regulations and for enforcing Federal directives. Agencies are responsible for reporting violations to Commerce. Commerce and the agencies have not determined the extent to which the Systems provisions are being followed or improperly used. Consequently, little enforcement action has been taken against those who have violated the Systems regulations.

An agency official said although the agencies are responsible for reporting violations, they rarely do so. For example, Defense instructions and letters require reporting of such violations, but, according to a Defense official, few formal reports had been received during the last 2 years. This contrasts sharply with the examples of noncompliance we found during the same time period.

Agency procedures require that the procuring activities insure that (1) their contractors understand the responsibilities and obligations of the regulations and (2) the

contractor issues properly rated purchase orders to suppliers, informs suppliers of their responsibilities, and periodically checks suppliers to obtain early knowledge of actual or potential delivery delays. We found that the agencies did not insure that contractors understood or properly used the System's procedures and requirements or that they rarely reported violations of the regulations to Commerce.

LACK OF ENFORCEMENT OF FEDERAL DIRECTIVES

A Federal directive must be accepted by the recipient and represents the most powerful action taken to expedite and resolve an assistance request. Recipients of a directive are required to notify Commerce within 3 days after a directed shipment has been made. We could not find shipping information for 42 of the requests in our sample.

Commerce officials said that Federal directives generally were not issued until the proposed delivery schedule was agreed upon by the supplier and the contractor. An industry official confirmed this by noting that the delivery schedules in the Federal directives, which his company had received, were the ones agreed to with Commerce before the directive was issued.

We found noncompliance with Federal directives by defense contractors and suppliers. Although willful violation of a Federal directive is a criminal offense, we noted that the delivery requirements in 48 of 96 Federal directives issued by Commerce were not met. The average delay was about 2 months and some were delayed as much as 4 months.

Although Commerce is the only agency that can initiate legal action against suppliers who violate Federal directives, we could find no evidence that such action had been taken. We found a few instances in which Commerce threatened suppliers that violated a Federal directive with legal action, but legal proceedings were not initiated. A Commerce official said Commerce prefers to "persuade" suppliers to comply rather than initiate litigation that would require long periods of time to complete.

This problem is not uncommon to other executive agencies. In recognizing this problem, the Administrative Conference of the United States--an independent Federal agency established to identify and analyze the causes of administrative inefficiency--adopted a recommendation in December 1972 sanctioning civil money penalties as a substitute or supplement to criminal penalties. The Conference stated

"Federal administrative agencies should prefer civil sanctions to criminal sanctions as a means of securing compliance with statutory provisions or administrative regulations. The approach suggested is that the criminal law should be used selectively and discriminatingly to deal with only the most serious regulatory offenses or with offenses as to which other sanctions have failed. In almost all other instances, civil sanctions (e.g., license revocations, money penalties, injunctions) should carry the brunt of the regulatory job."

The Conference also noted that criminal enforcement of agency regulations has often proven costly and ineffective; created undesirably wide areas of discretion; unnecessarily stigmatized defendants who were in no sense morally reprehensible; and, generally, interfered with the operation of criminal law.

Under the administrative imposition system recommended by the Administrative Conference, an agency would have the authority to assess civil money penalties for designated violations. The system would provide for the adjudication of alleged violations on the record pursuant to the Administrative Procedure Act (5 U.S.C. 554-57). The agency's decision would be final unless appealed within a specified period of time.

Any person on whom a civil money penalty is administratively assessed would have the right to appeal the agency's decision to the U.S. Courts of Appeals. If appealed the court would review the decision under the substantial evidence rule in accordance with the Administrative Procedure Act (5 U.S.C. section 706 (E)). That is, the agency's decision would be sustained if supported by substantial evidence and a new full-scale proceeding (de novo adjudication) by the court would not be required. If necessary the collection of civil money penalties could be enforced by a civil suit in Federal district court. To the extent authorized, an agency could settle or compromise any civil money penalty which may be assessed. (For a more detailed discussion, see "Recommendations and Reports of the Administrative Conference of the United States," "Recommendation 72-6--Civil Money Penalties as a Sanction," and the "Report In Support Of Recommendation 72-6--An Evaluation Of The Present And Potential Use Of Civil Penalties As A Sanction Of Federal Administrative Agencies" (1972).)

Our suggestion to consider the assessment of civil money penalties is intended to supplement the existing criminal

sanctions and is not intended to replace those criminal sanctions. Furthermore, we fully recognize the need to equitably assess civil money penalties; therefore, we believe that the factors which reflect the financial size and condition of the penalized firm must also be considered.

Commerce officials said that their limited staff could not follow up on all shipments and process the large volume of special priorities assistance requests received. Although Commerce had a compliance officer, his time was used to resolve assistance requests instead of enforcing the requirements in the Federal directives. Commerce officials noted that they have recently begun devoting more effort to determining that materials have been shipped as required in the Federal directives.

INDUSTRY AND GOVERNMENT OFFICIALS
LACK KNOWLEDGE OF THE SYSTEMS

Government officials at various levels said that one of the biggest problems with the Defense Priorities and Materials Systems is that they do not understand the basic regulations. In a May 1975 testimony before the Joint Committee on Defense Production, the Deputy Assistant Secretary of Defense in charge of the priorities systems, stated that many Government and industry people responsible for operating these systems were unfamiliar with its provisions and unskilled in its operations. Several officials who have direct contact with contractors and suppliers said many did not fully understand the regulations. Some officials estimated that 90 to 95 percent of the suppliers contacted required an explanation of the regulations. Examples of unfamiliarity with the Systems include:

- Suppliers rejecting or not filling defense-rated orders ahead of commercial orders.
- Suppliers not putting ratings on their defense orders for materials.
- One contractor had never seen a copy of the Defense Material System regulations even though he had initiated an assistance request for steel. The contractor's purchase order was legitimately refused by the supplier because it did not conform to the leadtimes established in the regulations.
- Another contractor asked for bids on steel and, when no bids were received, requested help through the Special Priorities Assistance Program. After several

similar requests were received on this matter, Commerce held meetings with the contractor. The contractor was told to issue defense-rated orders in accordance with the regulations to available suppliers. If these orders were rejected, an assistance request could be submitted. As a result of this meeting, the number of requests submitted by this contractor greatly decreased.

