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Follow-on Evaluation of the Defense Protective Service

Report Number IPO2004E001 February 18, 2004

Office of the Inspector General of the Department of Defense

Additional Information and Copies

The Office of the Deputy Assistant Inspector General for Investigative Policy and Oversight, Office of the Assistant Inspector General for Inspections and Policy, DoD, prepared this report. If you have questions on the evaluation or to obtain additional copies of the report, contact Mr. Scott Russell, at (703) 604-8718 (DSN 664-8718).

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Acronyms

ACPD	Arlington County Police Department
AT/FP	Antiterrorism Force Protection
CALEA	Commission on Accreditation for Law Enforcement Agencies, Inc.
CI/IAD	Criminal Investigations and Internal Affairs Directorate
DCIOs	Defense Criminal Investigative Organizations
DCIS	Defense Criminal Investigative Service
DPS	Defense Protective Service
DEA	Drug Enforcement Administration
DPAS	Defense Property Accountability System
ERT	Emergency Response Team
GSA	General Services Administration
IA	Internal Affairs
ICE	Interactive Customer Evaluation
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NCIC	National Crime Information Center
NCIS	Naval Criminal Investigative Service
NCR	National Capital Region
OGC	Office of General Counsel
OIG	Office of the Inspector General
OPM	Office of Personnel Management
PFPA	Pentagon Force Protection Agency
PM	Property Management Branch
PSU	Protective Services Unit
RE&F	Real Estate & Facilities
SOP	Standard Operating Procedure
USACIDC	United States Army Criminal Investigation Command
USC	United States Code
WHS	Washington Headquarters Services

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FEB 18 2004

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
GENERAL COUNSEL, DEPARTMENT OF DEFENSE

SUBJECT: Follow-on Evaluation of the Defense Protective Service (Report No. IPO2004E001)

This report is provided for your review and comment. Comments that we received on the draft report are addressed in this final report and are included as Appendix F.

The Under Secretary of Defense for Intelligence, and the General Counsel, Department of Defense, concurred with the draft report. The Director, Administration and Management, concurred in part and nonconcurred in part. Most significantly, the Director disagreed that his operational practice allowing police officers to carry their service weapons to and from work and store them in their homes was contrary to DoD policy and statutory requirements. The Director also disagreed with our assessment that the memorandum of understanding executed with the County Board of Arlington County, Virginia, might not be legally sufficient. Furthermore, although not specifically nonconcurring, the Director did not commit to amending the current policy that strongly encourages his officers to intercede in certain civilian matters. For the reasons set forth in detail in this final report, we cannot accept the bases for the Director's nonconcurrences and unwillingness to commit to the further policy revisions needed. The Director should reconsider these positions based on the facts and considerations in this final report, and submit final management comments on the final report. We should receive these comments no later than April 30, 2004.

Comments on the final report should conform to the requirements in DoD Directive 7650.3. The audit resolution procedures in DoD Directive 7650.3 will generally govern any nonconcurrence that continues. In accordance with these procedures, any disputed finding or recommendation that cannot be resolved at lower levels will be referred to the Deputy Secretary of Defense for policy decision.

We appreciate the courtesies extended to the evaluation staff. For additional information on this report, please contact Mr. Scott Russell, Project Manager, at (703) 604-8718 (commercial), 664-8718 (DSN), or srussell@dodig.osd.mil (e-mail). You may also contact Mr. John Perryman, Director of Oversight, at (703) 604-8765 (commercial), 664-8765 (DSN), or jperryman@dodig.osd.mil (e-mail).

James L. Pavlik
Director
Investigative Policy and Oversight

Attachment: Follow-on Evaluation of the Defense Protective Service (Final Report)

Office of the Inspector General of the Department of Defense

Project No. 2002C002 **February 18, 2004**

Final Report
Follow-on Evaluation of the Defense Protective Service

Executive Summary

Who Should Read This Report and Why? Members of Congress; the Under Secretary of Defense for Intelligence; the Director, Administration and Management; personnel responsible for managing security at DoD facilities in the National Capital Region; and agencies that work with the Pentagon Force Protection Agency (PFPA) should be interested in the issues discussed in this report.

Background. In 1997 and 1998, at congressional request,[1] we evaluated the overall effectiveness and efficiency of the Defense Protective Service (DPS)[2] in accomplishing its law enforcement mission. Our resulting report, "Evaluation of the Defense Protective Service," May 14, 1999, included 27 recommendations regarding roles and responsibilities, organization and management, personnel, operations, and operations support. This follow-on evaluation reviewed progress made toward implementing our recommendations.

At the request of Senator Charles E. Grassley, Ranking Member, U.S. Senate Committee on Finance, we expanded the follow-on evaluation that we had planned to include: an examination of DPS background check procedures and policies; National Crime Information Center (NCIC) checks for DPS officers hired since 1998, and private security guards employed at DoD sites under DPS cognizance; accountability of DPS weapons; and a determination of whether any missing DPS weapon had been used in a crime.

Results. Of the 27 recommendations, the Chief, DPS, fully implemented only five. Another was resolved without implementation. One of the five recommendations that were implemented resulted in a significant pay increase for DPS police officers. We identified problems related to implementation of the remaining 21 recommendations, some of which are critical to effective law enforcement operations. These included evidence accountability and weapons management (although we accounted for 100 percent of the current DPS weapons inventory).

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[1] The Chairman, Subcommittee on Military Readiness, Committee on National Security, U.S. House of Representatives, requested the evaluation.

[2] At the time of our initial evaluation, DPS operated as a separate organizational entity under the direction and control of the Director, Administration and Management. In 2002, DoD created the Pentagon Force Protection Agency (PFPA), under the direction and control of the Director, Administration and Management. DPS was subsumed into PFPA. The DPS Operations Division (police operations) continued as DPS under PFPA. Recently, DPS was renamed the Pentagon Police Department (PPD). All references to DPS in this report apply to the new PPD.

In responding to Senator Grassley's concerns, no current or former DPS officer had a disqualifying criminal conviction, and we did not identify a current problem with DPS hiring practices; however, two private security guards under DPS cognizance had disqualifying criminal convictions. Additionally, two stolen DPS weapons were recovered during civilian police drug investigations.

Since the terrorists attack on the Pentagon in September 2001, DPS officers have stored their assigned Government weapons at their residences, which is contrary to DoD policy. Further, for more than 11 months, numerous DPS personnel engaged in domicile-to-duty transportation using DPS vehicles without obtaining the required Secretary of Defense approval. We notified the responsible DoD management officials regarding these matters.

This report includes recommendations to correct the deficiencies identified during the follow-on evaluation.

Management Comments. On April 18, 2003, we issued this report in draft form for management comments. We requested comments from the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C3I));[3] the Director, Administration and Management; and the General Counsel, DoD. USDI and the General Counsel concurred with our report. The Director, Administration and Management, concurred in part and nonconcurred in part. Most significantly, the Director disagreed that his operational practice allowing police officers to carry their service weapons to and from work and store them in their homes was contrary to DoD policy. The Director also disagreed with our assessment that the memorandum of understanding executed with the County Board of Arlington County, Virginia, might not be legally sufficient. Furthermore, although not specifically nonconcurring, the Director did not commit to amending the current policy that strongly encourages DPS police officers to intercede in certain civilian matters. For the reasons set forth in detail in this final report, we cannot accept the bases for the Director's nonconcurrences and unwillingness to commit to the further policy revisions needed. The Director should reconsider his positions on these issues based on the facts and considerations in this final report, and submit final management comments on this final report. We should receive these comments no later than April 30, 2004.

[3] Subsequent to our draft report, a new organization, the Under Secretary of Defense for Intelligence (USDI), was established. ASD(C3I) is now part of USDI.

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Follow-on Evaluation of the Defense Protective Service

Part I. Introduction

Background

Following an April 1997 request by the Chairman, Subcommittee on Military Readiness, Committee on National Security, U.S. House of Representatives, we conducted an evaluation of the Defense Protective Service. We assessed DPS' effectiveness and efficiency in accomplishing its law enforcement mission, including whether the law enforcement mission was well defined and whether DPS written policies, operating procedures, and training requirements were adequate. We also assessed perceived DPS personnel and training problems cited by the Chairman, specifically a lack of continuing training for DPS officers after graduation from the basic training academy; shortages of personnel causing significant overtime requirements; the use of DPS officers on overtime at non-Pentagon locations; and low employee morale. On May 14, 1999, we issued a final report with 27 recommendations to improve DPS operations and management.

We scheduled a follow-on evaluation for the first quarter 2002, to assess DPS' progress in implementing corrective actions in response to our 1999 report. In a December 2001 letter to the Deputy Assistant Inspector General (DAIG), Investigative Policy and Oversight (IPO), Senator Charles E. Grassley, requested that our review also include: checking every DPS employee and private security guard that assisted DPS through the NCIC database; investigating whether any DPS employee or private security guard has been arrested and the case not resolved; ensuring DPS complied with requirements to remove law enforcement officers convicted of a felony; examining whether DPS had followed its background check procedures and policies since our 1999 report; conducting an inventory of DPS weapons; and determining if any missing weapon had been used in a felony. As a result of discussions with members of Senator Grassley's staff in December 2001, we expanded this evaluation to include NCIC checks for those current and former officers hired since 1998,[4] and at least a representative sample of private security guards employed at DoD sites under DPS cognizance.[5] We also examined DPS background check procedures and policies and determined whether they had been followed since 1999. Finally, we inventoried DPS weapons, and determined if any missing weapon had been used in a crime.

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[4] Prior to publishing our 1999 report, we checked every DPS law enforcement officer hired prior to January 1, 1998, through the NCIC.

[5] Although we agreed to conduct at least a representative sampling of private security guards employed at DoD sites under DPS cognizance, we actually conducted checks on 100 percent of them, as resources to conduct these checks were available.

Objectives

Our overall objective was to determine whether the Director, Administration and Management, and the Chief, DPS, had implemented or adequately addressed the findings and recommendations in Report No. 9950006F, "Evaluation of the Defense Protective Service," May 14, 1999. At congressional request, we also reviewed DPS hiring practices; DPS compliance with various statutory and regulatory requirements related to hiring and arming police officers and contracting for private security guards; DPS control over its weapons inventory; and whether any DPS weapon had been used in a crime.

The specific objectives were to:

Determine whether DPS implemented or adequately addressed the 27 unresolved recommendations in the final report, all of which were associated with findings in the following areas:

- Finding A - Roles, Responsibilities, and Relationships (four recommendations);
- Finding B - Organization and Management (two recommendations);
- Finding C - Personnel (six recommendations);
- Finding D - Operations (eleven recommendations); and
- Finding E - Operations Support (four recommendations)

At congressional request, determine whether:

- DPS policies and practices for hiring and retaining police officers and security guards, as well as for contracting private security guards, are adequate to screen out individuals with felony records;[6]
- DPS practices in arming police officers and security guards comply with statutory and regulatory requirements;
- DPS accounted for all missing and unaccounted weapons and now has full and effective control over its weapons inventory; and
- any missing or unaccounted DPS weapon had been used in the commission of a crime.

Pentagon Force Protection Agency

On May 3, 2002, the Pentagon Force Protection Agency (PFPA) was established under the Director, Administration and Management. DPS, formerly a subordinate element of the Real Estate and Facilities Directorate (RE&F),

[6] This entailed conducting NCIC checks on current and former DPS officers and private security guards.

Washington Headquarters Services (WHS), became a subordinate element of PFPA. The Chief, DPS, was appointed as the Acting Director, PFPA.[7] Additionally, prior to the PFPA formation, the Chief, DPS, was actively engaged in development of the new agency that now includes a chemical, biological, radiological response unit, and antiterrorism and force protection capabilities, as well as resource management and administration functions. Additionally, both the criminal investigative and security services elements were realigned from DPS to PFPA. We recognize that this reorganization affected the Chief's priorities and that the September 11, 2001, terrorists attack on the Pentagon severely affected the mission and priorities of DPS managers. Notwithstanding these serious affects, numerous recommendations could have been implemented in the years following the May 1999 publication of our evaluation, but were not.

Part II. Previous Findings and Recommendations, Follow-on Evaluation Results, and Follow-on Recommendations

Report No. 9950006F, "Evaluation of the Defense Protective Service," May 14, 1999, presented 5 findings and 27 recommendations. In this section we have listed each previous finding with its corresponding recommendations and management comments. These are followed by the results of our efforts to determine whether the recommendations were implemented or adequately addressed and our follow-on recommendations to correct continuing deficiencies.

Prior Finding A. Roles, Responsibilities, and Relationships

In our prior evaluation, DPS had not fully and clearly defined or articulated to its officers the specific law enforcement powers that exist for DPS officers when performing duties on particular DoD properties and when not on a DoD property. Furthermore, other Federal, state, and local law enforcement organizations have and may exercise law enforcement authority on DoD and non-DoD properties where DPS officers operate; yet DPS had not sufficiently identified those law enforcement actions that DPS officers should or could take in the face of these overlapping authorities. DPS also had not entered into operating agreements with key law enforcement organizations to establish which law enforcement organization had primary responsibility for addressing specific crimes or crime contingencies. In the absence of specific and adequately communicated guidance, DPS officers' roles, responsibilities, and relationships continued to be susceptible to misunderstanding, misinterpretation and misapplication, and DPS officers continued to risk exceeding their authority and subjecting both the Government and themselves to unnecessary liability.

[7] To avoid confusion, in addressing any decision or event that occurred prior to May 1, 2002, we refer to the Chief, DPS. In addressing any event or decision that occurred on or after May 1, 2002, we refer to the Acting Director, PFPA.

Prior Recommendation A.1.

"The Chief, DPS, in coordination with the WHS General Counsel, revise DPS General Order 1000.2, "Authority, Police Powers, and Jurisdiction," June 24, 1991, to set forth, in plain language, the specific police powers that DPS officers are authorized to exercise when:

- on duty at specific DoD properties and facilities in the National Capital Region, including the Pentagon Reservation;

- on duty, but not on a specific DoD property or facility, such as when traveling between DoD properties or when at another Federal (non-DoD) property or facility;

- providing protective services to DoD officials, visiting dignitaries, and other assigned personnel;

- monitoring and showing police presence at the Secretary of Defense's private residence;

- not on duty; and

- on other missions not specified herein."

The Director, Administration and Management, agreed. According to the Director,

> "[t]his General Order is currently being studied to determine what changes need to be made to comply with this recommendation. Officers will be queried to determine where they don't understand requirements which are already found in the General Order. This action will be completed no later than June 30, 1999."

Follow-on Evaluation Results

The Chief, DPS, partially implemented Recommendation A.1. DPS General Order 1000.02 "Authority and Jurisdiction," was updated and reissued on April 21, 2000, and again on June 18, 2001. However, procedure two in General Order 1000.02, which prescribes DPS policy for actions that an officer may or should take when traveling between DoD locations (not on DoD property) is confusing and misleading. This procedure "strongly encourages" on-duty DPS officers traveling between DoD locations to intervene in situations involving breaches of the peace (when violence is inflicted or immediately threatened) or when felonies are being committed in their presence. It does not, however, (1) articulate the criteria that the DPS officer is to consider when making the decision to intervene, (2) articulate legal authority for the officer's actions when intervening, (3) identify and describe the potential civil liability faced by the Government in the event the DPS officer elects to intervene, or (4) identify and describe the potential civil liability faced by the DPS officer in his personal capacity if he elects to intervene. Finally, we have serious doubts about the wisdom of any law enforcement leadership guidance that "strongly encourages" an officer to do anything. Either the action being contemplated is something that

the law enforcement leadership needs the officer to do to meet mission or legal requirements, or it is not.

Under the governing statute, Section 2674, Title 10, United States Code (10 U.S.C. 2674), "Operation and control of Pentagon Reservation and defense facilities in National Capital Region," DPS officers have law enforcement authority only on DoD property "located in the National Capital Region." Their authority to intervene in situations when traveling between DoD locations is generally the same as any private citizen; that is, to exercise "citizens arrest"[8] authority. In this regard, we note that in July 2002, DPS and the County Board of Arlington County, Virginia, executed a memorandum of understanding (MOU), which, purportedly, would allow DPS officers to enforce Commonwealth of Virginia and Arlington County laws/ordinances in Arlington County. Similarly, in 2001 the Commonwealth of Virginia extended "conservator of the peace" status to DoD law enforcement personnel.[9] The conservator of the peace legislation may provide DPS officers with the authorities outlined in Virginia Code Section 19.2-18, while on-duty and traveling between DoD properties located in the National Capital Region in Virginia. Neither the MOU nor the Virginia conservator of the peace legislation, however, can bestow new police authority on DPS officers that extends beyond their specific authority established in 10 U.S.C. 2674, as implemented by DoD policy. Based on these considerations, General Order 1000.02 requires further revision to address a DPS officer's authority to intervene in situations not occurring on DoD property in the National Capital Region (NCR). The revision should make it clear that intervention by a DPS officer in situations not occurring on DoD property in the National Capital Region or incidental to travel between property occupied by, or under the jurisdiction, custody, and control of DoD in the National Capital Region, could result in potential civil liability on the part of the Government and on the part of the DPS officer personally. (Further ramifications of the MOU with Arlington County are discussed in our findings related to Recommendation A.2.)

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[8] In medieval England, citizen's arrests were an important part of community law enforcement. Sheriffs encouraged and relied on citizens in towns and villages. The right of private citizens to make arrests was virtually identical to the right of a sheriff and constable to do so. (See Inbau and Thompson, Criminal Procedure, The Foundation Press, Mineola, NY, 1974.) The District of Columbia has a citizen's arrest statute (District of Columbia Code § 23-582, "Arrests without warrant by other persons."), while both Virginia and Maryland have case law that supports "citizens' arrests." (*See; Hall v. Commonwealth,* 12 Va. App. 559, 389 S.E.2d 921 (1900) (aff'd. on rehearing, 1990 Va. App. LEXIS 118); *Stevenson v. State,* 287 Md. 504, 413 A.2d 1340 (1980).