--One Government official contacted another lower level official to get additional information on an assistance request and learned that he was not familiar with the regulations because he had not received training in the area, and he could not locate a copy of the regulations. Yet, this person was responsible for carrying out the Special Priorities Assistance Program in that organization.

Need for increased training for Systems users

Commerce and the agencies share in the responsibility of educating Systems users regarding their responsibilities and obligations under the Systems, Commerce having prime responsibility. We found few formal training programs given by either Commerce or the agencies. Commerce's training usually occurs when a critical problem warrants Commerce's intervention. Such training is based on the possibility that the contractor or supplier may be doing additional defense-related business with the Government. These officials stated that lack of funds and personnel prevented regular training programs for a wide segment of users.

Commerce also disseminates information on the use of the Systems through National Defense Executive Reserve meetings. These meetings include business leaders who, in event of mobilization, can be asked to perform various functions for the Government. Most of Commerce's regular training seminars are given through this medium.

Agencies are responsible for supplementing Commerce's education of contractors and suppliers on proper use of the Systems. Only one agency holds formal training sessions on a regular basis. This agency meets with each of its operating level representatives and its major prime contractors once a year to tell those who are new to the system what the regulations are and how they are to be used. Updated information is also given to those already familiar with the Systems. Other agency representatives told us that they hold training sessions on an exception basis and that they are usually held in conjunction with Commerce.

Regulations lack detailed instructions
on special priorities assistance

The regulations that were in force during our review did not contain any reference to special priorities assistance. The current regulations issued July 1974 contain a very brief reference to special priorities assistance. These documents do not explain what constitutes a true priorities problem; identify what actions are necessary before an assistance request is initiated; contain information on the importance of initiating such a request to allow sufficient time to resolve the matter; identify the determinations such as the actions required by the contractor or supplier; address the urgency of the material; or assess the latest date the materials could be received.

CHAPTER 4

AGENCY COMMENTS

We solicited comments on a draft of this report from the Departments of Commerce and Defense, the General Services Administration, and the Energy Research and Development Administration. Commerce and the agencies have generally agreed with our conclusions and have indicated they will act to carry out the recommendations. The following paragraphs summarize the major points made by each agency. The agencies' responses are included in appendixes I to IV.

DEPARTMENT OF COMMERCE

The Department of Commerce (see p. 28) stated that Commerce, "* * *generally concurs with the conclusions and recommendations reached in the draft report." The Commerce letter also stated they have taken the following actions to carry out our recommendations:

- Added a compliance officer to the OIM staff to insure the requirements of the delegations, regulations, and orders issued pursuant to the Defense Production Act are being met by all users and administrators of the Systems.
- Initiated an intensive training program on the proper use of assistance requests to be conducted with all Government agencies and industry representatives.
- Started a thorough screening of all assistance requests submitted to eliminate improper or unnecessary use.
- Prepared and issued a procedures manual which provides a step-by-step procedure for processing assistance requests. The regulations will be adjusted to provide a more extensive explanation of the Special Priorities Assistance Program.

Commerce questioned the data base we used as a sample. Our sample of 100 cases was drawn from the 1,547 cases forwarded to Commerce in fiscal year 1974. Early in the survey we found that the sample included both original and reworked or support cases. Because we wanted a sample of 100 different cases, the reworked or support cases were replaced. The replacement cases were selected randomly. Also, in some instances the original case was not in the sample but the reworked or support case was. For these, the original case was used, provided it was forwarded to Commerce in

fiscal year 1974. We discussed this method of sample selection with Commerce people, and they were satisfied with our explanation but did not wish to withdraw the comment.

GENERAL SERVICES ADMINISTRATION

The General Services Administration (see app. III) stated that actions already have been instituted in an effort to eliminate the misuse or abuse of the Defense Priorities and Materials Systems, including special priorities assistance procedures. General Services is attempting, with Commerce and other agencies, to more clearly identify and more effectively manage the essential elements of special priorities assistance.

General Services also commented on the relationship of our sample to the total number of defense-rated purchase orders issued. The sample is not intended to represent the universe of rated orders, but rather to represent the 1,547 assistance requests received by Commerce.

General Services believes our conclusion that only 20 percent of the assistance requests appeared to be valid and that the 50 percent compliance rate for the Federal directives which have been issued are mutually exclusive. The 20 percent figure refers to the percent of the 100 requests we believe were valid on the basis of existing information, and the 50 percent compliance rate refers only to the 96 Federal directives issued by Commerce.

DEPARTMENT OF DEFENSE

Defense generally agreed with our conclusions and recommendations. (See app. II.)

Defense has initiated several improvement actions including: (1) adding another staff member to the program development and management surveillance support of the Defense Priorities and Materials Systems and the Special Priorities Assistance Program, (2) conducting joint inter-agency efforts with the Federal Preparedness Agency and Commerce to improve the Systems and the Special Priorities Assistance Program operations, (3) updating policy and procedural guidance to components and reemphasizing the need to report all violations of the Systems to Commerce, (4) reviewing the Special Priorities Assistance Program processing levels and reducing them where possible, and (5) conducting training programs with the Bureau of Domestic Commerce to improve Defense personnel's understanding of the Systems.

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

The Energy Research and Development Administration concurred with the general conclusion that the overall operational effectiveness of the Special Priorities Assistance Program could be increased. (See app. IV.)

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

We believe some form of priorities and allocations system is necessary to insure availability of resources and materials for essential defense and nondefense programs of vital national interest. There is a need to improve the management of the Special Priorities Assistance Program to meet the objectives of the Defense Priorities and Materials Systems.

The program was not adequately enforced, did not always work when used, and was often used where it did not apply. Special priorities assistance should only be requested to obtain urgently needed materials for essential programs of vital national interest. A concerted effort should be undertaken to insure that Federal agencies and industry fully understand when to use and not to use assistance requests. Program effectiveness could be greatly improved if requests were only made for actual priorities problems.

Contractors should comply with properly issued Federal directives and Commerce should enforce its basic regulations on the Defense Priorities and Materials Systems. A Federal directive should be issued only when assistance is necessary to obtain materials urgently needed for an important defense-related program. Appropriate action should be taken against all violators so that the Government's ability to insure timely material deliveries will not be compromised. The self-policing manner in which the Systems' procedures are presently enforced and the numerous violations of Federal directives impair the Government's ability to insure timely material deliveries for defense-related programs.

Because Commerce has experienced problems in enforcing Federal directives, we believe that the process could be improved by providing Commerce with the authority to administratively assess and collect civil money penalties, subject to judicial review, for directive violations. This administrative remedy could supplement the criminal penalty now available. If penalties were assessed in this manner, we believe it would have a remedial effect on the suppliers and contractors involved.

Because the success of the program depends on prompt action, it is essential that assistance requests be initiated quickly and accurately. Timely processing of requests helps the delivery of the desired materials by the

required date. Excessive administrative processing levels cause diffusion of authority and responsibility and greatly delay final resolution. The present inefficient processing procedures and failure of some Government officials to use their full authority to resolve priorities problems should be corrected. If this were done, Commerce could redirect staff resources from processing assistance requests to compliance and enforcement activities. The number of such requests would drop, more timely processing would result, and when Federal directives are issued, compliance would be more certain.

The Defense Priorities and Materials Systems have not been effectively carried out because some agency officials, Government contractors, and suppliers do not understand the Systems. This lack of understanding caused heavy reliance on the use of assistance requests to resolve problems when proper application of the regulations or proper procurement practices could have resolved them. It also casts doubt on the readiness of the Systems' mobilization function. Although private industry will try to meet the Nation's defense needs in a national emergency, we believe their efforts can be more effective if a smooth functioning and well-policed priorities and allocation system is in use.

Commerce is responsible for providing guidance to industry and Government agencies regarding the proper use of assistance requests. The inappropriate uses and problems identified in this report indicate that more could be done by Commerce to insure its proper use. There is a need to include in the regulations additional information on assistance requests to insure that agencies and industry are better informed on its use.

RECOMMENDATIONS

We recommend that the Secretary of Commerce

- obtain compliance with Federal directives and enforce Defense Priorities and Defense Materials Systems procedures by closely monitoring delivery requirements and taking appropriate actions against violators,
- eliminate unnecessary or improper use of special priorities assistance requests through more careful review and screening when these requests are received,

- emphasize that the agencies have authority for resolving priorities problems by exercising all necessary action before forwarding requests to Commerce,
- insure that one organizational unit has full authority and responsibility for complete processing of requests and issuances of Federal directives, to provide more responsive request processing,
- work more closely with industry to insure better understanding of the Special Priorities Assistance Program, and
- include in the instructions on Defense Priorities and Materials Systems additional information on requests so that agencies and industry are better informed on its proper use.

We recommend that the Secretary of Defense; Administrator, General Services Administration; and Administrator, Energy Research and Development Administration

- fully use their authority and require thorough attempts to resolve assistance requests at all levels and eliminate requests which are not true priorities problems,
- reduce the number of the assistance request processing levels,
- report all violations of the Defense Priorities and Materials Systems to Commerce,
- complement Commerce efforts to improve industry's understanding of the Defense Priorities and Materials Systems, particularly regarding the special priorities assistance functions.

MATTERS FOR CONSIDERATION BY THE CONGRESS

We recommend that the Congress amend the criminal penalty provisions of the Defense Production Act, to provide additional authority for the administrative assessment and collection of civil money penalties, subject to judicial review, in the event Federal directives are not complied with. Such money penalties could be assessed in lieu of, or in conjunction with, the existing criminal penalties depending on individual case circumstances. Further, the assessment of civil money penalties should consider such factors as the firm's financial condition, size, assets, etc., to maintain fairness so that the penalty will hurt without destroying the penalized firm.

CHAPTER 6

SCOPE OF REVIEW

We reviewed the use and effectiveness of the Special Priorities Assistance Program to determine whether the regulation's goals and procedures were being achieved. We reviewed the administrative processing policies and procedures for special priorities assistance at Commerce and the Government agencies involved in the program. Most of our work was conducted at the headquarters levels of these agencies. Field visits and telephone contacts were made to selected activities of these agencies and to a defense contractor and supplier to obtain additional information and divergent views on the program.

Our review centered on a statistically valid random sample of 100 of the 1,547 assistance requests received by Commerce during fiscal year 1974. We centered our work only on the requests sent to Commerce because they were supposed to be the most urgent or the hardest to resolve. We reviewed documents, records, and files regarding these requests and held discussions with cognizant officials of the Government agencies involved in their initiation, processing, and resolution.