[9] In 2001, the Virginia Assembly amended Section 19.2-12 of the Virginia Code to make special agents and law enforcement officers of the Department of Defense conservators of the peace while performing their duties." Conservators of the peace have the powers and duties described in Virginia Code Section 19.2-18, "Powers and duties generally," which include the authority to arrest without a warrant in such instances as are set out in §§ 19.2-19 and 19.2-81. This appears to be limited to offenses involving threats to kill, injure, or commit violence against person or property, or to unlawfully trespass.

General Order 1000.02 also addresses the PFPA protective services mission,[10] which includes providing security at the private residence of the Secretary of Defense and providing security at meetings and commissions; however, it does not set forth in plain language their authority to do so. Additionally, General Order 1000.02 does not address their specific police authority when providing protective services functions outside the NCR (See Part IV, Take-Home Weapons regarding Interim General Order 0000 with respect to arming during official travel outside the NCR).[11]

Follow-on Recommendation A.1.

We recommend that the Director, Pentagon Force Protection Agency, in consultation with the Washington Headquarters Services Office of General Counsel, revise General Order 1000.02, "Authority and Jurisdiction," June 18, 2001:

a. To delineate an officer's authority to intervene in situations involving breaches of the peace (when violence is inflicted or immediately threatened) or when felonies are being committed in their presence, when traveling between DoD locations in the National Capital Region. If the decision to intervene remains discretionary with the officer, the revision should alert the officer to the potential civil liability that could arise as a result of his decision to intervene.

b. To set forth in plain language the specific police powers that DPS officers are authorized to exercise when they:

(1) Provide protective services to DoD officials, visiting dignitaries, and other assigned personnel.

(2) Monitor and show police presence at the Secretary of Defense's private residence.

(3) Perform protective services functions outside the National Capital Region.

Management Comments and Our Evaluation

Director, Administration and Management Comments. The Director concurred, but stated the belief that "GO 1000.02 was clear and complete as evidenced by the lack of problems associated with PFPA police officers responding to criminal incidents. The Director stated that PFPA would, however, in consultation with WHS/GC, further review and revise GO 1000.02, if necessary, to clarify an officer's authority to intervene.

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[10] General Order 1000.02 states that the Protective Services Unit's primary mission is to provide for the safety and security of the persons and the property they are assigned to protect, and that law enforcement is a secondary consideration, limited to enforcing Federal laws regarding conduct that threatens the safety and security of the persons and property they are assigned to protect.

[11] 10 U.S.C. 2674(b)(1) provides, in part, that "[t]he Secretary may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region…."

Evaluation Response. The management comments are not fully responsive. Although fortunate, the fact that PFPA police officers have not yet encountered problems in responding to criminal incidents in no way demonstrates the current guidance is clear or complete. As we pointed out in the finding, GO 1000.02 "strongly encourages," but does not require, on-duty DPS officers traveling between DoD locations to intervene in situations involving breaches of the peace (when violence is inflicted or immediately threatened) or when felonies are being committed in their presence. This general guidance exceeds the statutory jurisdiction and authority established for DPS, and does not even purport to limit interventions in civilian matters to areas or matters directly involved in the officer's "official duties." In fact, the officer is strongly encouraged to intercede in civilian matters where the officer does not have jurisdiction and has authority only equal to that of any citizen. Despite this situation, GO 1000.02 does not (1) articulate criteria for the officer to consider when making the decision to intervene, (2) articulate specific legal authority (authority to make a citizen's arrest) for actions during the intervention, (3) describe the potential civil liability the Government could face if the officer elects to intervene, or (4) describe the potential civil liability the officer could face personally as a result of the intervention. In our view, this current guidance is an invitation to disaster, both personally for the police officer and for the DoD, and should not be allowed to continue. In commenting on this final report, therefore, PFPA should commit to adopting the clarifications to GO 1000.02 addressed in our recommendation.

Prior Recommendation A.2.

"The Chief, DPS, in coordination with the WHS General Counsel, identify the law enforcement agencies with which DPS would work during a contingency, both on and off the Pentagon Reservation, and:

- initiate discussions with those agencies to define each agency's authorities, roles, and responsibilities during a contingency; and,

- prepare an appropriate MOU between DPS and each of the other agencies formalizing the agreements on these issues."

The Director, Administration and Management, agreed with the recommendation. According to the Director, "DPS already has a Memorandum of Understanding (MOU) with the District of Columbia, Prince George's County, Alexandria, and the Metro Transit Authority. DPS is in the process of formalizing MOUs with the Federal Protective Service and the U.S. Park Service. Previous attempts to establish an MOU with Arlington County have not been successful, because of that police chief's reluctance to approach the County Board. Arlington police have preferred to work with oral agreements. Nonetheless, MOUs will be initiated with Arlington and Fairfax Counties before June 30, 1999.'

"It is specifically noted that the last large demonstration which occurred at the Pentagon showed that DPS can and does work closely with neighboring law enforcement authorities. It should be noted that jurisdiction to act either exists or it does not; an MOU cannot change the existence or non-existence of jurisdiction."

We accepted the Director's comments as generally responsive to our recommendation, but pointed out that:

> "However, as discussed in the draft report, DPS also does not have MOUs with the FBI Washington Field Office; or the Virginia or Maryland State Police Departments. The FBI clearly would be involved in a Pentagon contingency, and the Virginia or Maryland State Police Departments could be involved in a contingency at a site where DPS operates. DPS, therefore, should also pursue MOUs with these law enforcement organizations."

Follow-on Evaluation Results

DPS and PFPA now have 19 MOUs[12] or memoranda of agreement (MOAs) with law enforcement agencies with which they would work during contingencies. Some of these agreements, however, are inadequate. Additionally, although recommended in our prior evaluation, the Acting Director, PFPA, has not established agreements with some key law enforcement agencies.[13] The shortcomings include:

- Some MOUs/MOAs are outdated and have not been reviewed annually.[14]

- Key DPS management personnel were not familiar with the latest version of certain MOUs.

- Agreements do not fully outline the scope of duties required of each agency, as seen in the MOU between the Alexandria Police Department and DPS, where DPS responsibilities under areas of concurrent and proprietary jurisdiction are not differentiated. The MOU with the Alexandria Police Department states:

> "DPS…provides armed law enforcement and security services to carry out this responsibility, to include but not limited to: Provides 24-hour armed response for all police calls (PCs) within our authorized jurisdictional limits, to include demonstrations or hostage/barricade situations."

The MOU later indicates that the Alexandria Police Department has full command and control authority for hostage/barricade/suspicious package and bomb threats. However, it does not address demonstrations. As such, it is possible that DPS could infer the agency has full command and control for demonstrations, which is not the case.

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[12] This number does not include MOUs with the Defense Criminal Investigative Organizations.

[13] The 1999 report listed some key law enforcement agencies, including the FBI Washington Field Office, the Virginia and Maryland State Police Departments, the U.S. Park Police, and the Fairfax County Police Department. However, DPS only has a MOU with the U.S. Park Police. DPS did enter into an agreement with the Virginia State Police following the September 11, 2001, terrorists attack, to provide checkpoints on Virginia State Route 110; however, this agreement does not address contingency actions and responsibilities, and does not mention other DoD properties in the National Capital Region that are located in Virginia.

[14] DoD Instruction 2000.16, "DoD Antiterrorism Standards," June 14, 2001, Standard 20, "Comprehensive Antiterrorism Review," mandates that commanders at all levels shall review their own antiterrorism program and plans at least annually to facilitate antiterrorism program enhancement. MOUs/MOAs are part of the plan as highlighted in Defense Threat Reduction Agency comments in Recommendation A.2. As a result, one would expect that these agreements would be reviewed in conjunction with the Antiterrorism Force Protection Plan.

- Sometimes the duties listed for an agency are outside the agency's jurisdiction and authority. For instance, the MOA between the Defense Intelligence Agency and WHS, July 31, 1991, properly recognizes that WHS has only a proprietary interest at the Defense Intelligence Agency building, located in Arlington, Virginia. The agreement states, however, that WHS has full command and control for hostage situations, barricaded suspects, and civil disturbances. Absent MOUs with the Arlington County Police Department (ACPD)[15] and the Federal Bureau of Investigation permitting DPS such authority,[16] actual DPS authority and responsibilities in such situations are unclear.

Aside from the inadequacies of existing MOUs, the Acting Director, PFPA, did not follow Recommendation A.2 and establish agreements with all the key law enforcement agencies addressed in our recommendation. The Defense Threat Reduction Agency confirmed this during an August 27-31, 2001, vulnerability assessment of DPS. That agency recommended:

> "…MOUs/MOA with local authorities should be established when outside support is identified in the AT[17] plan. The memo should address exactly what support is needed and any issues of clarification, different rules of engagement (ROE), or line of authority. The AT officer should maintain these documents in conjunction with the AT plan."

The lack of MOUs and MOAs became apparent during the response to the September 11, 2001, terrorists attack on the Pentagon, as highlighted in the Arlington County After Action Report, which states that an ACPD lieutenant:

> ". . . quickly reached an agreement with a DPS official that the ACPD would assume responsibility for the outer perimeter. This was an important decision because the DPS exercises exclusive Federal legislative jurisdiction at the Pentagon and its surrounding grounds."[18]

The report also alludes to the vast support, by more than 300 officers, which DPS received from at least 10 different police agencies, via the ACPD association with the Northern Virginia Law Enforcement Mutual-Aid Agreement of May 1, 1991. However, PFPA still does not have agreements with most of those agencies.

Since the terrorists attack, the PFPA Antiterrorism Force Protection Division (AT/FP) is responsible for updating existing agreements and developing agreements with local agencies, and then including them in the AT/FP plan. Two

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[15] DPS had a MOA with ACPD at the time this MOA was signed, but the agreement with ACPD does not mention this property.

[16] For terrorist incidents, Presidential Decision Directive 39, "U.S. Policy on Counterterrorism," June 21, 1995, dictates actual authority, and specifically provides that "[t]he FBI shall be responsible for the Domestic Emergency Support Team (DEST) in domestic incidents." The FBI, therefore, would be the lead agency during a terrorist incident. PFPA also does not have an agreement with FBI.

[17] AT is the abbreviation for antiterrorism.

[18] We note in this respect, as we noted in the 1999 report, that actual jurisdiction for the Pentagon Reservation has never been established. Actual jurisdiction depends on the authorities ceded in individual deeds transferring real property to the United States, and whether the United States affirmatively accepted the authorities ceded in those real property deeds.

AT/FP personnel responsible for this tasking are also engaged in other duties. They have attended AT/FP meetings with local military and civilian public safety agencies; however, representatives of most of the civilian agencies are not cleared for classified threat information. It appears that the additional duties of the AT/FP personnel and the lack of security clearances for local agency personnel have slowed progress on updating and developing agreements with local agencies.[19] Although two agreements have been reached, one between PFPA and the County Board of Arlington County and the other with the Virginia State Police, each has problems, as detailed below:

- The MOA between PFPA and the County Board of Arlington County may not be legally sufficient because it purports to authorize PFPA management to direct DPS officers, while engaged in the performance of their official duties, to enforce state law off Federal property (the geographic limits established in 10 U.S.C. 2674). Although Virginia Code, Section 19.2-12, indicates that any law enforcement officer of the DoD shall be a conservator of the peace, while engaged in the performance of their official duties, 10 U.S.C. 2674, "Operation and Control of Pentagon Reservation and defense facilities in National Capital Region," establishes that the authority of personnel appointed by the Secretary of Defense to perform law enforcement and security functions only extends to property occupied by, or under the jurisdiction, custody, and control of the DoD, and located in the National Capital Region. The statute further limits police powers to "…property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region." We do not believe an MOU that would give DPS officers authority beyond these specific statutory limits is either supportable or appropriate. In this regard, we note that the Director, Administration and Management, in responding to our 1999 report, pointed out that "...jurisdiction to act either exists or it does not; an MOU cannot change the existence or non-existence of jurisdiction." We agree. Furthermore, we do not believe the actions would be part of a DPS officer's official duties.

- The Chief, DPS, did not establish an MOA with the Virginia State Police, a key agency with which DPS would work during a contingency, as recommended. However, following the terrorists attack on the Pentagon, the former Director, WHS, entered into a MOA, for an indefinite period, with the Virginia State Police, specifically to provide security for the Pentagon via checkpoints on (Virginia) State Route 110. The agreement lacks details for contingency operations, such as rules of engagement, agreed upon by all agencies, to cover actions that either side would take in an emergency. The DPS, the military police guarding the Pentagon, and the Virginia State Police need to improve the integration of their individual contingency plans that support the MOA, as no consensus existed. Additionally, while performing the security functions required by the MOA, the Virginia State Police collects information for the Federal Bureau of Investigation regarding suspicious activity around the Pentagon Reservation; this information is not routinely shared with PFPA.

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[19] The PFPA AT/FP liaison officer has submitted three applications for civilian police officers to have access to classified threat information. We encourage continued efforts to remove barriers to criminal intelligence sharing that exist between Federal, state and local law enforcement agencies.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Finding). The Director nonconcurred with the aspect of our finding in which we concluded that the MOA between PFPA and the County Board of Arlington County might not be legally sufficient because it purports to authorize DPS officers to enforce state law off Federal property (the geographic limits established in 10 U.S.C. 2674). According to the Director:

> "The draft finding is based on an unnecessarily narrow reading of the Secretary's authorities under 10 USC §2674 and is antithetical to the responsibilities of the Secretary of Defense to provide for the physical security, force protection and readiness required for the Pentagon Reservation in full accord with that statute and other Federal and State authorities. The draft report makes a curious argument both limiting the Secretary in his exercise of 10 USC §2674 responsibilities to provide for the security for the Pentagon Reservation, and concluding that the Secretary is without authority to enter into a mutual agreement with local authorities to authorize security and law enforcement officers to protect the Pentagon Reservation on land abutting the Reservation. The subject Agreement with Arlington County relies on both Federal and State authorities to convey authority on PFPA officers to act in the best interests of DoD *"for the proper exercise of their duties"* under 10 USC §2674."
>
> "We believe that the authorization in 10 USC § 2674 to provide security *for* (not on) the Pentagon Reservation places such reasonable discretion in the hands of the Department absent any law to the contrary. We see nothing in the statute that would so limit the Department's authority to achieve a central purpose of the statute - to provide for the security for the Pentagon Reservation and for the hundreds of DoD facilities in the NCR. Furthermore, the draft finding misses the import of the legal effect of the conveyance of authority by Virginia to the Department and to PFPA officers under Virginia statutes cited in the Agreement. The comity between the State and Federal Governments with respect to law enforcement, security functions and jurisdiction for federal installations within the States has long been respected by the Federal courts as well within the reasonable discretion of those parties for establishing mutual responsibilities in this area. Thus, where a State conveys, and a Federal entity duly accepts certain authorities within the jurisdiction of the States, the courts will clearly uphold such arrangements. This is not a question of obtaining "legislative jurisdiction" over property but of the practical authority of the States and Federal governments to convey on each other certain authorities within their respective domains."
>
> "The conclusion of the WHS Office of General Counsel is that there is indeed ample legal authority for the subject mutual aide agreement between DOD and Arlington County. The draft report indicates no other statute or principal of law that would lead us to a contrary conclusion."

Evaluation Response. We do not question the Secretary's authority to protect DoD property and personnel, or the Secretary's authority to enter into an agreement authorizing Arlington County police officers to enter property under the jurisdiction, custody and control of the Department of Defense within the National Capital Region to perform law enforcement and security functions and to assist PFPA. However, since 10 USC §2674 specifically limits PFPA's **law**

enforcement authority to the physical confines of "the property," we do question whether 10 U.S.C. §2674, when read in conjunction with Virginia Code §19.2-12 and §19.2-18, provides a legal basis for authorizing PFPA officers to enforce state law on property abutting Federally owned property.[20] Specifically, we question whether a PFPA officer, whose law enforcement authority is restricted to the confines of property under the jurisdiction, custody and control of the Department of Defense, who leaves the confines of that property to enter property under exclusive Virginia jurisdiction for the purpose of enforcing state law, would be considered to be "engaged in the performance of [his] official duties" so as to be within the scope of Virginia Code §19.2-12.

Furthermore, even if we accepted the Director's narrow interpretation of the scope of the Arlington County agreement, i.e., "to convey authority on PFPA officers to act in the best interest of DoD '*for the proper exercise of their duties*' under 10 U.S.C. §2674," the actual terms of the Arlington County agreement are far more expansive. For example, pursuant to Section 3 entitled "Operational Guidelines," found on page 2 of the agreement, "DPS officers may intervene when breaches of the peace or felonies are committed in their presence" on highways and property abutting the Pentagon Reservation but under exclusive Virginia jurisdiction. Thus, a DPS officer would be authorized to intervene in the theft of a privately-owned vehicle, a purse snatching, an armed robbery, or a street mugging if they occurred on property abutting the Pentagon Reservation, notwithstanding the fact that none of these crimes pose a threat to the Pentagon Reservation or persons therein.