The requests in our sample involved materials costing \$9 million for programs valued at about \$4 billion, including some military programs with high national priority (TRIDENT submarine, MINUTEMAN intercontinental ballistic missile system, and M-60 tank program). Items for less critical programs, such as interior latex paint, were also included.

About 73 percent involved suppliers who had accepted purchase orders but could not or would not meet the agency or contractor's requested delivery date or deliver the amount specified. The remaining 27 percent involved contracts or purchase orders that were refused by suppliers.



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

November 5, 1975

Mr. Victor L. Lowe
Director, General Government Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Lowe:

This is in reply to your letter of October 15, 1975, requesting comments on the draft report entitled "Increased Effectiveness Possible In The Special Priorities Assistance Program."

We have reviewed the enclosed comments of the Assistant Secretary for Domestic and International Business and believe they are responsive to the matters discussed in the report.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy W. Chamberlin, Jr.", written over the typed name.

Guy W. Chamberlin, Jr.
Acting Assistant Secretary
for Administration

Enclosure





UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Domestic
and International Business
Washington, D.C. 20230

OCT 31 1975

Mr. Victor L. Lowe
Director
General Government Division
U.S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Lowe:

In response to your October 15, 1975 letter enclosing a draft proposed report to the Congress on improving the effectiveness of the Special Priorities Assistance Program, the following comments are forwarded. We are limiting our comments to those recommendations and certain specific findings pertaining to the Department of Commerce.

Introduction

Title I of the Defense Production Act of 1950 authorizes the President to (1) require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

Executive Order 10480 provides for the delegation of these Title I authorities to the Director of the Federal Preparedness Agency (formerly the Office of Emergency Planning) and for redelegation to (1) The Secretary of the Interior with respect to petroleum, gas, solid fuels and electric power; (2) The Secretary of Agriculture with respect to food and with respect to the domestic distribution of farm equipment and commercial fertilizer; (3) The Commissioner of the Interstate Commerce Commission with respect to domestic transportation, storage, and port facilities, or the use thereof, but excluding air transport, coastwise, intercoastal, and overseas shipping; (4) The Secretary of Commerce with respect to all other materials and facilities. Defense Mobilization Order

(DMO)-3 (formerly DMO-8400.1) accomplishes the redelegation as provided for in Executive Order 10480.

The Department of Commerce administers the Title I priorities and allocation functions through a body of regulations, orders, and delegations known as the Defense Priorities System (DPS) and the Defense Materials System (DMS). This body of regulations, orders, and procedures is designed to accomplish two main purposes. First, it is a means of directing the flow of materials and products to the Nation's military, atomic energy, and space, production, construction, and research and development programs. The Defense Priorities System and the Defense Materials System help ensure that defense programs are maintained on schedule by providing a priority for the purchase of materials by contractors, subcontractors and their suppliers. Second, the operation of the Systems results in the maintenance of an administrative means of promptly mobilizing the total economic resources of the country in the event of a national emergency.

Comments

This Department generally concurs with the conclusions and recommendations reached in the draft report. Many similar conclusions were reached in a study initiated by the new management of the Bureau of Domestic Commerce (BDC) in January 1975 and conducted by the Office of Management and Systems, Domestic and International Business Administration; thus we were cognizant of the types of problems discussed in your draft report. The resources to resolve these problems have been committed and new management in the operating area for the Defense Priorities System, Defense Materials System and the Special Priorities Assistance Program has been given full authority and responsibility to modify and rebuild the operations within the Department as well as assisting in the efforts in other Government agencies. Careful monitoring of the System has been initiated to avoid misuse of the System. Training to inform the users of the System of appropriate procedures and appropriate application of the System is also being instituted.

It should be noted, however, that in concurring with the conclusions and recommendations of the report, we do not necessarily agree with the material in the body of the report. In the time available to us to analyze the draft, we have found serious allegations not supported by facts available to us, technical errors, and statements which, through their

emphasis, distort the operation and use of the System. We have discussed a sampling of these problems later in these comments, but cannot fully explore them without reviewing the substantiating data which were used to prepare the document. For example, we find that data from cases other than those on the list of 100 available to us were used in the report. If more than 100 cases were included in your statistically valid sample, it would appear that the statistics could be inaccurate.

We believe that we should review all the data used in the report with the persons who prepared the document prior to its public issuance.

Our comments related to each of the recommendations contained in the draft proposed report which were addressed to the Secretary of Commerce are as follows:

- obtain compliance with Federal directives and enforce Defense Priorities and Defense Materials Systems procedures by closely monitoring delivery requirements and taking appropriate actions against violators,

A Compliance Officer has been added to the staff of the Office of Industrial Mobilization (OIM), the operating area for the System, in order to ensure that the requirements of the delegations, regulations, and orders issued pursuant to the Defense Production Act are being met by all users and administrators of the System. The compliance function is now a quality control as well as an enforcement function for the System. The Compliance Officer will maintain contact with involved Government agencies to ensure that each agency fulfills its obligations under the System. He will also participate in the training of industry users to help assure compliance and to reduce the number of unnecessary requests for assistance. In addition, actions taken by BDC to obtain timely material deliveries for defense contractors are being monitored to ensure that suppliers are complying with these actions. In the first quarter of FY 1976, companies were obligated to make shipments as a result of 164 actions (Directives or letters of understanding)

taken by the Office of Industrial Mobilization. In 74 percent of those cases shipment was made ahead of time, on time, or within one week of the date specified. In 20 percent of the cases shipment was delayed up to two weeks for valid reasons and six percent were delayed for more than two weeks for similarly valid reasons. All required shipments for the first quarter have been made. Finally, discussions have been held between the Department of Commerce, the Department of Defense (DOD) and the Federal Preparedness Agency (FPA) to develop additional data feedback systems which will further monitor certain aspects of the System.

- eliminate unnecessary or improper use of special priorities assistance through more careful review and screening when requests are received,

An intensive training program on the proper use of special priorities assistance conducted with all Government agencies and industry representatives will eliminate unnecessary and improper use of the System. In addition, a thorough screening procedure has been adopted to review each request for priorities assistance submitted to BDC and is part of our new processing procedure.

- emphasize that the agencies have authority for resolving special priorities assistance requests by exercising all necessary action before forwarding requests to Commerce,

The Department will emphasize to all Government agencies participating in the administration of the Special Priorities Assistance Program each agency's authority for resolving special assistance requests. The Bureau has prepared and issued a procedures manual entitled "Bureau of Domestic Commerce, Industrial Mobilization Responsibilities and Procedures Manual," which provides a step-by-step procedure for processing requests for priorities assistance within BDC. We are recommending the adoption by other Government agencies of the basic processing procedures contained in this manual to assist them in using their authorities.

- insure that one organizational unit has full authority and responsibility for complete processing of requests and issuances of Federal directives, to provide more responsive special priorities assistance requests processing,

The Bureau of Domestic Commerce has full authority and responsibility for the Special Priorities Assistance Program. This authority has been assigned to the Office of Industrial Mobilization (OIM). The Office of Business Research and Analysis (OBRA), composed of industry analysts with knowledge of industry and manufacturing techniques, supports OIM in the processing of these requests for assistance. This industry orientation has been found to be essential in resolving many of the requests that have been forwarded to BDC. We anticipate that this background will be even more important in the future as the Defense agencies resolve more of their own requests and forward only the appropriate problems to the Bureau. This is particularly pertinent in peacetime to assure minimum impact to industry.

The procedures manual discussed above will provide better management control of the processing of the requests and lead to consistent, well-reasoned actions in resolving the requests.

- work more closely with industry to assure better understanding of the program,

The Bureau of Domestic Commerce will conduct extensive training of industry representatives to assure better understanding of the Defense Priorities System regulations and the Special Priorities Assistance Program. Currently the Bureau is planning a series of training sessions from January through June 1976 in conjunction with its training of the National Defense Executive Reservists. In addition, the DOD and BDC are planning joint training programs during the same period.

--include in the instructions on Defense Priorities and Defense Materials Systems additional information on special priorities assistance so that agencies and industry are better informed on its proper use,

The DMS and DPS regulations are currently being reviewed to provide greater control over the use of priority ratings. The regulations will also be adjusted to provide a more extensive explanation of the Special Priorities Assistance Program.

While the Department generally agrees with the recommendations of the draft report the following comments relate to specific GAO findings:

GAO found that--

[See GAO note.]

--most priorities assistance actions were not properly justified,

GAO note: Material deleted from this letter concerns matters included in the draft report which have been revised in the final report.

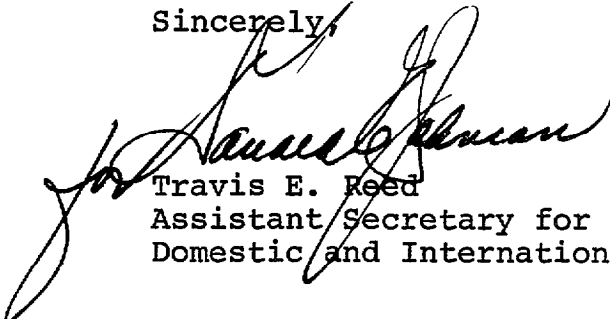
-some were for low priority items such as latex paint and plastic hammer handles.

The proposed report does not show that BDC returned many cases to the various claimant agencies, including those for plastic hammer handles, as not being eligible for special priorities assistance. In addition, BDC has issued to DOD, the Energy Research and Development Administration, and the General Services Administration proposed revised delegations which restrict the use of priority ratings for common use items.

We have noted with interest the recommendation that Congress consider amending the criminal penalty provisions of the Defense Production Act to provide additional authority for the administrative assessment and collection of civil money, penalties, subject to judicial review, in the event Federal directives are not complied with. While our initial reaction to this recommendation is positive, we wish to reserve any further comments until we can review any proposed legislation considered by Congress to expand the penalty provisions of the Defense Production Act.

We appreciate the opportunity to comment on the draft proposed report and look forward to further discussions.

Sincerely,



Travis E. Reed
Assistant Secretary for
Domestic and International Business



ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

2 DEC 1975

INSTALLATIONS AND LOGISTICS

Mr. R. W. Gutmann
Director, Procurement & Systems
Acquisition Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Gutmann,

This is in response to your letter of October 10, 1975 to the Secretary of Defense requesting comments on your draft report to the Congress entitled "Increased Effectiveness Possible in the Special Priorities Assistance (SPA) Program" (GAO Code 950195; OSD Case Number 4187).

The Department of Defense (DoD) considers that the GAO has conducted a timely and useful survey of the SPA system and procedures. We are in general agreement with conclusions reached and recommendations made in the draft report concerning actions that should be taken by the sponsoring agencies, including the DoD, toward achieving better management of the SPA program.

It is difficult, however, to provide a meaningful point-by-point assessment of the report in the time permitted because of its general nature, and because the specific substantive information developed by the GAO in their evaluation was not available to us. Accordingly, while we generally concur with the conclusions and recommendations made in the draft GAO report, we do not necessarily agree with all of the information reflected in it. Also, there are a number of statements which are subjective and judgemental in nature which we were unable to address in the absence of the analytical data from which they were derived. Nevertheless, the principles set forth in the recommendations are essentially sound and we will embody them wherever possible toward meeting the objective of improving the management and operations of our SPA program. Specific comments concerning the draft report are attached.