In summary, we question whether 10 U.S.C. §2674 confers any law enforcement authority on PFPA officers when they are physically off the "the property," and therefore, whether 10 U.S.C. §2674, even when read in conjunction with Virginia Code §19.2-12 and §19.2-18, authorizes PFPA officers to enforce state law on property abutting the Pentagon Reservation pursuant to the Arlington County agreement. Assuming, for the sake of argument, that the Director's narrow interpretation of the Arlington County agreement is legally correct, i.e., that the agreement only confers "authority on PFPA officers to act in the best interest of DoD '*for the proper exercise of their duties*' under 10 U.S.C. §2674," the scope of the agreement as currently written is still overly broad and needs to be revised.

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[20] 10 U.S.C. §2674(b)1(1) reads, in part, as follows:

> "The Secretary may appoint . . . civilian personnel . . . to perform law enforcement and security functions for property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region. Such individuals . . . (B) shall have the same powers . . . as sheriffs and constables upon the property referred to in the first sentence to enforce the laws enacted for the protection of persons and property, to prevent breaches of the peace and suppress affrays or unlawful assemblies . . . ." Emphasis added.

Va. Code §19.2-12 reads, in part, as follows:

> "any special agent or law enforcement officer of the United States . . . Department of Defense, . . . shall be a conservator of the peace, **while engaged in the performance of their official duties**." Emphasis added.

Va. Code §19.2-18 reads, in part, as follows:

> "Every conservator of the peace shall have authority to arrest, without a warrant in such instances as are set out in §§19.2-19 and 19.2-81."

Follow-on Recommendation A.2.

We recommend that the Director, Pentagon Force Protection Agency:

a. Identify a primary point of contact or liaison for coordinating and developing MOUs and MOAs, and keep this person abreast of all communication with outside agencies with regard thereto.

b. Systematically review all existing MOUs and MOAs to ensure currency, legal sufficiency, and clarity of each organization's roles and responsibilities.

c. Establish written MOUs and MOAs using the Arlington County, Virginia, and other after action reports as reference points to identify agencies that provided support during the terrorist attack on the Pentagon and incorporate them into a viable antiterrorism force protection plan, as recommended by the Defense Threat Reduction Agency.

d. In concert with Washington Headquarters Services Office of General Counsel, develop and propose legislation that allows the Director, Pentagon Force Protection Agency, to enter into agreements that allow Defense Protective Service officers to enforce laws outside the geographic limits established in Section 2674, Title 10, United States Code, to ensure the safe, secure, and efficient operation of the Pentagon Reservation.

e. Work with the Virginia State Police and the Military Police to develop a comprehensive plan for the (Virginia) State Route 110 security operation that includes:

(1) identification of responsibilities, establishment of clear mission and threat requirements during contingency operations, to include specific rules of engagement, signed by the Director, Pentagon Force Protection Agency, and posted so that all involved can clearly understand their responsibilities and operational details;

(2) training (in coordination with the Virginia State Police) that covers the most likely use of force scenarios, to include deadly force; and

(3) establish information sharing protocols with Virginia State Police and the Federal Bureau of Investigation regarding suspicious activity around the Pentagon Reservation, while ensuring compliance with laws and regulations covering the collection of information concerning persons not affiliated with DoD.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendations A.2.a – b). The Director concurred, advising that PFPA was developing a Support Agreement Program and PFPA Regulation to outline the program policies, procedures, and responsibilities. According to the Director, the program will encompass all Memoranda of Agreement (MOAs), Memoranda of Understanding (MOUs), Interagency Agreements (IAs), Inter Service Support Agreements (ISSAs), and other such documents to which PFPA is a party. The

program will have a single manager for oversight; however, each document will have a separate subject matter expert responsible for functional and technical content and currency. The program manager will ensure that each document is reviewed at least once annually and properly coordinated with all affected and appropriate individuals and organizations. PFPA is reviewing the current documents for currency, overlaps, and gaps, and for consolidation potential and need to establish additional ones. PFPA anticipates completing the regulation by August 1, 2003, and having the program fully operational by September 1, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation A.2.c) The Director concurred, advising that (1) PFPA has developed an overarching antiterrorism/force protection plan for WHS-controlled assets throughout the National Capital Region, (2) relevant portions of the plan address both internal and external agency responses to contingencies, and (3) supporting MOUs will be developed once the plan is coordinated with all responsible agencies.

Evaluation Response. The management comments are responsive. In responding to the final report, the Director should identify the agencies involved and specify the estimated completion date for each MOU.

Director, Administration and Management Comments (Recommendation A.2.d) The Director nonconcurred. According to the Director, 10 U.S.C. 2674 gives the Secretary of Defense ample authority to enter into MOAs with local jurisdictions to further enhance the safety and security of the Pentagon Reservation and DoD personnel. The MOA with Arlington County, for example, relies on both Federal and State authorities to convey authority on PFPA officers to act in the best interests of DoD *"for the proper exercise of their duties"* under 10 USC §2674.

Evaluation Response. As discussed above in detail, we do not question the Secretary's authority to protect DoD property and personnel, or to enter into agreements authorizing state and local law enforcement officers to enter property under the jurisdiction, custody and control of the Department of Defense with the National Capital Region to perform law enforcement and security functions. However, since 10 USC §2674 specifically limits DPS' law enforcement authority to "on property," we question whether it provides a legal basis to enter into a "mutual support agreement" with a state or local law enforcement agency purportedly authorizing DPS officers to exercise state law enforcement authority off DoD property for two reasons – first, because 10 U.S.C. §2610 does not provide a DPS officer with any statutory law enforcement authority off DoD property, and second, because 10 U.S.C. §2610 does not provide any statutory authority to enter into mutual support agreements with state or local law enforcement organizations.

Prior Recommendation A.3.

"The Chief, DPS, in coordination with the WHS General Counsel, initiate discussions with the DCIOs [Defense Criminal Investigative Organizations] to define each organization's authorities, roles, and responsibilities when conducting investigations on the Pentagon Reservation and at DoD facilities in the National

Capital Region, and then execute MOUs formalizing the agreements on these issues."

The Director, Administration and Management, agreed. According to the Director, "DPS already had written MOUs with Army CID, and the Navy had been reluctant in the past to initiate a written MOU." Nonetheless, DPS would attempt to initiate MOUs with the Navy and the Air Force within the next month, and would complete agreements no later than September 30, 1999.

We accepted the Director's comments as generally responsive; however, the existing MOU with the U.S. Army Criminal Investigation Command (USACIDC) only addressed instances in which USACIDC would support and assist DPS investigations. In addition, the MOU was based on the erroneous conclusion that "…DPS is the agency responsible for the investigation of all criminal acts occurring within the Pentagon and other designated Department of Defense (DoD) buildings, both U.S. Government owned and leased, located within the National Capital Region which house U.S. Army personnel and activities…" Hence, we recommended that DPS pursue a complete MOU with USACIDC based on each agency's actual jurisdiction and authority.

Follow-on Evaluation Results

The Director, PFPA, partially complied with Recommendation A.2 to establish or update and revise MOUs with the DCIOs. The DPS now has MOUs with the Defense Criminal Investigative Service (DCIS) and Air Force Office of Special Investigations; however, DPS did not negotiate an MOU with the Naval Criminal Investigative Service (NCIS) and did not update the 12-year-old MOU with the USACIDC as recommended.

Following our 1999 report, the Chief, DPS, entered into MOUs with the Director, DCIS (March 2001), and with the Commander, 33d Field Investigations Squadron, Air Force Office of Special Investigations (August 2000). Additionally, in July 1999, the Chief, DPS, corresponded with the Special Agent In Charge, NCIS Washington Field Office, proposing a MOU with NCIS. When the Special Agent In Charge declined in favor of a gentlemen's agreement, the Chief, DPS, did not elevate the matter to the attention of NCIS Headquarters; the level at which MOUs are normally signed.

Follow-on Recommendation A.3.

We recommend that the Director, Pentagon Force Protection Agency:

a. Renegotiate and update the memorandum of understanding with the United States Army Criminal Investigation Command, based on each agency's actual jurisdiction and authority, as previously recommended.

b. Negotiate a comprehensive memorandum of understanding between the Director, Administration and Management, or the Director, Pentagon Force Protection Agency, and the Director, Naval Criminal Investigative Service.

Management Comments and Our Evaluation

Director, Administration and Management Comments. The Director concurred, advising that by July 31, 2003, the Director, PFPA, would send a letter to USACIDC requesting an update to the existing MOU and a letter to the Director, NCIS, requesting a comprehensive MOU.

Evaluation Response. The management comments are responsive.

Prior Recommendation A.4.

"The Chief, DPS, upon completing actions in response to Recommendations A.2 and A.3 above, conduct training and take other actions as necessary to ensure that all DPS employees (police officers, investigators and security guards) are fully cognizant of, and thoroughly understand, their law enforcement and investigative authorities, particularly in reference to the different properties on which they operate."

The Director, Administration and Management, agreed and advised that DPS was implementing Recommendation A.4.

We accepted the Director's comments as generally responsive to Recommendation A.4. However, until actions were completed in response to Recommendations A.2. and A.3., we were not convinced that DPS training and other actions could be sufficiently detailed to ensure that DPS police officers, investigators, and security guards fully understood their authority. We therefore asked DPS to provide information on the specific training and other actions that it had taken or planned in response to this recommendation. Additionally, we requested actual or estimated completion dates for individual training and other actions and descriptions on how they addressed differing DPS authority at the various locations where DPS operates.

Follow-on Evaluation Results

The Acting Director, PFPA, has not taken measures to fully implement Recommendation A.4. The law enforcement authority and jurisdiction training, related to MOUs and MOAs between DPS (or PFPA) and other law enforcement agencies with which DPS (or PFPA) works, remains inadequate. Numerous shortcomings in the training provided to DPS officers included the following:

- Pre-Field Training and Evaluation Program: Authority and jurisdiction training is an 8-hour block of instruction during the 1-week program. The Virginia code, Federal, and District of Columbia codes are taught during this training block. The Maryland Code is not taught. Furthermore, the Cooperative Agreement with the Washington Metropolitan Police Department is the only MOU/MOA that is covered. DPS officers are taught that in Washington D.C., it is a statutory misdemeanor for a police officer <u>not</u> to make an arrest.[21] In this regard, as discussed previously, the DPS enabling legislation limits DPS authority to DoD property. In reality, DPS officers are "police officers" only while on DoD property and performing official duties. Thus, they would not be subject to

[21] DC Code § 5-115.03, "Neglect to make arrest for offense committed in presence."

misdemeanor charges for not making an arrest on D.C. streets outside a DoD property. However, they are being trained to intercede in such civilian matters.[22] This training, therefore, could foster a complex, dangerous situation with potentially severe liability consequences for the Government (DoD) and DPS officers.

- Field Training and Evaluation Program: Of the 26 task items required in the 12-week program, 6 items deal with authority and jurisdiction. These include authority and jurisdiction; criminal procedure; Title 32, Code of Federal Regulations; Title 41 Code of Federal Regulations; Virginia Annotated Code 18.2; Virginia Annotated Code 46.2; and Title 18, United States Code. However, the Maryland Code and MOUs are not included. Additionally, DPS has not prescribed evaluation technique to measure an officer's competence in the skill, knowledge, and abilities taught,[23] although a team was in the process of developing one at the time of our review.

- In-Service Training Program: The DPS training officer and the Commander, Support Services Branch, both reported that authority and jurisdiction was a core item for in-service training. Each officer is supposed to receive the training every 18 months, but this training was scaled back because of manning requirements and because of the Chief's push to train officers to qualify for Master Patrol Officer upgrade, so they could receive increased pay. PFPA (or DPS) has not conducted in-service training since calendar year 2000. Furthermore, the October 2000 in-service training schedule did not include authority and jurisdiction. The Commander, Support Services Branch, also reported that the "Supervisory Forum" uses the same schedule as the in-service program, except that it also discusses leadership. As such, authority and jurisdiction are also not covered in that training program.

- Master Patrol Officer Program: This program has a 2-hour block of instruction on authority and jurisdiction; however, it does not cover MOUs and MOAs.

We concluded that authority and jurisdiction related training in DPS is deficient at all levels (basic entry, intermediate, and advanced). The complex DPS mission of protecting the Pentagon and 24 off-site locations in the National Capital Region could exacerbate the impact of this deficiency. Additionally, since the terrorists attack, the Acting Director, PFPA, has entered into the MOA with the County Board of Arlington County that agrees to allow DPS officers to act outside the limits of their authority and jurisdiction established in 10 USC 2674 (See Recommendation A.2.). Thus, at a time when training should have expanded to ensure that officers understood their authority and jurisdiction, training was curtailed.

Follow-on Recommendation A.4.

We recommend that the Director, Pentagon Force Protection Agency:

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[22] The field training officer responsible for this training advised that students are told that a phone call to the Washington D.C. Metropolitan Police will satisfy the requirement to intercede. He does not tell students that they are not permitted to take other police actions.

[23] CALEA Standard 33.4.2 requires the "…use of evaluation techniques designed to measure competency in the required skills, knowledge, and abilities."

a. Take the actions necessary to implement Prior Recommendation A.4. Initially, complete the required actions to implement Prior Recommendations A.2 and A.3. Then, direct that all training (Pre-Field Training and Evaluation, Field Training and Evaluation, In-Service Training, Supervisory Forum, and Master Patrol Officer) be organized and conducted to ensure that all Pentagon Force Protection Agency personnel (police officers, investigators, and security personnel) understand their law enforcement and investigative authorities, particularly with regard to the different properties on which they operate.

b. Provide oversight to ensure that all employees receive required training and that such training is tracked and properly recorded in training records.

c. Complete the development of a measurement tool to ensure that new officers comprehend authority and jurisdiction, to include all MOUs and MOAs.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation A.4.a) The Director concurred. According to the Director, (1) the events of 9/11 and subsequent need to maintain a high level of security disrupted the training program, (2) PFPA is now conducting a comprehensive review of the agency's training requirements at all levels and then will develop a strategy to fulfill those requirements, (3) prior Recommendation A.4 has been used as a starting point for the training review, and (4) this is a long-term process with an estimated closure date of July 2004.

With respect to **prior Recommendation A.2,** the Director advised that corrective action was underway. PFPA has moved beyond discussions to an interim stage and has developed an overarching antiterrorism/force protection plan for WHS-controlled assets throughout the National Capital Region. Relevant portions of that plan address both internal and external agency responses to contingencies. Supporting MOUs will be developed once the plan is coordinated with all responsible agencies.

With respect to **prior Recommendation A.3,** the Director advised that MOUs exist with DCIS, USACIDC and AFOSI, and the Director, PFPA, will send letters to these agencies requesting updates (estimated completion date July 31, 2003). The Director, PFPA, will also send a letter to NCIS requesting an MOU to define NCIS authority, role and responsibility for conducting investigations on the Pentagon Reservation (estimated completion date July 31, 2003).

With respect to **prior Recommendation A.4**, the Director advised that all Pentagon Police Department (PPD) officers have been given initial training and follow-on training is being incorporated into the PPD training plan.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation A.4.b). The Director concurred, advising that PFPA is conducting a comprehensive review of the agency's training requirements at all levels and then will develop a strategy to fulfill those requirements. Prior Recommendation A.4 has been used as a starting point for the training review. This is a long-term process with an estimated closure date of July 2004.

Evaluation Response. The management comments are generally responsive, but do not specifically address the oversight mechanisms that PFPA has or will develop to track training and ensure proper recording in training records. Management comments on this final report should address these areas.

Director, Administration and Management Comments (Recommendation A.4.c). The Director concurred, advising that PFPA is conducting a comprehensive review of the agency's training requirements at all levels and then will develop a strategy to fulfill those requirements. Prior Recommendation A.4 has been used as a starting point for the training review. This is a long-term process with an estimated closure date of July 2004.

Evaluation Response. The management comments do not address the primary issue in our recommendation. We recommended that DPS develop a measurement tool to ensure its new officers comprehend their authority and jurisdiction, including their authority to use police powers under MOUs and MOAs with other law enforcement organizations. The issues involved in DPS jurisdiction and authority are complex, and it has been apparent throughout our involvement with the agency that many DPS officers do not fully comprehend their legitimate law enforcement authority in the various, different jurisdictions in which they work. Furthermore, in our view, recent actions purporting to give DPS officers authority in the District of Columbia and the Commonwealth of Virginian, coupled with questionable provisions in the MOU with Arlington County, greatly exacerbate the difficulties already inherent in understanding a DPS officer's legitimate jurisdiction and authority. We did not identify a specific measurement tool in our recommendation because we would prefer for PFPA to develop and use the one it considers most appropriate. PFPA, for example, could adopt a "testing program" to rate a new officer's understanding of jurisdiction and authority before assignment to full duty. Whatever the mechanism adopted, however, we believe it essential that PFPA support its officers by ensuring that they fully comprehend and understand the basis for their law enforcement authority at individual locations where their jurisdiction and authority differ. In commenting on this final report, PFPA should address this area in detail.

Prior Finding B. Organization and Management

In the prior evaluation, we did not identify specific problems in the DPS organizational structure. However, the DPS management control program for its law enforcement operations did not include needed control mechanisms. Additionally, DPS managers did not always adequately pursue issues identified through their management control program. If DPS managers had applied common management controls, they could have avoided many of the operational and management problems discussed in the previous report.

Prior Recommendation B.1.

"The Chief, DPS, take action to implement and ensure compliance with DoD internal management control programs and requirements."

The Director, Administration and Management, agreed and advised that DPS was already implementing Recommendation B.1.

Follow-on Evaluation Results

DPS does not currently have a viable management control program.

The Chief, DPS, did comply with the management control program requirements established by the Management Support Division, RE&F, the former parent organization; however, these requirements alone were not sufficient to meet DoD management control program requirements as directed by DoD Directive 5010.38, "Management Control Program," August 26, 1996. The Management Support Division program requirements entailed identifying assessable units within subordinate directorates (including DPS) and on a recurring 5-year cycle, conducting vulnerability assessments within those assessable units. The RE&F requirement for DPS involved five assessable units. Additionally, each year, each Director must provide the Director, RE&F, with a description of management control systems within the organization as input to the RE&F annual statement required under the Federal Manager's Financial Integrity Act (FMFIA) of 1982.

The DPS management control program that was outlined in General Order 1100.20, "Internal Management Control Program," November 19, 1991, would have met program requirements had it been followed. General Order 1100.20 required the identification of assessable units[24] and the conduct of vulnerability assessments by unit supervisors, with oversight at the branch level, as well as internal management control reviews by DPS inspectors. Additionally, General Order 1100.20 required the Deputy Chief, Law Enforcement Services, to advise the Chief annually by memorandum that the management control program was in place and functioning as intended.[25] In September 1999, the Chief, DPS, rescinded General Order 1100.20, after he implemented General Order 1004.03, "Staff Inspections", July 19, 1999. The Chief, DPS, established General Order 1004.03, in response to Recommendation E.4.[26] He intended to provide an effective management control program by conducting an increased number of staff inspections and by implementing a self-inspection program. To accomplish this, he initially increased manpower in the Inspections Section; however, he later had to reassign those people to meet other operational needs. As a result, both the management control and the staff inspection programs remain ineffective.

Follow-on Recommendation B.1.

We recommend that the Chief, Defense Protective Service:

a. comply with the DoD Management Control Program requirements by;

(1) re-establishing written management control program guidance, similar to that outlined in General Order 1100.20, "Internal Management Control Program," November 19, 1991; and

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[24] The number of assessable units within DPS is unknown, but estimated to be more than 20.

[25] The Deputy Chief advised that he never sent formal memoranda to the Chief, despite the requirement.

[26] Among other things, we recommended that the Chief, DPS, assign additional trained personnel to the Inspections Section.

(2) involving managers at all levels in the program;

b. provide training for all Defense Protective Service managers regarding the requirements of the DoD Management Control Program, Office of Management and Budget Circular A-123, "Management Accountability and Control," June 21, 1995, and the Government Performance and Results Act, 103 Pub. L. –62; 107 Stat. 285, which requires agencies to develop strategic plans, set performance goals, and report annually on actual performance compared to goals.

Management Comments and Our Evaluation

Director, Administration and Management Comments. The Director concurred**.** According to the Director, PFPA published and disseminated a Management Control Program (MCP) Regulation dated January 30, 2003. The Regulation establishes policies and procedures for administering an MCP program. In February 2003, PFPA provided MCP training to all senior level directors, deputies and AU managers. The training covered a multitude of areas of Management Accountability and Control including, but not limited to: OMB Circulars A-123, 127, 130; GAO Standards for Internal Controls; the Financial Manager's Financial Integrity Act; the management control process/review; risk assessment; reporting and correcting deficiencies, and the Government Performance and Results Act. Additional training will be provided to PFPA managers and supervisors as part of the standup of PFPA.

Evaluation Response. The management comments are responsive.

Prior Recommendation B.2.

"That the Chief, DPS, adopt and implement a strategic goals program that:

- has a firm nexus to WHS management priorities;
- includes customer satisfaction as a goal or objective;
- includes a management process for formally reviewing accomplishments against stated goals, based on specific measurement criteria and data collection methods for the measurements; and
- identifies and prioritizes key DPS processes supporting the organization's core competencies, and defining the essential data required for process evaluations and the method(s) used to collect the essential data."

The Director, Administration and Management, agreed with the recommendation. According to the Director, "[a] strategic goals program already exists within DPS and the Real Estate & Facilities Directorate. DPS plans to develop a more encompassing, long range strategic plan during calendar year 1999."

Follow-on Evaluation Results

The Chief, DPS, did not implement Recommendation B.2. In 1999, the Chief, DPS, developed a strategic plan; however, a DPS strategic goals program was not

fully implemented. DPS does not have documentation demonstrating specifically how the strategic plan was created, implemented, or carried out. The first indication that DPS was involved in some type of strategic planning process occurred around September 2000, when DPS was identified as the lead agency for one objective and two Director's activities under the RE&F strategic plan. DPS was active for these elements of the RE& F strategic plan from September 2000 through January 2002, after which all activities under this plan ceased.

The documents that we reviewed indicate that DPS management was not involved in the process of reviewing, recommending, or approving the actions that were taking place. Also, DPS did not have documentation or a measuring system in place to demonstrate how well DPS was accomplishing the assigned tasks.

A PFPA strategic plan is currently under development. The Acting Director, PFPA, intends to establish a PFPA planning office and to consolidate plans and goals from all PFPA divisions into a single PFPA strategic plan.

Follow-on Recommendation B.2.

We recommend that the Director, Pentagon Force Protection Agency, develop an overarching strategic plan based on the management priorities of the Pentagon Force Protection Agency and the Director, Administration and Management. We further recommend, that the Chief, Defense Protective Service, and other Pentagon Force Protection Agency directorates develop and implement separate strategic plans that:

a. Are based on the principles established in the Government Performance and Results Act and have a firm nexus to Pentagon Force Protection Agency management priorities.

b. Include customer satisfaction as a goal or objective.

c. Include a management process for formally reviewing accomplishments against stated goals, based on specific measurement criteria and data collection methods for the measurements.

d. Identify and prioritize key processes supporting the organization's core competencies, and define the essential data required for process evaluations and the method(s) used to collect the essential data.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Finding). According to the Director, our comment that DPS ceased all actions on the strategic plan after January 2002, appeared to disregard the major impact the September terrorists attack and requirement for high security had on the organization. All assets were then focused on the primary function, protecting the Pentagon against further terrorist attacks.

Evaluation Response. We did not ignore operating impacts resulting from the terrorists attack. We simply stated the fact that action on the strategic plan ceased after January 2002. As stated earlier, however, we believe that actions on many of our 1999 recommendations could have been completed in the more than

2 years before the terrorists attack. In fact, in response to follow-up inquiries, DPS had reported completing actions on all of our recommendations with the exception of one. Our follow-up evaluation showed that was not the case.

Director, Administration and Management Comments (Recommendation B.2). The Director concurred, advising that PFPA is in the process of accomplishing a new comprehensive strategic plan with an expected completion date of September 30, 2003.

Evaluation Response. The management comments are responsive.

Prior Finding C. Personnel

In the previous evaluation, although we identified some exceptions, overall the DPS pre-employment and in-service employee screening processes were adequate and effective, as was the overall training program. We believed that some DPS staff should be classified as security guards rather than as police officers, because they were routinely assigned to fixed posts, performed security guard functions, and met the Office of Personnel Management (OPM) classification standards for GS-085 (security guard), not GS-083 (police officer). In responding to the draft and final evaluation reports, the Director, Administration and Management, disagreed, citing numerous criteria. Although we continued to believe that our recommendation had substantial merit, we decided not to pursue the issue into a resolution process because some of the Director's counter arguments appeared to have at least some merit and because DoD was not incurring higher cost from classifying the individuals as police officers. See Appendix C for details.

Additionally, while recognizing that many DPS police officers and criminal investigators were hired without being subject to a continuing physical fitness requirement, DPS needed to standardize its physical fitness requirements for non-emergency response team police officers. We believed DPS should either "grandfather in" these employees or reassign them to positions that did not require a high degree of physical fitness.

Finally, DPS needed to develop procedures to ensure that it dispensed discipline fairly and consistently and that it also distributed employee overtime assignments equitably.

Our recommendations, excluding Recommendation C.1, which concerned reclassifying police officers as security guards, are set forth below.

Prior Recommendation C.2.

"The Chief, DPS, with WHS support and utilizing the recent OPM review of Federal Protective Service positions, determine whether DPS police officers are properly graded based on actual duties and responsibilities for their positions."

The Director, Administration and Management, agreed with the recommendation. According to the Director, the OPM review was completed but was of little or no value because it invalidated GSA's reclassification of police officer positions to higher pay grades. The Director advised that DPS and GSA were involved in a

joint study, which was to be completed by August 31, 1999, looking at viable ways to assure proper pay grades for their police officers.

We accepted the Director's comments as responsive, provided:

> ". . . the joint study resulted in actions that both complied with OPM requirements and ensured proper grades based on actual duties and responsibilities for DPS positions, as we recommended."

Follow-on Evaluation Results

Through efforts to increase officer salaries and, thereby, alleviate officer retention and morale problems, the Chief, DPS, properly addressed all facets of Recommendation C.2, including determining whether DPS police officers were properly graded based on actual duties and responsibilities and ensuring that any action complied with OPM requirements. The process DPS used to arrive at the current pay scale is noteworthy, not only because it met the intent of Recommendation C.2, but because it demonstrates the Chief's determination to increase police officer pay to a level commensurate with those of other agencies in the National Capital Region.

The Chief, DPS, did not use the OPM review of Federal Protective Service, as originally recommended, because it did not support the efforts to increase officer pay. In 1999, DPS requested a wage survey[27] that would compare DPS salaries and benefits to similar police organizations in the National Capital Region. Unfortunately, a comparison of duties could not be completed because numerous organizations (non-Federal) had incomplete or nonexistent position descriptions. However, salaries were compared, and it was found that DPS had the lowest entry-level pay and the second lowest pay for journeymen and sergeant positions. The study compared 17 agencies, including DPS, for the journeyman position while the entry-level and sergeant positions compared 14 agencies, including DPS. This effort led DPS to implement a 10 percent retention bonus in October 2000. DPS then made an effort to upgrade its officers to master patrol officers and began conducting back-to-back training classes. This effort resulted in training and certifying 51 master patrol officers. Concurrently, DPS started the process to propose legislation that would tie DPS pay scales to the United States Secret Service Uniform Division and the United States Park Police. When it appeared that the legislation was about to pass, the former Director, Administration and Management, tasked a committee to examine the DPS pay scale. The committee met three times. The members compared position descriptions and pay policies from all three agencies, developed a new pay scale, and developed a strategy to implement the new scale. The legislation passed on December 28, 2001. On January 14, 2002, the committee presented its recommendations to the former Director, Administration and Management, who immediately approved the new DPS pay scale, effective January 13, 2002.

Follow-on Recommendation C.2.

None.

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[27] The Wage and Salary Division, Defense Civilian Personnel Management Service, conducted the survey, which was completed in September 2000.

Prior Recommendation C.3.

"The Chief, DPS, take actions to standardize DPS physical fitness requirements for non-EST[28] police officers."

The Director, Administration and Management, agreed with the recommendation. According to the Director, DPS was standardizing physical fitness requirements for all newly employed non-emergency services team police officers, and this recommendation would be fully implemented by February 1, 2000.

Follow-on Evaluation Results

On March 31, 2002, DPS implemented a standardized physical fitness-testing program for prospective DPS police officers. Current position vacancy announcements include successful physical fitness testing as a hiring criterion. Within the next year, the Chief, DPS, intends to implement a sustained physical fitness-testing program to be administered annually for officers hired under the current hiring program. There is no physical fitness standard for existing non-ERT DPS officers. They will not be required to undergo annual fitness testing because the Chief, DPS, believes the testing might adversely affect morale.

Follow-on Recommendation C.3.

We recommend that the Director, Pentagon Force Protection Agency, continue working with the Office of the Under Secretary of Defense (Personnel and Readiness) to develop standard, core-level training standards and physical fitness requirements for civilian police officers and security guards employed throughout DoD and, when completed, adopt those standards for DPS police officers and security guards.

Management Comments and Our Evaluation

Director, Administration and Management Comments. In the draft report, we recommend that the Chief, Defense Protective Service, formalize implementation of the physical fitness program requirements by developing a general order within 90 days following receipt of the final evaluation report. The Director partially concurred. According to the Director, PFPA developed comprehensive physical fitness standards, which tie physical fitness and medical standards to the job elements in position descriptions for police officers. The standards and proposed position descriptions are in staffing with WHS. Once the WHS HRSC and General Counsel concur, PFPA will coordinate with the FOP bargaining unit. When that process is completed, the new program will be initiated. This process is tied to many variables, but it is PFPA's intent to execute the new program as soon as possible. The Director did not include an estimated completion date for the actions, advising that establishing an artificial "no later than date" would serve little purpose and might not be achievable given union bargaining requirements.

Evaluation Response. In addition to factors mentioned in the Director's comments, in response to another evaluation report,[29] the Office of the Under

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[28] Emergency Services Team.

Secretary of Defense (Personnel and Readiness) is leading an effort to develop standard, core-level training standards and physical fitness requirements for civilian police officers and security guards employed throughout DoD.[30] PFPA is involved in this effort. In addition, current Administration efforts to amend the Civil Service requirements as they pertain to DoD could impact PFPA initiatives in this area. One potential impact under the proposed legislation is that PFPA might no longer be required to address changes in physical fitness requirements with union bargaining units. Due to these ongoing initiatives, it would not be appropriate for us to continue the recommendation in the draft report, which could place DPS at odds with the ongoing efforts to standardize police officer and security guard training and physical fitness requirements throughout DoD. We, therefore, have amended our recommendation in the final report. In commenting on the final report, the Director should address comments to the amended recommendation.

Prior Recommendation C.4.

"The Chief, DPS, take action to ensure that supervisors who make overtime assignments do so equitably."

The Director, Administration and Management, agreed. According to the Director, although General Order 1300.17 already addressed this issue, DPS was studying the matter and would take appropriate steps to assure equitable overtime assignments.

Follow-on Evaluation Results

The Chief, DPS, has put measures in place to ensure that overtime is distributed equitably; however, a DPS audit and an OIG DoD investigation provide indications that management controls with respect to overtime pay may be deficient.

The December 29, 2000, negotiated labor agreement between DPS and the Fraternal Order of Police, stipulates the procedures for assigning officers overtime. Comparing overtime data from 1997-2000 (before the new agreement) with data from 2001-2002 showed that overtime is now more evenly distributed. Based on these data and because there is currently more overtime available than officers to work the time, equitable overtime distribution is no longer an issue. The current labor agreement seems to assure that the system will remain fair after PFPA manning reaches its increased authorized strength.

A DPS officer has not filed a complaint or formal grievance dealing with overtime since the changes. However, an audit by DPS staff inspectors in calendar year 2000, and a preliminary OIG DoD evaluation in 2001,[31] revealed

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[29] Report No. IPO 2002E004, "Evaluation of Installation-Level Training Standards for Civilian Police Officers (GS-0083) and Security Guards (GS-0085) in the Department of Defense," December 20, 2002.

[30] The new DoD-wide standards for physical fitness might well not include "grandfather provisions" excluding current officers from the requirements.

[31] A DCIS criminal investigation was initiated based on information developed during the evaluation. Because the investigation limited the work that could be done on the evaluation, the evaluation was discontinued without a report being published.

that DPS did not properly account for overtime hours worked. DPS inspectors uncovered numerous incidents, especially within the Special Operations Division, in which data from the daily detail sheets did not match data on the official time sheets. Although tasked by the Deputy Chief, the Commander, Operations Services Branch, did not respond with the results of corrective actions implemented in response to the aforementioned audit. The preliminary OIG DoD evaluation identified suspected improprieties. A subsequent DCIS and FBI joint criminal investigation led to a DPS employee being convicted for receiving $40,000 in fraudulent overtime pay.

Follow-on Recommendation C.4.

We recommend that the Chief, Defense Protective Service:

a. Revise and update General Order 2300.24, "Overtime Procedures," November 30, 1994, to coincide with the December 29, 2000, union agreement regarding allocation of overtime hours.

b. Provide recurring training to administrative duty officers and supervisors regarding their responsibilities to record overtime hours worked on daily detail sheets and employee time sheets, respectively.

c. Implement a system of effective management controls as required by the Federal Manager's Financial Integrity Act of 1982, to ensure that all overtime hours worked are accurately recorded.

d. Direct that all managers promptly evaluate and determine proper actions in response to known deficiencies, reported audit and other findings, and related recommendations.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation C.4.a). The Director concurred, advising that GO 2300.24, "Overtime Procedures," was being updated based on the union agreement provisions regarding allocation of overtime hours. Additionally, an SOP was being created, as well as an "Acknowledgement of Responsibilities" form that timekeepers would be required to sign (estimated completion date August 31, 2003).

Evaluation Response. The management comments are responsive.

PFPA Comments (Recommendation C.4.b). The Director concurred. According to the Director, PPD timekeepers and first-line supervisors have been trained on responsibilities for recording overtime and filling out timesheets, and all new supervisors are trained on these responsibilities.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation C.4.c). The Director concurred, advising that a new PFPA Time and Attendance Regulation was created to set up policies and procedures for all PFPA. Responsible personnel have been briefed and trained on the Regulation

and procedures. An IMC[32] Assessable Unit manager was also appointed to monitor all timesheets and ensure that they are accurate and include proper documentation.

Evaluation Response. The management comments are responsive.

Prior Recommendation C.5.

"The Chief, DPS, take action to revise the current policy for internal affairs investigations, requiring direct internal affairs reporting to the Chief, DPS, and an alternative reporting mechanism, such as to the Director, RE&F, WHS, when internal affairs allegations involve the Chief, DPS."

Management Comments. The Director, Administration and Management, agreed. The Director advised that DPS was modifying General Order 1100.25, in this regard and would complete the review by March 31, 1999.

Follow-on Evaluation Results

The Chief, DPS, incorporated the recommended changes into DPS General Order 1100.25, "Internal Affairs Investigations," May 7, 1999; by requiring direct internal affairs reporting to the Chief, DPS, (through the Deputy Chief), and an alternative reporting to the Director, Real Estate and Facilities, WHS, when internal affairs allegations involve the Chief and/or Deputy Chief, DPS. However, General Order 1100.25 was replaced by PFPA General Order 9000.02, "Internal Affairs Investigations," December 17, 2001, which does not include the recommended changes.