Let me reiterate that DoD has found the Defense Materials System (DMS), the Defense Priorities System (DPS), and particularly the SPA program, to be absolutely essential to assuring timely acceptance and deliveries of

BEST DOCUMENT AVAILABLE

APPENDIX II

APPENDIX II

our contracts and orders in peacetime as they have proved to be during national emergencies.

We appreciate the opportunity to comment on the report and believe that it will assist in the improvement of DoD participation in the SPA program.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Bennett". The signature is fluid and cursive, with a large initial "J" and "B".

JOHN J. BENNETT
Acting Assistant Secretary of Defense
(Installations and Logistics)

COMMENTS ON GAO DRAFT REPORTBACKGROUND

The following background statement is furnished to set the timeframe of the report in the proper perspective. During the Fiscal Year 1974 the industrial world experienced many changes that had little or no precedent, particularly in peacetime. It was a period of great inflation, total demand, an oil embargo, major shortages of a wide spectrum of materials, continued erosion of the industrial base, the impact of high foreign demand for U.S. industrial products, and many other unusual and disruptive conditions.

In most instances, our defense orders were accepted, but because of the types of economic conditions prevailing, many supply sources throughout industry would not quote prices to their customers until time of delivery of needed items. Difficulties were experienced in placing and obtaining acceptance of defense orders in many segments of industry, particularly in commodity areas where suppliers had little or recent occasion to be aware of the existence of priority rated orders or of any significant impact of these orders on their normal ways of doing business. Many producers and suppliers were not interested in accepting rated orders due to more attractive market place considerations.

As mentioned in your report, there had been much concern over materials shortages. The shortage and high cost of petroleum resulted in shortages of industrial chemicals such as ethelene oxide, toluene and benzene. The lack of these fuel stocks in turn caused cutbacks in production of synthetic fibers and textiles and severely restricted the production of plastics such as neoprene and polyvinyl chloride. The short supply of most metals similarly caused significant escalations of lead times and other shortages and caused the list of long lead time items to grow rapidly. Many other chemicals and materials shortages had similar sequential impacts. Some of these materials are not subject to the Bureau of Domestic Commerce (BDC) priorities system.

There was little or no previous government and industry experience with the rapidly increasing lead times that were forcefully becoming evident. Early or late DoD and industry procurement placement in many instances, therefore, was a relative phenomenon, frequently depending on when the assessment of timeliness was taken.

Your report observed the increase in cases processed by the sponsoring agencies to the BDC from 491 in FY 1973 to 1547 in FY 1974. It took about 152 man-years to process about 4200 identifiable SPA cases originating from DoD, GSA, ERDA activities and their contractors, suppliers and vendors during FY 1974. This processing resulted in 1547 cases being sponsored to BDC for appropriate action. By way of comparison, in 1970 when the DoD was fully manned with people having considerable knowledge and working experience in the DMS and DPS gained from handling SPA program activities during the Vietnam

conflict, the DoD spent 203 man-years processing SPA actions that resulted in 474 residual cases being sent to BDC for appropriate action.

In FY 1974, a year of extreme shortage when lead times trebled, the DoD SPA case load processed to BDC also approximately trebled between FY 1973 and FY 1974 and it was done with about half as many SPA program people as we had in 1970. As noted by the GAO, the DoD experienced a very rapid and unexpected turnover of its experienced priorities system personnel at all levels immediately before and during the time covered by the study. We also found this situation in industry.

DOD IMPROVEMENT ACTION AND GOALS

Following oral briefings by the GAO in the results of the SPA, the Military Departments and the Defense Supply Agency (DSA) started to assess their individual SPA program operations. These DoD components also were informed by this office of the results of the study and applicable actions to correct such deficiencies. We have also requested each of them to review the SPA operations and make immediate adjustments where necessary, particularly in the light of the oral briefings and the narrative statement on the SPA study presented before the Joint Committee on Defense Production earlier this year. The written GAO draft report of October 10, 1975 on the SPA study also has been furnished to the above DoD components.

We have increased the Office, Secretary of Defense program development and management surveillance support of the DMS, DPS and SPA by adding another staff officer to this effort.

We are actively participating in joint interagency efforts with the Federal Preparedness Agency (FPA) and BDC to improve DMS/DPS and SPA operations, and have so advised the Joint Committee on Defense Production. Among the programs pertinent to the GAO study which have been identified for further inter-agency review and action are:

- Refine, clarify and make regulations, orders and other basic guidance more precise.
- Formulate new Special Assistance Process.
- Review concepts, techniques, responsibilities, staffing requirements and criteria for compliance and enforcement.
- Substantive management data collection and feedback.
- Training and education.

These highlight some of the more important broad action areas. They may be expected to undergo further refinement and change as specific agency responsibilities are further defined and targeted. Although SPA program

improvement will be a continuing effort, it should be noted that significant policy and procedural changes are being promulgated as a result of the issuance of Defense Mobilization Order 1-12 by the FPA, the expected future issuance of an updated implementing delegation of priorities authority by BDC to the DoD, and other concurrent actions affecting the priorities system.

Among some of our own immediate DoD SPA improvement goals are revitalization of DoD priorities system cadres, updating of policy and procedural guidance as it is issued by the control agencies (FPA, BDC), establishing more effective means to police DoD participation in the system, eliminating abuses that are found to be within our own authority or refer those that are not to BDC for appropriate action, and highlight situations that may require system modification.

COMMENT ON GAO RECOMMENDATIONS

The DoD takes the following position with respect to each of the four recommendations addressed in the draft report by the GAO to the DoD, GSA, and ERDA, that these agencies should:

- Fully utilize their authority and require thorough attempts to resolve requests at all levels and eliminate requests which are not true priorities problems.

DoD Position. Concur. It is considered important that the DoD authority to resolve SPA cases be fully understood. In most instances, valid SPA cases usually involve shortfalls in delivery or bottlenecks of other kinds which occur down the subcontract chain and involve companies not contractually responsible to the DoD procuring activity. Because the DoD contracting activity has no privity in the contractual relationship between a prime contractor and its subcontractors and suppliers, the authority of the DoD contracting activity to require the subcontractors or suppliers to accept such contracts or orders and to adjust production and delivery schedules is limited by the parameters of the delegation of authority from BDC to DoD as described below.

BDC regulations require industry to accept rated orders according to the date received and if possible, to deliver in accordance with the customer's specified delivery date. In scheduling production accordingly, the producers may produce some items of a less critical nature in advance or excess of requirements, while more critical items, ordered subsequently, may remain in short supply.

Diversion of deliveries of completed items will often relieve temporary shortages for some defense contractors and suppliers but the more serious problems affecting critical items must be resolved at the production scheduling level, prior to production. While the DoD has been delegated authority to divert or reschedule deliveries of finished items in a few authorized program areas ("A" products) we do not have the authority to rearrange the production schedules of an industrial plant to resolve

conflicting orders which have been established in accord with BDC regulations. Only BDC has the authority to change production schedules which require deviation from the rules for acceptance of orders and delivery sequence. Also, the DoD elements may request, but not compel a private contractor to produce his plant order board to determine if it follows BDC regulations and orders and to determine the nature of conflicting orders, if any. Again, only BDC can require this.

These restrictions on scheduling apply to negotiations by the DoD operating elements to rearrange rated production to accelerate deliveries on orders placed by their contractors; the normal customer-supplier relationship between a DoD procuring activity and its own prime contractors for its own orders is not affected.

Within this parameter, DoD components have the responsibility, as differentiated from authority, to investigate an SPA action, assure that the information certified by the applicant under BDC regulations is complete and accurate, that all possible action has been taken to eliminate requests which are not true priorities problems and to assure that all available resources at each level of the processing chain have been used to resolve the problem which generated the request for SPA. Within these limits of the authority delegated to the DoD, we will continue to use our authority vigorously.

- Reduce the number of special priorities assistance processing levels.

DoD Position. Concur. DoD elements are being requested to review the SPA processing levels and to reduce them where possible.

- Report all violations of the DMS and DPS to Commerce.

DoD Position. Concur. A significant proportion of SPA actions involve problems which are compliance matters. DoD sponsoring agencies forward these cases directly to BDC as part of normal processing activity. Those SPA cases involving other, more severe types of non-compliance properly are referred by the DoD department or agency to this office for referral to BDC for appropriate enforcement action. This aspect of compliance is being reemphasized to our sponsoring agencies by this office.

- Complement Commerce efforts to improve industry understanding of the DPS and DMS, particularly regarding SPA functions.

DoD Position. Concur. DoD and BDC are making plans to conduct joint training programs during the first part of 1977. Since improving industry understanding of the priorities system also requires strengthening the understanding and capabilities of DoD personnel manning SPA activities and who are in daily contact with industry and the SPA program, we have inventoried formal training curricula at DoD schools with the objective of strengthening existing courses having DMS/DPS content as well as

developing new courses and emphases as necessary. This will be in addition to internal cadre improvement actions taken by the individual sponsoring DoD agencies.

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



NOV 17 1975

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, DC 20548

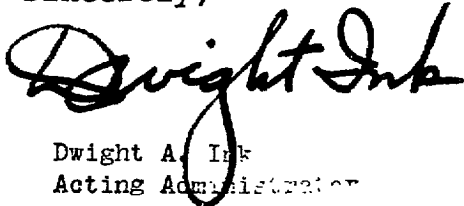
Dear Mr. Staats:

Thank you for the opportunity to review your October 10, 1975, draft of a proposed report to Congress entitled "Increased Effectiveness Possible in the Special Priorities Assistance Program." The details contained in this report provide helpful amplification of the testimony offered by the General Accounting Office in the May 1975 hearings conducted by Senator Proxmire of the Joint Committee on Defense Production on Title I of the Defense Production Act.

Actions based on these hearings already have been instituted in an effort to eliminate the misuse or abuse of the Defense Materials System and Defense Priorities System, including special assistance procedures.

Our comments on the proposed report are presented in two parts in the enclosure. We offer general observations regarding the rationale underlying the report, and follow with comments keyed to specific pages in the report.

Sincerely,


Dwight A. Ink
Acting Administrator

Enclosure

Keep Freedom in Your Future With U.S. Savings Bonds

Comments on GAO Report on
The Special Assistance Program
October 10, 1975

1. General observations.

a. There is no Special Priorities Assistance Program per se; rather this type of assistance is a feature of the DMS and DPS. Consequently, of the millions of rated orders, the special assistance cases reflect only those difficult ones of non-compliance. The true facts of non-compliance are therefore greatly exaggerated in the report. Rather than 73 out of 100 cases, the true relationship is 73 out of millions; i.e., not 73% but a small fraction of a percent.

b. The study uses the same data (i.e., the 100 cases) to make its point of non-compliance and also its case of unjustified assistance actions. The review and rejection of invalid cases is a proper role of the administering agency. You cannot reasonably argue, on the one hand, that only 20% of the special assistance requests appeared valid (page 8) and, on the other, that the 27 cases enforced by Commerce constituted only 50% compliance (page 7). Without a correlation of the actual cases GAO studied, it would appear that Commerce enforced all 20 valid cases and 7 additional with which the reviewers do not agree, i.e., on the face of it an over-enforcement (100% of valid requests and 7 others as well).