Follow-on Recommendation C.5.

We recommend that the Director, Pentagon Force Protection Agency, revise the current policy for internal affairs investigations, to require direct internal affairs reporting to the Director, Pentagon Force Protection Agency.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation C.5). The Director concurred. The Director advised that, under the new PFPA organizational structure, the Director of Criminal Investigations and Internal Affairs reports directly to the Director, PFPA.

Evaluation Response. The management comments are responsive. In commenting on the final report, the Director should provide a copy of the final, approved PFPA organizational structure.

Prior Recommendation C.6.

"The Chief, DPS, take action to revise General Order 1300.10 to identify specifically the types of community relations events that the honor guard may

[32] Internal Management Controls

support, and requiring these events to be selected in accordance with Federal law and DoD policy. General Order 1300.10 should set forth specific criteria for selecting and training team members, approving their participation in community events, and for funding participation. The policy should also include a follow-up reporting process that documents participation, costs, and the actual or anticipated Government benefits derived from the participation."

The Director, Administration and Management, agreed with the recommendation and advised that DPS would implement required changes immediately.

Follow-on Evaluation Results

The Chief, DPS, published General Order 3076.02, "Utilization of the Ceremonial Unit," May 1, 2000. As recommended, General Order 3076.02 identifies the types of community relation events the unit may support and sets forth specific criteria for selecting and training team members; approving their participation; and funding the participation. The policy establishes the requirement to document participation in events within 7 days following an event to the Commander, Special Operations Division; however, General Order 3076.02 does not require the after-action report to contain the nature of the event, the costs, or the actual or anticipated Government benefits derived from the participation.

Although the Chief, DPS, revised General Order 3076.02 regarding use of the ceremonial unit and provided a copy to OIG DoD Audit Followup to satisfy follow-up reporting requirements, he did not disseminate General Order 3076.02 to the Deputy Chief, the officer in charge, or the supervisory sergeant in charge of the ceremonial unit. Therefore, after action reports were not prepared.

After learning of the requirement to prepare after action reports, as a result of our follow-on evaluation, the Deputy Chief, DPS, provided a historical compilation of events that the ceremonial team supported from March 2000 to June 2002. A review of this information indicates that the events aligned with the types of events the honor guard may legally support. The report did not include the costs or benefits derived.

Follow-on Recommendation C.6.

We recommend that the Director, Pentagon Force Protection Agency:

a. revise General Order 3076.02, "Utilization of the Ceremonial Unit," May 1, 2000, to require after-action reports that contain the nature of the event, the costs, and the actual or anticipated Government benefits derived from the participation; and

b. through a system of management controls, require that general orders are disseminated throughout the department and that affected work units comply with the requirements outlined therein.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation C.5.a). The Director concurred, advising that the action would be accomplished not later than August 31, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation C.5.b). The Director concurred and advised that a complete review of all General Orders would begin in July 2003. The revised products will be posted to the PFPA Intranet and paper copies are already available to the PPD. General Orders are to be followed by personnel in the affected work units and they are required to comply. Failure to comply becomes a supervisory issue for necessary reemphasis or disciplinary action.

Evaluation Response. The management comments are responsive.

Prior Finding D. Operations

Our previous evaluation of DPS law enforcement operations, including patrol, traffic, and fixed post operations; criminal investigations; and special operations, identified serious operational and management problems, some spanning all operational categories, and others isolated to a particular category or categories. Specifically, DPS had problems in weapons accountability and firearms qualification. We also noted deficiencies in protecting and preserving evidence and with oversight of confidential funds.

DPS policies and procedures for criminal investigations were not completely effective, and the program was not subject to effective management oversight. As a result, the DPS Criminal Investigation Section did not produce results commensurate with its workload.

Prior Recommendation D.1.

"The Chief, DPS, take action to expand the agency's general orders to include policies and procedures for:

- all DPS weapons, including specialized weapons not specifically assigned to individual officers, and specifically addressing the carrying of personal weapons on and off DoD properties in the National Capital Region; and

- handling Grand Jury information, including specific procedures for receiving, processing, safeguarding and disposing of such information in accordance with the protection accorded Grand Jury information under Rule 6(e) of the Federal Rules of Criminal Procedure."

The Director, Administration and Management, agreed with the recommendation. The Director advised that the work dealing with DPS weapons was ongoing and would be completed by June 30, 1999. The portion dealing with Grand Jury information would be completed by October 31, 1999.

Follow-on Evaluation Results

In response to this recommendation, the Chief, DPS, published DPS General Order 1100.31,"Personal Weapons," July 1, 1999, which prohibits carrying personal weapons onto the Pentagon Reservation.

For details, regarding expansion of the agency's general orders to include policies and procedures for specialized weapons not specifically assigned to individual officers, see the results of Recommendations D.2.

The handling of Grand Jury evidence and information is now addressed in General Order 5061.01, "Evidence Management," May 5, 2000; however, the procedures do not address the requirement to obtain a Rule 6(e) access letter from the Assistant United States Attorney before receiving grand jury evidence or information.

Follow-on Recommendation D.1.

We recommend that the Director, Pentagon Force Protection Agency, revise General Order 5061.01, "Evidence Management," May 5, 2000, to require that the evidence custodian obtain a Rule 6(e) access letter prior to receiving Grand Jury information and evidence.

Management Comments and Our Evaluation

Director, Administration and Management Comments. The Director concurred, advising that the action should be completed by August 31, 2003.

Evaluation Response. The management comments are responsive.

Prior Recommendation D.2.

"The Chief, DPS, in concert with the WHS Property Management Branch, take action to standardize the accountability process for DPS weapons to conform to DoD policy. This effort should include an aggressive, thorough investigation to determine the total weapons for which DPS is accountable and the circumstances surrounding each missing or otherwise unaccounted weapon."

The Director, Administration and Management, agreed with the recommendation. According to the Director, the investigation that we recommended "has been completed and there are no missing or unaccounted weapons." Further, the inventory that was completed when the original handguns and shotguns were transferred from General Services Administration (GSA) was faulty, but "there is currently an accurate inventory listing and the OSD Property Management Office verifies the inventory annually."

Follow-on Evaluation Results

In examining DPS efforts at implementing Recommendation D.2, and considering Senator Grassley's interests in weapons accountability and the use of DPS weapons in crimes, we discovered violations of DoD Directive 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law

Enforcement and Security Duties," November 1, 2001, including: DPS officers do not store their weapons as required; and, the Chief, DPS, allowed a Service member assigned to DPS to carry a private weapon for personal protection. These issues are fully addressed in Part III, "Other Problem Areas," of this report.

We conducted a 100 percent physical (hands-on) inventory and performed a records reconciliation that accounted for all 640 current PFPA weapons.[33] However, there were numerous problems with the PFPA weapons management process, including the following:

- Some DPS arms storage facilities did not meet the requirements of DoD Manual 5100.76-M, "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives," August 12, 2000, and DoD Standard 6055.9-STD, "Ammunition and Explosives Safety Standards," July 1999, with regard to restricted area warnings, use of access rosters, and posting of firefighting symbols.

- Three inoperable weapons were not marked or recorded as unserviceable, and there was no effort to fix them, as required by WHS Administrative Instruction 94, "Personal Property Management and Accountability," November 6, 1996, paragraph 6.4.1, which states, "The custodial (sic) and/or subcustodian must ensure that all property assigned to the custodial area is in serviceable condition and available for use."

- Three ceremonial rifles were leaning against the wall of the Remote Delivery Facility arms room and were not secured in a weapons rack or metal container as required by DoD Manual 5100.76-M, paragraph C.4.2.2.

- On May 24, 2002, the clearing barrel at the Protective Services Unit (PSU) was full of papers and rags, and in violation of General Order 1500.7, "Weapons Accountability," July 16, 1999, an officer stored his firearm[34] loaded in the safe while he was exercising.

- The Smith and Wesson .38 and .357 caliber handguns that DPS turned in to WHS Property Management Branch (PM) in April 2002 have not been accounted for monthly, and when we conducted the 100 percent inventory, WHS PM spent more than 20 minutes searching their vault before finding the weapons in a cardboard box.

- Reporting the status of DPS weapons to the DoD Small Arms Registry (DoD Registry), via the Defense Property Accountability System (DPAS), is faulty. The DoD Registry confirmed that DPS and WHS PM made numerous mistakes for weapon turn-in with respect to proper documentation, weapon nomenclature, national stock numbers, and military control numbers. This led to the Fort Belvoir Serialization Officer and Anniston Army Depot reporting the same weapons to the DoD Registry as being on-hand when they were actually at

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[33] As discussed later, our efforts did not locate or account for six missing weapons, not on the current inventory that were not properly removed from the inventory prior to this follow-on evaluation. Once PFPA completes recommended actions with respect to these weapons, its inventory records will be as accurate as is currently possible for future weapons control and accounting.

[34] Sig Sauer, model P228, serial number B298435.

Anniston Army Depot. DPS, in concert with the WHS PM, should continue the reconciliation process with the Fort Belvoir Serialization Officer. They should also work with DPAS personnel to ensure that the PFPA data system is properly connected with DPAS for future entries.

- Weapon procurement practices do not align with DoD Manual 5100.76-M, paragraph C5.3.1.[35] WHS PM and DPS do not have written guidance regarding authorization documents, such as a "table of distribution and allowances," that specifies the types and quantities of weapons they are authorized.

- DPS efforts to account for 12 weapons that had been listed as lost or stolen since 1996 did not comport with DoD Manual 5100.76-M, paragraph C5.5, and DoD Regulation 7000.14-R, "Financial Management Regulation," April 1998, volume 12, chapter 7.[36] Four of these weapons are the Smith and Wesson revolvers that we recommended DPS aggressively and thoroughly investigate to determine the total weapons for which DPS was accountable and to determine the circumstances surrounding each missing or otherwise unaccounted weapon.[37] Contrary to management's comments in response to our 1999 report, the investigation was not completed as reported, and the four missing weapons remain unaccounted.

- Our review of five weapon theft investigations[38] that were conducted by the PFPA Criminal Investigation and Internal Affairs Directorate (CI/IAD) revealed:

  - Three weapon thefts occurred since we published the previous evaluation report in May 1999. In two instances, the DPS officer or investigator was outside DPS jurisdiction and the weapons were not stored in accordance with DoD policy. The third weapon was stolen from the DPS logistics section where numerous unassigned weapons were stored in a manner that did not meet the requirements for arms storage established by DoD Manual 5100.76-M.[39]

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[35] "[t]he DoD Components shall establish procedures for item managers to ensure the adequacy of requisition verification of Category II-IV arms."

[36] Six of these 12 weapons have been recovered and are back under Government control. Two other weapons (Beretta handguns) have been identified as stolen and have not been recovered.

[37] There were actually seven missing weapons, of which five were Smith and Wesson revolvers that we recommended DPS investigate in 1999. One .357 caliber, serial number D787912, was found in March 2002 in the DPS operations arms room in a drawer of a desk that was being moved to facilitate renovation. The investigation of this weapon did not meet requirements. The weapon's loss was discovered in October 1996, but the DD Form 200, "Financial Liability Investigation of Property Loss," was not initiated until December 1997, and reflects, "[i]tem does not exist due to transposition of ID numbers during inventory." Additionally, according to a memorandum by the Commander, Support Services Branch, the Bureau of Alcohol, Tobacco, and Firearms reported this weapon as never being in the possession of the Federal Government. Furthermore, loss of this weapon was never entered into NCIC as required.

[38] These included case control numbers 97-1900; IA004-99; IA008-99; IA014-99; and IA010-2001.

[39] DPS management later moved the remaining unassigned weapons to a suitable arms storage facility.

- The investigative steps undertaken to resolve these thefts did not comport with accepted standards for conducting criminal investigations.[40] In general, the investigations did not contain investigative plans; supervisory guidance if provided was not documented; investigative efforts were not timely or thorough; and reports of investigation or interim reports of investigation were not well written and some were completed several months after the last pertinent investigative step was taken.

- Of the five cases reviewed, four were designated as internal affairs (IA) cases; however, there was no documentation to indicate the cases were initiated with the approval of the Chief, DPS, or his designee, as required by General Order 1100.25, "Internal Affairs Investigations," May 7, 1999, and General Order 9000.02, "Internal Affairs Investigations," December 17, 2001.

- In two cases, the DPS law enforcement officers whose assigned weapons were stolen were not properly listed in the internal affairs reports of investigation. In case IA 010-2001, the suspect of the weapon theft was a civilian and the officer whose weapon was stolen was categorized as a witness. Yet, the officer was given a letter of warning because he did not properly secure the weapon, and because of his association with a person of questionable character. In case IA 008-99, an investigator whose assigned weapon was stolen was categorized as a victim. He was given a letter of "caution and requirement" for not properly securing his assigned weapon and not remaining armed while performing duties as the on-call duty investigator. If the purpose of initiating these two internal affairs investigations was to investigate possible misconduct by the DPS law enforcement officer, and they later received corrective letters because misconduct was substantiated, they should have been listed as suspects or subjects in the respective internal affairs reports of investigation. In case IA 014-99, the weapons custodian was found to have committed three administrative violations, yet the person's report status was listed as "other."[41]

- Disciplinary action noted during the reviews did not align with the suggested disciplinary action established by WHS Administrative Instruction 8, "Disciplinary and Adverse Actions," August 17, 1981. Enclosure 2, "Guide to Disciplinary Actions," suggested discipline for the offense, "[u]nauthorized possession of, use of, loss of, damage to, or willful destruction of Government property, records, or information," as ranging from a reprimand to removal from employment for the first offense. In case IA 008-99, the investigator received a "letter of caution and requirement." In case IA 014-2001, the officer was given a letter of warning.[42]Case number IA008-99 involved the theft (in September 1999) of a CI/IAD investigator's assigned weapon from his privately owned vehicle. The IA supervisor conducted the investigation. We believe the Chief, DPS,

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[40] President's Council on Integrity and Efficiency, Executive Council on Integrity and Efficiency, "Quality Standards for Investigations," September 1997

[41] To avoid confusion, in some instances it may be advisable to initiate both a criminal investigation (to concentrate on investigating the theft and recovering the weapon), and a separate internal affairs case to investigate administrative shortcomings or misconduct by DPS officers that contributed to the theft.

[42] On January 9, 2003 the Acting Director, PFPA, advised that this officer has since been dismissed from DPS. We determined that following the theft incident the officer was involved in subsequent misconduct.

should have assigned responsibility for this investigation outside the CI/IAD to avoid the appearance of a conflict of interest.

- Most DD Forms 200, "Financial Liability Investigation of Property Loss," were completed beyond the 30-day requirement, and when the block indicating "Negligence or Abuse Evident or Suspected," was marked, "yes," no financial accountability officer was assigned, and no one was held financially liable.

- The MOU between the Director, WHS, and the Director, DCIS, effective March 30, 2001, requires that DPS investigators notify the DCIS Mid-Atlantic Field Office in the event of any reported theft or attempted theft of Government-owned weapons or ammunition. Our review of the DPS investigation of the November 15, 2001, theft of a DPS officer's weapon from his residence did not reveal any indication that DCIS was notified as required.

- The inventory process DPS and WHS PM uses for receiving new weapons is not the same as that dictated by DPS General Order 1500.7, "Weapons Accountability," July 9, 1999. Even though we noted confusion concerning the exact procedures, it appears that a DPS and WHS PM joint inventory of newly acquired weapons is the norm; however, the primary custodian does not sign for newly acquired weapons until the next scheduled quarterly inventory. General Order 1500.7 also needs to address how quarterly inventories will be conducted to include specific wording that the "serial number" on the weapon must be physically examined. Lastly, General Order 1500.7 should specify who is responsible for entry and verification of newly acquired weapons into DPAS.

See Appendix C for details.

Follow-on Recommendations D.2.

We recommend that:

a. The Director, Administration and Management:

(1) Establish a recurring program to ensure that individuals responsible for weapons accountability are aware of their responsibilities as established by DoD Manual 5100.76-M, "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives," August 12, 2000.

(2) Establish procedures to ensure that Washington Headquarters Services, Property Management Branch, accurately and timely reports the Pentagon Force Protection Agency weapon inventory to the DoD Registry, as required by DoD Manual 4000.25-2-M, "Defense Logistics Management System," September 19, 2001, chapter C12, via the Defense Property Accountability System.

(3) Take immediate steps to secure properly the excess Smith and Wesson .357 and .38 caliber weapons and turn them into the Anniston Army Depot.

(4) Comply with DoD Manual 5100.76-M, DoD Manual 4000.25-2-M, and Army Regulation 710-3, "Asset and Transaction Reporting System," March 31, 1998, by issuing guidance regarding the procurement of weapons. In particular, develop weapon procurement procedures that include steps for

rejecting excess and unauthorized requisitions, and to require oversight, verification of weapon shipments, Defense Property Accountability System data entry, and custodian signature upon receipt.

b. The Director, Pentagon Force Protection Agency:

(1) Reopen the investigations into four missing revolvers and complete all investigative leads involving the two stolen Beretta handguns. The investigations should be conducted in accordance with DoD Manual 5100.76-M, paragraph C5.5 and DoD Regulation 7000.14-R, "Financial Management Regulation," volume 12, chapter 7 (emphasizing the proper completion of DD Forms 200, "Financial Liability Investigation of Property Loss"). Furthermore, in accordance with DoD Manual 5100.76-M, paragraph C7.6.3, ensure the local Federal Bureau of Investigation field office and local law enforcement agencies, as appropriate, are provided information pertaining to stolen weapons.

(2) Comply with DoD Manual 5100.76-M, paragraph C7.5, by furnishing the results of all stolen weapon investigations, as well as those of recovered weapons, to the Director of Security, Office of the Assistant Secretary of Defense, Command, Communications, Control, and Intelligence, Deputy Assistant Secretary of Defense (Security and Intelligence Operations), (OASD (C3I), DASD (S&IO)). Reports should include an analysis of the theft as well as actions taken to prevent future incidents and should be presented at the next Physical Security Review Board.

(3) Inspect all arms storage facilities to ensure compliance with DoD Manual 5100.76-M and DoD Standard 6055.9-STD, "Ammunition and Explosives Safety Standards," July 1999, giving particular attention to requirements for restricted areas, use of access rosters, posting of firefighting symbols, and ensuring the physical security of all weapons.

(4) Revise General Order 1500.7, "Weapons Accountability," July 16, 1999, in compliance with DoD Manual 5100.76-M, paragraph C5.3.2.1, regarding quarterly inventory procedures that include serial number examination.

(5) Develop procedures to ensure that all weapons are serviceable as required by WHS Administrative Instruction 94, "Personal Property Management and Accountability," November 6, 1996.

(6) During training, emphasize weapon safety and firearms storage requirements to all Pentagon Force Protection Agency personnel.

(7) Establish policy requiring that all investigators apply the "Quality Standards for Investigations," established by the President's Council on Integrity and Efficiency, and ensure that all investigations, including weapon theft investigations, are properly planned, executed, supervised, and reported.

(8) Through a system of management controls, ensure that:

(a) All internal affairs investigations are properly initiated by the Director, Pentagon Force Protection Agency, or the Chief, Defense Protective Service, or his designee, and are unbiased and objective.

(b) In all instances involving the loss or theft of a Defense Protective Service weapon, a financial liability investigations of property loss is completed as required by Washington Headquarters Services Administrative Instruction 94, "Personal Property Management and Accountability," November 6, 1996, and DoD Regulation 7000.14-R, "DoD Financial Management Regulation," April 1998, volume 12, chapter 7.

(c) Pentagon Force Protection Agency and Defense Protective Service supervisors comply with Administrative Instruction 8, "Disciplinary and Adverse Actions," August 17, 1981, Enclosure 2, in all instances where disciplinary action is required.

(d) The Defense Criminal Investigative Service is notified in all thefts or attempted thefts of Government-owned weapons or ammunition as required by the memorandum of understanding.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation D.2.a.1). The Director concurred, advising that PFPA had conducted the required training and was incorporating it into its annual training program.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.2.a.2). The Director concurred, advising that PFPA, in conjunction with Washington Headquarters Services, was working to assume full accountability for and reporting of its weapons. As a former element of WHS, PFPA's weapons are currently on its property books and under the WHS account in the Defense Property Accounting System (DPAS). WHS and PFPA have reconciled the current PFPA inventory and corrected all discrepancies between the WHS DPAS records and the component registry. The DPAS software now electronically updates the registry on a monthly or quarterly basis.

As part of the PFPA standup process, PFPA has established its own property book and will be using DPAS as its electronic system of record. All current data within the WHS DPAS system will be electronically transferred, via the mainframe computer at the DFAS facility in Columbus Ohio, to the PFPA database. This will ensure data integrity within the property book and the component registry.

The PFPA logistics staff is developing the following: property management policy and procedures; physical inventory requirements; reports of survey; outside organization reporting procedures; and excess property disposition instructions. These procedures will include all necessary steps to ensure physical inventories of all firearms are completed and reported to the registry on a scheduled basis.

The following are the estimated completion dates:

July 30, 2003: Publish PFPA Property Accountability Instructions

August 31, 2003: Transfer weapons inventory and full responsibility to PFPA

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.2.a.3). The Director concurred. According to the Director, the Smith and Wesson .357 and .38 caliber weapons are properly secured, under the control of, and reported to the registry by the Washington Headquarters Services Property Management Branch. PFPA is working with WHS to establish a turn-in schedule for these weapons.

Evaluation Response. The management comments are responsive.

Prior Recommendation D.3.

"The Chief, DPS, take action to establish management processes and monitoring systems as necessary to prevent lapses in DPS officer firearm qualification testing and preclude firearms access to those officers who do not qualify or who are otherwise barred from carrying a weapon."

The Director, Administration and Management, agreed and advised that procedures existed, all officers qualified with their weapons twice annually, and weapons were not issued to officers who did not qualify.

We accepted the comments as generally responsive, but pointed out that these procedures existed at the time of our fieldwork, but they were not being fully enforced and DPS did not have a monitoring system to aid enforcement. We also pointed out that DPS management would benefit from a monitoring system to permit ready determinations of dates on which officers (1) last qualified to carry a weapon, (2) must re-qualify to maintain weapon carrying status, and (3) when appropriate, were denied weapon carrying status because they did not meet requalification requirements or another condition warranting withholding a weapon from the officer. We asked the Director to address the monitoring issue or describe other actions completed since our fieldwork, to preclude the types of enforcement lapses we had identified.

The DPS response to Audit Followup indicated:

> "One individual is responsible for ensuring that there are no lapses in DPS officer firearm qualifications and for denying access to firearms to those officers who do not qualify. The Branch commander has reviewed the procedures with this individual. All officer records for firearms training are up to date and proper procedures are being followed."

Follow-on Evaluation Results

The mechanism to track weapons qualifications still needs improvement. In particular, five violations of DoD Directive 5210.56, paragraph E1.1.4 need to be addressed: three unqualified PFPA personnel were found to be carrying firearms on duty (one of which was detected and corrected by PFPA prior to this review); the Chief, DPS, had direct access to a weapon, but had not qualified; and another officer, who had custody of his weapon, was on extended leave out of the area when his qualification lapsed.

As for specialized weapons qualifications, DPS had extreme difficulty getting officers to the classroom and to the firing range, because of manning requirements both before and after the September 11, 2001, terrorists' attack on the Pentagon. This situation has hampered DPS' ability to perform its mission in the event of increased force protection conditions. On September 11, 2001, when the terrorists' attack occurred, DPS had only one officer from the DPS Operations Services Branch qualified on the MP5 submachine gun. From September 13, 2001, to January 25, 2002, DPS manned numerous posts with officers armed with MP5 submachine guns, which they were not qualified to carry.

The lack of specialized weapons qualifications was also found with the firing instructors who did not fire for instructor qualification on a yearly basis. As a result, there currently is no method, such as a qualification roster or a weapons card, to ensure that people are actually qualified before being issued an MP5 submachine gun.[43] DoD level guidance does not address initial and continuing certification standards for firearms instructors.

Specialized weapon qualification and tracking were also problems for the DPS Special Operations Branch. The DPS training officer did not track specialized weapon qualifications for ERT or PSU. These sections conducted their own weapons training. The training officer did not know what course of fire they used. ERT uses the same course of fire as the rest of DPS, but PSU developed its own course of fire, with no record of approval by the training officer. We also identified three PSU officers who had not qualified on the MP5 submachine gun, one of whom had an MP5 stored in his assigned safe.

Although DPS currently has a "do not carry list" that identifies officers who are unqualified or on light-duty, DPS has not established formal procedures to maintain the list. Discrepancies existed on the do not carry list that were caused by problems associated with maintaining the qualification database. Some officers were told that they needed to qualify when they already had qualified; one officer was placed on the "do not carry list," even though he was qualified; and two unqualified officers[44] were not placed on the list when they should have been. Additionally, the DPS training officer was unaware that the general order on semi-annual qualifications had been revised in October 2000, eliminating the exception for majors and above to qualify annually, rather than semiannually. As a result, the Commander, Operations Services Branch, did not qualify and was not placed on the "do not carry list." We believe that responsibility for maintaining the weapons qualifications database should rest with firing range personnel. They appear to be best resourced to accomplish timely and accurate database maintenance. The training officer should emphasis requirements to the officers and ensure they maintain their weapon qualifications. An on-line database would assist management in providing the necessary oversight.

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[43] DoDD 5210.56, E1.1.5 states, "Procedures shall be established to ensure that any individual being issued a firearm has written authorization in effect before the actual issuance of the weapon." Furthermore, E1.1.4 states, "...all authorizations to carry firearms by personnel shall be in writing, signed by the appropriate authorizing official, and issued only to personnel who satisfactorily have completed qualification training, proficiency testing, and use of deadly force training within the preceding 12 months."

[44] One of these officers was a Reservist called to active duty, and did not have immediate access to DPS weapons.

PFPA has no policy guidance on adding personnel, who for various reasons are not suited to carry firearms, to the "do not carry list." This became evident when DPS management allowed an officer to continue to bear firearms after numerous incidents of misconduct that led to the initiation of an adverse personnel action to terminate his employment. No DoD policy exists regarding suitability to carry firearms based on conduct, physical capabilities, or mental or emotional factors.

Additionally, DPS general orders and standard operating procedures lack guidance in other issue areas, including:

- Arming, use of force, and weapon qualification procedures for the Service members and civilian security specialist that the Chief has authorized to bear firearms.

- Ensuring people are qualified and have a need to be armed before a weapon is issued.

- Annual use of force training for specialized weapons.

- Post-certification training requirements for firearm instructors.

Finally, on October 30, 2001, the Deputy Chief, Security Services Division, signed an authorization letter, in which 10 of the 25 people authorized to carry firearms, including the Deputy Chief, had not qualified. As a result of the September 11, 2001, terrorists attack on the Pentagon, the Chief, DPS, delegated arming authority, as dictated by DoD Directive 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties," to the Deputy Chief, Security Services Division.

Follow-on Recommendation D.3.

a. We recommend that the Under Secretary of Defense for Intelligence develop:

(1) policy and procedure that preclude arming DoD personnel determined to be unsuitable because of physical, medical, mental health, or performance related reasons; and

(2) minimum standards for training, certification, and qualification of firearm instructors.

b. We recommend that the Director, Pentagon Force Protection Agency:

(1) establish policy requiring all personnel who do not qualify, including activated Reserve members, to be placed on the "do not carry list" and, while protecting the privacy of the people on the list, ensure this list is available to personnel responsible for issuing weapons and developing duty rosters;

(2) comply with DoD Directive 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties," November 1, 2001, paragraph E1.1.4, to ensure that only qualified personnel are authorized to bear firearms;

(3) authorize only qualified personnel to bear firearms, and ensure that authorization letters have expiration dates;

(4) revise the general orders dealing with arming, use of force, and weapon qualification to include Service members, security specialists, and other personnel that the Director, Pentagon Force Protection Agency, deems necessary to bear arms, including procedures to verify currency of qualifications and the need to bear arms before weapon issuance;

(5) develop policy guidance and training on use of force continuum for specialized weapons;

(6) formalize weapon courses of fire, and provide oversight to ensure that all Pentagon Force Protection Agency elements use only approved courses of fire for specialized weapons qualification;

(7) formalize procedures for the "do not carry list";

(8) examine the process of scheduling Pentagon Force Protection Agency personnel for weapon qualification training to eliminate inadvertent qualification lapses--a weapons qualification schedule developed by the training section working in concert with operations, and posted well in advance, should facilitate the process;

(9) streamline the process for maintaining the weapons qualification database;

(10) revise procedures for tracking special weapons qualification, expeditiously train an adequate number of officers to staff posts for contingency/crisis situations, and continually monitor the number of qualified officers to ensure they remain mission capable; and

(11) maintain qualification rosters for all weapons, including specialized weapons, in the arms room to facilitate issuance of weapons to qualified personnel only, especially when responding to increased force protection conditions.

Management Comments and Our Evaluation

USDI Comments (Recommendation D.3.a). The USDI concurred and advised that necessary policy would be developed for inclusion in DoDD 5210.56. The expected publication date was August 30, 2003.

Evaluation Response: The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.3.b.1). The Director concurred, advising that PFPA will incorporate policy for placing personnel who do not qualify with their PFPA weapon on a "do not carry list" in GO 1005.03, "Semi-Annual Weapons Qualification." This will include identifying the proper personnel who will be allowed to have access to the list. Additionally, an SOP will be developed that includes specific procedures for maintaining this list. These documents and procedures will be updated, established and implemented by August 31, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.3.b.2). The Director concurred and advised that all PFPA employees authorized to carry a firearm are now qualified on that firearm.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.3.b.3). The Director concurred in part. The Director agreed that authorization letters should be issued to qualified personnel, but did not agree with the expiration date requirement, claiming that it would place a logistical and administrative burden on the branch According to the Director, Pentagon police officers qualify twice annually with their issued handguns and quarterly with the sub-machine gun, and it would be more beneficial to pull a few individual's letters if they failed to qualify and reissue to them on a case by case basis rather issuing approximately 600 letters 6 times a year.

Evaluation Response. We appreciate the Director's desire to limit the administrative burden involved in issuing authorization letters. However, we have no basis to assume that PFPA management controls would operate effectively to ensure only qualified personnel are armed. The reality is that DPS' controls have not been effective in precluding unqualified personnel from being armed. The situation was serious during our initial evaluation and continued 3 years later during our follow-on evaluation. In our view, the potential liability associated with this condition far outweighs the administrative burden involved in monitoring the expiration of authorizations to carry firearms. We expect an aggressive, robust program to monitor authorizations and deny access to firearms when the authorization expires. We found no such program. Our concern is increased by the organization's practice of allowing officers to take home Government weapons contrary to law and departmental directive. Without a program that actively surveils firearms authorizations, it is not reasonable for PFPA to expect an armorer or supervisor to ensure a police officer is qualified to carry a specific Government weapon. Therefore, we ask the Director to reconsider his position in responding to this final report.

Director, Administration and Management Comments (Recommendation D.3.b.4). The Director concurred, advising that GO 1005.03 "Semi-Annual Weapons Qualifications" will be updated to include procedures for arming, use of force, and weapon qualification for all appropriate PFPA employees. This will be completed by August 31, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.3.b.5). The Director concurred, advising that GO 1005.03 "Semi-Annual Weapons Qualifications" and GO 100.07 "Use of Force" would be updated to include policy guidance and training requirements for specialized weapons, and would be completed by August 31, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.3.b.6). The Director concurred, advising that a SOP and

lesson plan were being developed to address specialized weapons qualification. The estimated completion date for the SOP and lesson plan is August 31, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.3.b.7). The Director concurred, advising that a SOP would be developed to include specific procedures for maintaining the "do not carry list." This SOP will be established and implemented by August 31, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.3.b.8). The Director concurred, advising that a SOP was being developed to address weapons training. Personnel will be scheduled by name and within the prescribed time to eliminate "lapses." This SOP will be established and implemented by August 31, 2003.

Evaluation Response. The management comments are responsive. The new SOP, together with authorization letters with clear expiration dates, should preclude future qualification lapses as have existed during each of our DPS evaluations.

Director, Administration and Management Comments (Recommendation D.3.b.9). The Director concurred. According to the Director, the current filing system and software program is being reviewed. PFPA is procuring new training-tracking software and adding additional staff for data entry and record keeping to the Training Branch. The estimated completion date for this project is undetermined due to the uncertainty of the procurement process.

Evaluation Response. The management comments are responsive. In responding to this final report, PFPA should include an estimated completion date for these actions. We understand that procurement process uncertainties preclude giving an actual future date, but they do not preclude giving a reasonable estimate that could be adjusted later as necessary.

Director, Administration and Management Comments (Recommendation D.3.b.10). The Director concurred, advising that GO 1005.03 "Semi-Annual Weapons Qualifications" will be updated to include procedures for tracking special weapons qualifications and training all PPD officers on these weapons. The estimated completion date for the updates to this GO is August 31, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.3.b.11). The Director concurred, advising that a SOP was currently under development to address a "do not carry" list. Additionally, the training program currently under development includes specialized weapons qualifications for all PPD personnel. The estimated completion date for the SOP is August 31, 2003.

Evaluation Response. The management comments are responsive.

Prior Recommendation D.4.

"The Chief, DPS, take action to adopt and implement an evidence program that, at minimum, prescribes standards and procedures for:

- assessing and certifying individual qualifications for an evidence custodian and formally appointing the custodian;

- limiting access to evidence holdings to the evidence custodian and other designated and authorized DPS officials with specific access requirements;

- transferring to the evidence custodian all physical and other evidence collected, seized or otherwise obtained by all DPS personnel in connection with any law enforcement or criminal investigative case;

- collecting, marking, preserving, packaging, labeling, and storing evidence, including blood, body fluids, and other hazardous materials;

- temporary evidence transfers to prosecutors, forensics laboratories, and others when necessary and appropriate;

- special security and control over sensitive evidence, such as cash, jewelry, firearms, or drugs;

- conducting physical inventories annually and whenever an evidence custodian is replaced to ensure that evidence seized, collected, or otherwise obtained in connection with DPS law enforcement and criminal investigative cases is accounted for in the inventory;

- initiating investigative or other action as appropriate to resolve any discrepancy in the evidence identified in a physical inventory;

- returning or disposing of evidence within 6 months, or another justifiable, reasonable time period after prosecution or other legal requirements have been satisfied; and

- inspecting the evidence program at least annually to assess compliance with the prescribed program standards and procedures."

The Director, Administration and Management, agreed and advised that DPS was revising its General Order dealing with evidence custody and control, and expected to implement the revision by October 31, 1999. Further, a standard operating procedure was being developed for the DPS Evidence Custodian and the Federal Bureau of Investigation would conduct training.