[See GAO note.]

[See GAO note.]

n. page 22, top of page. Observation: a delivery delay may not be a deliberate violation of an order and therefore subject to criminal penalties. The proposal on administrative penalties is a good one.

[See GAO note.]

p. page 26, re. regulations for special assistance cases. Special assistance, as the name implies, is "an exception to the system," not the entire system. We are, however, attempting with the participation of the Department of Commerce and other agencies, to more clearly identify and more effectively manage the essential elements of special assistance.

[See GAO note.]

GAO note: Material deleted from this letter concerns matters included in the draft report which have been revised in the final report or discussed and satisfactorily explained to agency officials.

r. page 28. We agree with the recommendation that Commerce and other resource agencies using Title I authorities should have the authority to administratively assess and collect civil penalties. This could become a very useful tool in administering the DMS and may be more effective than the present system of criminal penalties.

Federal Preparedness Agency
General Services Administration
October 28, 1975



UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

NOV 13 1975

Mr. Henry Eschwege, Director
Resources and Economics Development Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

We concur with the general conclusion of the GAO draft report "Increased Effectiveness Possible in the Special Priorities Assistance Program." The effectiveness of the overall operation of the program could be increased. We do not believe, however, that the GAO draft report gives adequate recognition to ERDA's Special Priorities Assistance Program. The information collected for the draft report demonstrates that the ERDA program is in compliance with the appropriate statutes and regulations and is effective in the resolution of problems on rated orders with suppliers. This is evidenced by the data on Page 17 of the draft report in which ERDA attained the highest percentage of resolved requests in a favorable average processing time.

With reference to the specific recommendations in the GAO draft report directed to ERDA, each of the actions recommended has been and continues to be standard procedure in the management of the program within ERDA. Comments on each of these recommendations are as follows:

1. Fully utilize their authority and require thorough attempts to resolve requests at all levels and eliminate requests which are not true priorities problems.

Comment: The authority vested in ERDA is fully utilized to resolve requests. This is evidenced by the degree of success, 86 percent, in the resolution of problems by ERDA.

2. Reduce the number of special priorities assistance processing levels.

Comment: ERDA, for the past several years, has had only two processing levels; an initial receipt level, usually an ERDA contractor having direct contact with industry, and a headquarters level where authority and responsibility are concentrated. This system is commented upon favorably on Page 17 in the draft report, although it is not identified with ERDA.



Mr. Henry Eschwege

3. Report all violations of the Defense Priorities and Materials Systems to Commerce.

Comment: ERDA has been in compliance with this recommendation. Late delivery problems or refusals to accept rated orders that cannot be resolved by ERDA are referred to the Department of Commerce for appropriate action.

4. Complement Commerce efforts to improve industry understanding of the program.

Comment: ERDA holds formal training sessions on a regular basis for operating level personnel and prime contractors as a refresher for those familiar with the system and to train those who are new to the system. Department of Commerce personnel qualified in the Defense Priorities and Defense Materials Systems usually participate in the training sessions. ERDA also participates in Commerce's National Defense Executive Reserve training seminars. Also, in conjunction with the resolution of problems with suppliers, every effort is made to insure that these suppliers are acquainted with the system and an understanding of its workings.

The report does not include enough information about the proposed authority to use civil money penalties instead of criminal penalties for failure to comply with appropriate requirements. It is not clear to us that the use of civil money penalties would, in fact, make the program more effective.

Sincerely,


M. C. Greer
Controller

PRINCIPAL OFFICIALS RESPONSIBLE FOR
ACTIVITIES DISCUSSED IN THIS REPORT

Tenure of office
From To

DEPARTMENT OF COMMERCE

SECRETARY OF COMMERCE:

Elliot L. Richardson	Feb. 1976	Present
Rogers C. B. Morton	May 1975	Feb. 1976
John K. Tabor (acting)	Mar. 1975	Apr. 1975
Frederick B. Dent	Feb. 1973	Mar. 1975

DEPARTMENT OF DEFENSE

SECRETARY OF DEFENSE:

Donald H. Rumsfeld	Nov. 1975	Present
James H. Schlesinger	June 1973	Nov. 1975

DEPARTMENT OF THE AIR FORCE

SECRETARY OF THE AIR FORCE:

Thomas C. Reed	Jan. 1976	Present
John L. McLucas	July 1973	Nov. 1975

DEPARTMENT OF THE ARMY

SECRETARY OF THE ARMY:

Martin R. Hoffmann	Aug. 1975	Present
Howard Callaway	May 1973	July 1975

DEPARTMENT OF THE NAVY

SECRETARY OF THE NAVY:

J. William Middendorf, II	Apr. 1974	Present
John W. Warner	May 1972	Apr. 1974

<u>Tenure of office</u>	
<u>From</u>	<u>To</u>

ATOMIC ENERGY COMMISSION (note a)

CHAIRMAN:

Dixie Lee Ray	Feb. 1973	Jan. 1975
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ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

ADMINISTRATOR:

Robert C. Seamans	Jan. 1975	Present
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GENERAL SERVICES ADMINISTRATION

ADMINISTRATOR:

Jack Eckerd	Nov. 1975	Present
Dwight A. Ink (acting)	Oct. 1975	Nov. 1975
Arthur F. Sampson	June 1972	Oct. 1975

a/Effective January 19, 1975, the Atomic Energy Commission was reorganized and the responsibilities for activities discussed in this report were assumed by the Energy Research and Development Administration.

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