Follow-on Evaluation Results

In response to Recommendation D.4, DPS developed General Order 5061.01, "Evidence Management," May 5, 2001 and Standard Operating Procedure (SOP) 516.01, "Evidence Management and Storage Procedures," May 22, 2001. We compared each item that we recommended with the general order requirements and standard operating procedure to determine whether the requirements we recommended were actually adopted. We then determined

whether they were actually implemented. Overall, DPS only implemented 3 of the 10 requirements. The continuing problem areas are:

- Assessing and certifying individual qualifications for an evidence custodian and formally appointing the custodian. Neither General Order 5061.01 nor SOP 516.01 addresses individual qualifications for the position.

- Transferring to the evidence custodian all physical and other evidence collected, seized, or otherwise obtained by all DPS personnel in connection with any law enforcement or criminal investigative case. General Order 5061.1 states:

> "The evidence will then be presented to the Evidence Custodian on the SD 558 (Evidence/Property Receipt Form) and recorded in the evidence logbook. The evidence custodian will ensure that all proper packing requirements are met prior to receiving any evidence from the officer or investigator or placing those items into the evidence room for safekeeping."

Despite this requirement, we identified numerous discrepancies (see Recommendation D.5. for details) because the evidence custodian continued to accept evidence items from temporary storage without reviewing the SD Form 558 and evidence items with the seizing official.[45]

- Collecting, marking, preserving, packaging, labeling, and storing evidence, including blood, body fluids, and other hazardous materials. General Order 5061.01 and Standard Operating Procedure 516.01 do not specifically address hazardous materials.

- Temporary evidence transfers to prosecutors, forensics laboratories, and others when necessary and appropriate. General Order 5061.01 includes procedures on how to process SD Form 558 and the evidence log. However, the procedures do not:

  - Require identifying the person responsible for submitting the evidence.

  - Include methods for packaging and transmitting evidence to the laboratory.

  - Identify the documentation required to accompany evidence when transmitted.

  - Require receipts to ensure chain of custody evidence.

  - Require laboratory results to be submitted in writing.

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[45] We first compared PFPA against CALEA standards since the 1999 report used these standards as the baseline. However, we also looked at established accepted practices that have been formalized by the Services. For consistency, we always reference the Army standard, Army Regulation 195-5,"Evidence Procedures," August 28, 1992. This is not to say that other Service guidance is lacking. Army Regulation 195-5, paragraph 2-4, requires that evidence will be secured in temporary storage until the seizing official personally releases the evidence to the evidence custodian. Additionally, Army Regulation 195-5, paragraph 2-3e, requires the evidence custodian to review the evidence custody document submitted with the evidence and have the submitting agent correct and initial all errors when possible.

A procedure was in place to hand-carry items to the local Drug Enforcement Administration (DEA) laboratory. General Order 5061.01 also addressed how firearms and ammunition will be packaged for transmittal. However, the guidance does not cover how other types of evidence will be packaged, or include transmittal procedures (courier or mail, or documentation requirements) for evidence being transmitted to agencies other than DEA.[46]

Also, in April 2000, DPS inspectors recommended creating and using a five-copy version of SD Form 558;[47] however, the recommendation was not implemented. We agree that DPS should use a multi-copy evidence custody form. The procedure would enhance the evidence custodian's ability to provide copies of evidence receipts to the seizing official for filing with the official case and investigative reports. It would also allow the original evidence receipt to accompany evidence sent for laboratory analysis or judicial proceeding, while maintaining a file copy.

- Conducting physical inventories annually and whenever an evidence custodian is replaced to ensure that evidence seized, collected, or otherwise obtained in connection with DPS law enforcement and criminal investigative cases is accounted for in the inventory. This recommendation combined two CALEA standards, as follows:

  - CALEA standard 84.1.6 (b) mandates:

> ". . . [a]n inventory of property occurs whenever the person responsible for the property and evidence control function is assigned to and/or transferred for the property and evidence control function is assigned to and/or transferred from the position and is conducted jointly by the newly designated property custodian and a designee of the CEO to ensure that records are correct and properly annotated."

The DPS General Order requires a joint inventory by the newly assigned evidence custodian and the court liaison sergeant, which satisfies the CALEA standard. However, the DPS guidance does not require the presence of the outgoing evidence custodian. The outgoing custodian must also be present because he/she must sign the forms releasing the evidence to the new custodian in order to maintain chain of custody for evidence purposes.[48]

  - CALEA standard 84.1.6 (c) requires, "an annual audit . . . by a supervisor not routinely or directly connected with control of property." General Order 5061.01 requires an annual audit by the court liaison sergeant to verify evidence control. However, this requirement does not meet the standard because the court liaison sergeant directly supervises the evidence custodian and is also the assistant evidence custodian.[49]

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[46] Army Regulation 195-5, paragraph 2-7, "Temporary Release of Evidence," provides specific procedures for this process.

[47] DPS 2000 Annual Evidence Accountability Inspection, April 27, 2000.

[48] The Army has very detailed instructions in AR 195-5, 3-2b(4)c, covering this procedure.

[49] "The Standards Manual of the Law Enforcement Agency Accreditation Program, 4th Edition," January 1999, the Commission on Accreditation of Law Enforcement Agencies, Inc.

- Initiating investigative or other action as appropriate to resolve any discrepancy in the evidence identified in a physical inventory. Neither General Order 5061.01 nor Standard Operating Procedure 516.01 includes such a requirement.

- Returning or disposing of evidence within 6 months, or another justifiable, reasonable time period after prosecution or other legal requirements have been satisfied. Standard Operating Procedure 516.01 requires evidence that the Assistant United States Attorney approves for release or destruction will be processed in accordance with General Order 3031.15, "Lost and Found Property, Final Disposition." General Order 3031.15 has been renumbered as 1800.8, "Lost and Found Property, Final Disposition," July 21, 1997; however, the Standard Operating Procedure does not reflect this change. Neither General Order 1800.8 nor Standard Operating Procedure 516.01 includes a time constraint for returning or disposing evidence. Additionally, General Order 1800.8 pertains to lost and found property, not evidence.

Follow-on Recommendation D.4.

We recommend that the Director, Pentagon Force Protection Agency, revise General Order 5061.01, "Evidence Management," May 5, 2001, and Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001, to include procedures for:

a. Assessing and certifying individual qualifications for the evidence custodian, to include specific qualification, training, and experience requirements.

b. The evidence custodian to personally receive all evidence from the seizing official and physically review each piece of evidence obtained to ensure that all items turned in to the evidence custodian are properly recorded on the accompanying SD Form 558, "Evidence/Property Custody Document."

c. Specifying hazardous materials storage and handling requirements.

d. Transmitting evidence to entities other than the Drug Enforcement Administration. Procedures should include the physical wrapping of evidence, required transmittal documentation, and the requirements for transporting via the U.S. Postal Service or another approved carrier.

e. Using a five-copy version of the SD Form 558, "Evidence/Property Custody Document," as recommended in the Defense Protective Service annual evidence accountability inspection, conducted in calendar year 2000.

f. Conducting a joint inventory when the evidence custodian changes, requiring both the old and new custodians to be present for the inventory and sign SD Forms 558, "Evidence/Property Custody Document," thereby maintaining proper chain of custody over evidence.

g. An annual audit of evidence conducted by a supervisor not routinely or directly connected with control or oversight of the evidence storage process.

h. Investigative or other action as necessary to resolve any discrepancy in evidence accountability.

i. Returning or disposing of evidence within 6 months, or another justifiable, reasonable time period after prosecution or other legal requirements have been satisfied.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation D.4.a). The Director concurred and advised that the change would be accomplished not later than August 30, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.4.b). The Director did not specifically concur or nonconcur, but advised that the Evidence Custodian (EC) had been directed to review all evidence entering storage in the Evidence Room (ER). According to the Director, there is only one EC assigned to PFPA PPD at this time and it is impossible for that individual to be on duty at all times. Therefore, another person will be identified, trained and assigned to assist. Supervisors of PPD personnel collecting evidence have been directed to conduct supervisory inspections of evidence and EPCDs prior to submission to the ER or Temporary Evidence Storage Safes.

Evaluation Response. The management comments are generally responsive. As stated previously, the Army requires that evidence be secured in temporary storage until the seizing official personally releases the evidence to the evidence custodian. We endorse this practice. Procedures can be established whereby seizing officials can secure their evidence in temporary storage and relinquish it to the evidence custodian at their first opportunity, e.g., day shift personnel can turn-in their evidence immediately; swing shift officers could relinquish evidence at the beginning of their shift the next duty day; mid-shift officers could relinquish evidence before departing at the completion of their shift. Special provisions should be established for evidence obtained and stored in temporary storage during weekends to ensure it is relinquished personally to the evidence custodian on Monday. In commenting on the final report, the Director should include an estimated completion date for assigning the back-up evidence custodian. The Director should also identify the date on which the supervisory inspection process was implemented.

Director, Administration and Management Comments (Recommendation D.4.c). The Director concurred, advising that GO 516.01 and SOP 516.01 will be revised not later than August 30, 2003, to identify specific measures for safeguarding hazardous material stored either in the ER or at a separate site when not feasible to store in the PFPA ER.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.4.d). The Director concurred, advising that GO 516.01 and SOP 516.01 would be revised not later than August 30, 2003, to include specific measures for wrapping and transporting evidence through the U.S. Postal Service or other approved carrier.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.4.e). The Director concurred without further comment.

Evaluation Response. The management comments are responsive. In commenting on the final report, the Director should include an estimated completion date for the action.

Director, Administration and Management Comments (Recommendation D.4.f). The Director concurred, advising that GO 516.01 and SOP 516.01 would be revised not later than August 30, 2003, to direct a 100 percent joint inventory by the outgoing and incoming ECs. The results will be annotated on each SD Form 558 on hand during the inventory.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.4.g). The Director concurred, advising that GO 516.01 and SOP 516.01 would be revised not later than August 30, 2003, directing that a disinterested supervisor conduct an annual audit of the evidence room in the presence of the EC.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.4.h). The Director concurred without further comment.

Evaluation Response. The management comments are responsive. In commenting on the final report, the Director should include an estimated completion date for the new policy and procedures.

Director, Administration and Management Comments (Recommendation D.4.i). The Director concurred without further comment.

Evaluation Response. The management comments are responsive. In commenting on the final report, the Director should include an estimated completion date for the new policy and procedures.

Prior Recommendation D.5.

"The Chief, DPS, require an immediate physical inventory of evidence in DPS' possession and determine whether:

- evidence known to have been collected can be accounted for in the current DPS inventory; and

- individual current inventory items may have lost their utility as evidence for prosecutions.

DPS should return current inventory items that are determined to have lost their utility in prosecutions to the owners or custodians, or dispose of those items, as appropriate."

The Director, Administration and Management, agreed and advised that the inventory we recommended had been completed and proper evidence disposition had occurred.

Follow-on Evaluation Results

On March 24, 2000, DPS inventoried the DPS evidence holdings and reported that the agency had accounted for all items of evidence. During June 2002 we conducted a 100 percent inventory, which identified numerous shortcomings. There were 62 cases involving one or more items of evidence, and a total of 474 items in the evidence room. However, the officers or investigators who seized the evidence listed only 380 items on SD Forms 558, "Evidence/Property Custody Document," as being taken into evidence. We noted discrepancies in over 50 percent of the cases. Furthermore, we could not locate three items of evidence. See Appendix G for details.

As a result of the above discrepancies, we evaluated the entire PFPA evidence program using the policies and procedures in General Order 5061.01, "Evidence Management," May 5, 2001, and Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001. We also assessed how well PFPA guidance covered required standards.[50] Utilizing the aforementioned standards, we noted the following shortcomings:

- PFPA guidance does not require the evidence custodian to check and inventory each piece of evidence in sealed bags[51] before accepting it. Additionally, we found that the evidence custodian does not open and check paper bags of evidence, which have been sealed and taped shut by the seizing officer. General Order 5061.01 does require that, ". . . all proper packing requirements are met prior to receiving any evidence from the officer or investigator . . . ," but does not mandate any accountability standard.[52]

- The combination locks on containers, within the evidence room, were overdue for changing. They were last changed on November 14, 2001. General Order 5061.01 requires that combinations locks will be changed semi-annually.

- The evidence custodian advised that the keyed locks for temporary storage lockers are changed every 6 months. SOP 516.01 directs that the locks will be changed quarterly.

- The majority of evidence, including drugs, was packaged correctly; however, we found bloody clothing sealed in a plastic bag. The section of General Order 5061.01 pertaining to blood and bodily fluids states that items containing blood will be packaged in a paper bag after thorough air-drying.

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[50] We first compared the PFPA against CALEA standards since the 1999 report used these standards as the baseline. However, we also looked at established accepted practices that have been formalized by the Services. For consistency, we always referenced the Army standard, AR 195-5. This is not to say that other Services guidance is lacking.

[51] Excluding fungible or other evidence in transparent heat-sealed bags.

[52] CALEA Standard 84.1.1, Property and Evidence Control, mandates, "...A written directive establishes procedures for receiving all in-custody and evidentiary property obtained by employees into the agency control…" Guidance can also be found in AR 195-5, 2-3(e).

- SOP 516.01 requires using the "Pentagon Incinerator Burn," and "Incinerator Evidence" forms for destruction of evidence. The evidence custodian and assistant advised that they had never heard of these two forms. They use DD Form 2843, "Classified Material Destruction Record," to record all evidence destruction.

- We could not confirm that items recorded as having been destroyed were actually destroyed, because the certifying witness did not observe the destruction. SOP 516.01 states that the destruction form must have three signatures: evidence custodian; DPS supervisor; and heating plant representative. None of the forms contained three signatures. Forms reviewed had the evidence custodian's printed information and a signature at the bottom, which was supposed to be an employee of the heating plant. Additionally, during discussions with the primary and assistant evidence custodian, information was disclosed that the certifying witness on the SD Form 558, "Evidence/Property Custody Document" on occasions, never went to the burn facility to witness the destruction. The evidence custodian admitted that the certifying witnesses on some SD Forms 558 did not actually observe the destruction. Further, the heating plant representative sees only a bag containing multiple items being destroyed. The evidence custodian advised that the heating plant representative does not actually see the SD Form 558 or verify the items are those listed on a particular SD Form 558. Additionally, the evidence custodian stated that some of the witness signatures on the SD Forms 558 came from DPS personnel in other sections who also did not personally observe the destruction of the evidence on the SD Form 558, which they certified. The evidence custodian said he thought the form only needed a destruction witness signature by someone not associated with the evidence section, not someone who actually witnessed the destruction.[53]

- The evidence custodian was not properly completing the disposal section of SD Forms 558. We reviewed several SD Forms 558 for completion of items 10 through 12,[54] which cover the final disposition process. This review disclosed that item 10 was not filled out completely on any of the forms. Furthermore, based on DPS guidance, an evidence disposal list will be sent to the Assistant United States Attorney for disposition approval. However, in the forms reviewed, the evidence custodian signed item 11 as the final disposal authority without any reference to the Assistant United States Attorney approving the destruction. General Order 5061.01, "Evidence Management," requires "[a]ny additional information authorizing the disposition of that evidence will be attached to the SD 558 and will be a part of completed evidence file."

- On numerous occasions, evidence was not removed from the temporary storage lockers within 24 hours as required by SOP 516.01.

- During the course of our inventory we found a computer disk labeled "CONFIDENTIAL" in an unlocked evidence container, within the evidence vault. The classification of the disk is listed on the seizing officer's report; however, it

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[53] That PFPA officers would sign SD Forms 558 as witnesses, when in fact they did not witness destruction of evidence, is quite disturbing. These would appear to be false official statements in violation of 18 U.S.C. 1001.

[54] SD Form 558, Item 10 lists the final disposition action, Item 11 describes final disposition authority, and Item 12 identifies the witness to the evidence destruction, as well as their signature.

was not listed on the SD Form 558. The evidence custodian did not have a security safe available to store classified evidence. This discrepancy was reported to PFPA senior management for a security investigation as required by DoD Regulation 5200.1-R, "Information Security Program," January 1997.

Follow-on Recommendation D.5.

We recommend that the Director, Pentagon Force Protection Agency, take action to:

a. Correct all discrepancies identified during our inventory listed in Appendix D, and do so within 30 days following receipt of the final evaluation report;

b. Revise Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001, to require face-to-face verification and correction of discrepancies, between the evidence custodian and the seizing official of all evidence listed on SD Forms 558. The evidence custodian should check and inventory each piece of evidence in sealed bags (except for transparent heat sealed bags containing fungible evidence) before accepting it, to include paper bags of evidence, which have been taped shut.

c. Ensure all evidence is removed from temporary storage within 24 hours as required by Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001.

d. Change all combinations semi-annually as required by General Order 5061.01, "Evidence Management," May 5, 2000, and temporary storage locks quarterly as required in Standard Operating Procedure 516.01 "Evidence Management and Storage Procedures," May 22, 2001.

e. Implement a training program for all Pentagon Force Protection Agency law enforcement personnel regarding the collection, preservation, receipt, and turn-in of evidence.

f. Properly destroy or return all evidence as required by Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001, when evidence no longer has utility for investigation or prosecution.

g. Ensure witnesses properly observe the destruction of evidence.

h. Conduct an investigation to determine if the evidence custodian and other DPS officers improperly destroyed evidence and made false statements in violation of Section 1001, Title 18, United States Code.

i. Certify the destruction of evidence by using the proper forms.

j. Properly complete items 10-12 of SD Forms 558, "Evidence Property/Custody Document," to record the disposal of evidence.

k. Obtain a General Services Administration approved storage container for evidence that may contain classified Defense information.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation D.5.a). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.5.b). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.5.c). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.5.d). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.5.e). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.5.f). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.5.g). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.5.h). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.5.i). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.5.j). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.5.k). The Director concurred and advised that PFPA now has a GSA-approved safe for storing classified Defense evidence.

Evaluation Response. The management comments are responsive.

Prior Recommendation D.6.

"The Chief, DPS, take action to align actual evidence custodian duties and responsibilities with the position designated as having those duties and responsibilities."

The Director, Administration and Management, agreed and advised that DPS would take the action recommended in conjunction with its actions in response to Recommendation D.4. above.

Follow-on Evaluation Results

The Chief, DPS, took the necessary action to align actual evidence custodian duties and responsibilities with the position designated as having those duties and responsibilities.

Follow-on Recommendation D.6.

None.

Prior Recommendation D.7.

"The Chief, DPS, issue policy for DPS criminal investigators that includes:

- criteria for initiating, continuing, and suspending investigations;

- sharing relevant information from investigative reports with appropriate DoD managers responsible for the personnel or property involved in DPS criminal investigations;

- procedures for identifying, collecting, and reporting investigative case results (from which goals and objectives should be formulated and tracked), including:

  - number of indictments;

  - number of convictions,

  - fine, penalty, and restitution amounts collected for the Government, and whether the amount was collected through criminal, civil, or administrative means;

  - fine, penalty, and restitution amounts collected for non-Government parties, and whether the amount was collected through criminal, civil, or administrative means;

- the value of Government property recovered as a result of criminal investigations;

- the value of property recovered for non-Government parties as a result of criminal investigations;

- number of cases resolved; and,

- case timeliness."

The Director, Administration and Management, agreed. The Director advised that the work would be completed by October 31, 1999.

Follow-on Evaluation Results

The PFPA CI/IAD needs to improve its policy guidance regarding the documentation of supervisors' decisions to initiate, suspend, or close investigations, and requiring coordination with DoD managers responsible for the personnel or property in PFPA criminal investigations. Additionally, the software system the CI/IAD uses to track cases needs improvement.

Our discussion with the Supervisory Criminal Investigator indicates that CI/IAD investigators use a "solvability" form to make decisions on which complaints and allegations will be opened and kept active. Further, after the investigator completes the initial leads, the team leader decides whether to continue the investigation.[55] The team leader also manages and prioritizes the team's assigned cases. He also reported that the team leaders document all investigative case review guidance in writing, either in the case file, on a separate note, or via e-mail.

There is no policy regarding the documentation of supervisors' decisions to initiate, suspend, or close investigations. These decisions, according to the supervisor, are recorded in the case file and on the "solvability" form.[56] The decisions made by management are based on the manager's training and experience, and include solvability factors, including, witness availability, suspect identification, distinguishable modus operandi, identifiable property, patterns of activity, the presence of physical evidence, and investigative leads.

We did not find written policy concerning the sharing of relevant information from investigative reports with appropriate DoD managers responsible for the personnel or property involved in DPS criminal investigations. As a practical matter, CI/IAD personnel talk with affected DoD managers and notify them regarding the status or inactivation of investigations.

With regard to procedures for identifying, collecting, and reporting investigative case results, the relational database file (Paradox) that CI/IAD uses is not configured to break the assigned data fields into smaller sub-sections. They do not have anyone trained to generate queries and/or reports, and the software is not

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[55] In accordance with CI/IAD Policy Memorandum Number 2, Daily Case Incident Report and Team Leader Procedures, October 27, 2000.

[56] We did not validate the reported documentation practices through a review of open and closed case files.

installed on a network available to all investigators and investigative supervisors. These deficiencies reduce the capability to manage and account for cases, as well as to perform crime analysis and criminal intelligence operations.

The current system does not allow for tracking the timeliness of investigative effort or investigative reporting. This must be done manually by reviewing individual case files.

Follow-on Recommendation D.7.

We recommend that the Director, Pentagon Force Protection Agency:

a. Establish written policy

(1) requiring the documentation in case files of supervisors' decisions to initiate, suspend, or close investigations; and

(2) requiring coordination with DoD managers responsible for the personnel or property in Pentagon Force Protection Agency criminal investigations; and

b. purchase a commercial case management software package, as well as training, to enable supervisors to capture and use the previously recommended statistical data.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation D.7.a.1). The Director concurred and advised that existing General Orders and SOPs were being updated to reflect this recommendation. These documents will be updated by July 30, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.7.a.2). The Director concurred without further comment.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation D.7.b). The Director concurred and advised that PFPA was reviewing vendor-based programs to determine which best-suited CIIA needs. This is expected to be completed NLT August 30, 2003.

Evaluation Response. The management comments are responsive.

Prior Recommendation D.8.

"The Chief, DPS, take action to identify a reasonable and appropriate caseload for a DPS criminal investigator and then adjust staffing for the Criminal Investigations Section accordingly. This caseload should be based on the environment in which DPS operates, including provisions in Memoranda of

Understanding or operating agreements with other Federal or civilian criminal investigative and law enforcement organizations."

The Director, Administration and Management, agreed. The Director advised that DPS had taken steps to implement corrective action. According to the Director, at that time, DPS had seven criminal investigators and each investigator was handling an appropriate caseload.

Follow-on Evaluation Results

In response to Recommendation D.8., the Chief, DPS, increased manning and established appropriate caseloads. Standard Operating Procedure CI-900.02, "Criminal Investigations and Internal Affairs Case Assignment Procedures," September 4, 2000, limits each investigator to 15 active case files; investigative gaps in each case should not exceed 7 days. The Supervisory Criminal Investigator advised that he established the caseload per investigator in September 2000, based on benchmarking DCIS and NCIS caseloads, as well as the experience level of his field investigators and what he felt they could manage.

Follow-on Recommendation D.8.

None.

Prior Recommendation D.9.

"The Chief, DPS, determine whether the problem with prosecutors accepting investigative cases from certain criminal investigators has continued despite the Supervisory Criminal Investigator's intermediary actions and, if so, take action to resolve the problem. At management's discretion, a criminal investigator may be transferred to a different job series with the same journeyman grade level."

The Director, Administration and Management, agreed with the recommendation, but advised that the cause of the problem no longer existed. According to the Director, DPS took steps to improve both investigative techniques and reports. Further, the intermediary actions previously in effect were no longer necessary, and prosecutors now deal directly with DPS investigators.

Follow-on Evaluation Results

The relationship between CI/IAD investigators and the Special Assistant U.S. Attorney who supports them appears to be appropriate. The intermediary actions undertaken appear to have resolved prior relationship problems.

Follow-on Recommendation D.9.

None.

Prior Recommendation D.10.

"The Chief, DPS, either eliminate the current confidential fund and disburse the cash holdings, or issue guidance on properly using confidential funds and maintaining the account."

The Director, Administration and Management, agreed and advised that the confidential fund had been eliminated.

Follow-on Evaluation Results

Through coordination with the Accounting Officer, Budget and Finance Directorate, WHS, we verified that in August 1998, the Chief, DPS, returned the confidential funds in their entirety ($1,000.00) in order to effect account closure. The funds were subsequently returned to the U.S. Treasury on August 11, 1998.

Follow-on Recommendation D.10.

None.

Prior Recommendation D.11.

"The Chief, DPS, take action to implement a general order specifying procedures for scheduling and posting duty assignments, including rotation requirements."

The Director, Administration and Management, agreed. The Director advised that a new SOP would be completed by August 31, 1999, and would include procedures for scheduling and posting duty assignments, including rotation requirements, with an overall goal of maintaining maximum flexibility within permissible limits. We asked for a copy of the SOP upon completion.

Follow-on Evaluation Results

Contrary to management's comments, the Chief, DPS, did not implement Recommendation D.11, establishing a general order to specify procedures for scheduling and posting duty assignments, including rotation requirements.[57]

In November 1999, the Director, Administration and Management, responded to an OIG DoD Audit Followup Directorate inquiry, advising that:

> "Standard Operating Procedure No. OB-12 includes procedures for scheduling and posting duty assignments. Rotations are supported to the maximum extent possible, as long as the officer has the required certifications, e.g. to operate booth equipment or direct traffic. The

[57] "Evaluation of the Defense Protective Service," page 58, "DPS does not have a general order or other policy establishing standard procedures for officer assignments, and many DPS officers believe they are treated unfairly in the assignment process. Our employee survey (Appendix C) showed, for example, that 79.4 percent of DPS officers (excluding supervisors) do not believe they are treated equally with respect to assignments. This issue was also mentioned during our interviews with DPS personnel."

union has not brought the issue of rotations to DPS management, as of this date, in the weekly union negotiations meetings."

Our subsequent review of SOP No. OB-12 reveals that it does not address procedures for assigning officers to specific posts or rotating personnel among positions (except with regard to assigning personnel to overtime hours). Moreover, this SOP existed when the former Director, Administration and Management, responded to the previous report and advised that a new SOP would be created. Accordingly, the November 1999 response contradicts the earlier comments and indicates the promised action was not completed.

The Commander, Operations Services Branch, believes watch commanders need sufficient latitude to get the right people assigned to high visibility posts, and those requiring little supervision into the patrol squad. Since he had not received grievances or complaints, he intends to continue the current system.

Although no standard exists, we believe it is important to rotate officers between patrol and static posts to enhance skills, ensure alertness, and avoid stagnation and boredom.

As previously reported, the existing officer assignment practice cannot ensure consistency, which means that some officers could be treated unfairly in the assignment process. We reiterate our prior position "that a law enforcement agency should have a single method for determining days off and for assigning officers to shifts, beats, and posts. This standard is encouraged because a uniform procedure helps ensure impartiality in the assignment process."[58]

Follow-on Recommendation D.11.

We recommend that the Chief, Defense Protective Service, adopt policy in a general order that:

a. includes specific procedures for scheduling and posting duty assignments, including rotation requirements;

b. includes information on how officer career progression depends upon or relates to the level of difficulty involved in the officer's duty assignments;

c. identifies the need to maintain officer alertness, as well as proficiency on all required tasks, in making duty assignments; and

d. recognizes the Defense Protective Service retains final authority over officer assignments (shifts, posts, and patrols) as necessary to ensure effective coverage and accountability, despite scheduled duty assignments and rotation requirements.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation D.11.a – d). The Director partially concurred. According to

[58] Chapter 41, paragraph 41.1.2, "Standards for Law Enforcement Agencies, The Standards Manual of the Law Enforcement Agency Accreditation Program," January 1999.

the Director, PFPA believes that an SOP, rather than a GO, is appropriate for instructions on scheduling and posting duty assignments, including rotation requirements, and specific procedures are already in place. The Administrative Desk Officer (ADO) completes a detail sheet one day in advance. The sheet is reviewed by the Administrative Supervisor and sent to the Administrative Lieutenant for signature. The final version is approved by the Watch Commander and given back to the ADO. The Administrative Supervisor approves any last minute change. It is up to the Relief Watch Commander to determine the needs of the respective shifts, to match the criticality of the various posts with the proper personnel, and to schedule the officers accordingly. These procedures are not explained in the SOP, but will be added.

Officers assigned to more difficult assignments must successfully complete PFPA training requirements, be certified in proper systems, and be in physical shape required to perform the unique duties. New officers can work on any rotation due to a more robust Field Training Program ensuring they are fully trained in all systems.

Regarding officer alertness and proficiency on required tasks, PPD makes every effort to match officers with their desired assignments and rotates assignments to prevent tedium and monotony. Extensive training ensures that officers are proficient in their duties. SOP OB-12 will be revised by July 31, 2003.

Evaluation Response. The management comments are responsive. However, we encourage DPS to ensure that its guidance fully addresses subparts b and d of our recommendation.

Prior Finding E. Operations Support

We previously found the following shortcomings in certain key operations support areas:

- "[p]olicy documents did not adequately define the community that DPS serves, and DPS had not adequately defined either its customers or their needs;

- DPS did not have a policy covering crime analysis, and its crime analysis reports (which were one individual's work) were not based on multi-jurisdictional trends and patterns that could affect DPS' operations;

- DPS did not proactively contact other organizations to either share information on criminal activities or to solicit input on how DPS could improve the services it provides;

- delays in the internal affairs function hamper personnel discipline procedures and cause employees to believe that DPS personnel procedures are unfair or do not work properly; and

- DPS had an inspections program that is not fully effective in identifying operating problems; moreover, it did not receive sufficient management attention to produce corrections when inspections identify problems."

Prior Recommendation E.1.

"The Chief, DPS, take action to:

- identify DPS customer and community needs through surveys and community relations programs;

- adopt an agency-wide goal of satisfying customer and community needs; and

- amend DPS general orders to incorporate and emphasize this new goal."

The Director, Administration and Management, agreed and advised that DPS had adopted a goal of customer satisfaction and attention to community needs; surveys were ongoing and follow-up calls were taking place; and DPS was involved in community relations programs, where appropriate. The Director also advised that, as each DPS General Order was revised, the General Order was reviewed to see where customer satisfaction and attention to community needs could be emphasized.

Follow-on Evaluation Results

Information provided by the Director, Administration and Management, to Audit Followup indicated that:

> "Calls for law enforcement assistance are directed to the communication center. Recent results from customer service surveys are extremely positive. DPS personnel will also receive training in customer service. DPS has requested that training be tailored to DPS concerns and DPS unique situations. Also, plan to place a more generic customer satisfaction survey on RE&F's web site, which may give DPS additional feedback."

Although the information that the Director, Administration and Management, provided to the OIG DoD Audit Followup Directorate, indicated that customer service surveys were ongoing and follow-up calls were taking place, the Chief, DPS, did not conduct surveys to identify customer and community needs. The Chief, DPS, did develop and administer one informal survey to assess customer satisfaction with DPS police service. The informal survey conducted by DPS personnel consisted of telephone calls to complainants and victims of 50 randomly selected calls for service during a 4-month window in either 1999 or 2000. The Chief, DPS, intends to conduct additional informal customer satisfaction surveys to gauge the level of customer satisfaction, as opposed to conducting formal statistically valid surveys.

The chief has emphasized to officers, through training and newsletters, the importance of customer service. As a result, DPS is involved in a number of community relations programs, including: using the DPS ceremonial unit at community events; various crime prevention activities, including using the McGruff "take a bite out of crime" dog; fingerprinting children; providing officers and crime prevention information at community events; the annual Pentagon crime prevention display; and preparing instructional videos on evacuation safety and building security procedures. DPS also publishes *The*

Shield magazine periodically. Customer service has also been improved at the Pentagon Pass Office, with reduced waiting times, quicker customer-focused service, and a professional décor.

The Chief, DPS, included customer satisfaction in the September 2000 strategic plan. Goal 1 is to:

> "[p]romote DPS as the Customers' Provider of Choice for Security Services; Assess Customer Satisfaction with Services Provided." Objectives for Goal 1 include: ensure all DPS employees receive initial customer services training; to implement means for customers to provide feedback on services provided by all DPS officers during Fiscal Year 2000-2001; to continue customer service awareness through periodic training between Fiscal Years 2002-2005; to evaluate feedback from customers during FY 2000-2001; and to implement procedures to objectively gather data, evaluate responses, and use to make positive changes in how DPS conducts its business."

We verified that from January through April 2001 approximately 60 percent of DPS personnel attended specialized customer relations training provided by "International Leadership Development Consortium, Inc., Towson, Maryland.

On June 29, 2001, the Web-based "interactive customer evaluation" (ICE) program was implemented for RE&F, which included DPS. RE&F started the program as a customer service initiative. Since implementation, ICE has received more than 60 comments related to DPS services. The customer comments vary and include simple questions, pointing out safety problems, complaining about how long it took to get a building pass, and praising DPS police officers for their actions. The RE&F directorate's points-of-contact evaluate ICE comments, and then provide feedback to the respondents. RE&F advertises ICE through building circulars, newspapers, posters, electronically, etc.

Information provided by the Chief, DPS, in the Audit Followup's tracking system reflected, "[a]s each DPS GO is revised, it will be reviewed to see where customer satisfaction and attention to community needs can be emphasized." DPS managers provided conflicting information regarding the status of this action and could not provide any revised general orders to support the information provided to follow-up. The DPS manager responsible for revising and consolidating DPS general orders was not aware of this requirement.

Follow-on Recommendation E.1.

We recommend that the Director, Pentagon Force Protection Agency, take action to:

a. Identify Pentagon Force Protection Agency and Defense Protective Service customer and community needs through statistically valid surveys.

b. Conduct statistically valid sample surveys to measure the level of customer satisfaction in response to the goals and objectives in the strategic plan. It may be advisable to hire a professional contractor to complete the surveys. These surveys should be performed on a periodic basis.

c. Advertise Defense Protective Service involvement in the "interactive customer evaluation" program through Web-based hyperlinks, brochures, business cards, posters, building circulars, and other viable means.

d. Amend Defense Protective Service and Pentagon Force Protection Agency general orders to incorporate and emphasize the goal of satisfying customer and community needs.

e. Establish written policy to formalize requirements and responsibilities for the community relations program to ensure it operates effectively to meet the needs of the agency, as well as the community it serves.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation E.1.a – e). The Director concurred. According to the Director, as part of its Strategic Planning Process, PFPA is developing a customer satisfaction evaluation and outreach program that will achieve the recommendations' intent and satisfy GPRA needs.

Evaluation Response. The management comments are generally responsive, but lack specificity that focuses on the Pentagon community. In responding to the final report, PFPA should provide details on the new program, including current status and estimated implementation date.

Prior Recommendation E.2.

"The Chief, DPS, take action to formalize crime statistics development and reporting, based on collecting and analyzing DPS crime statistics and relevant statistics from other law enforcement organizations in the National Capital Region."

The Director, Administration and Management, agreed. The Director advised that statistics were being developed, analyzed, and reported monthly.

Follow-on Evaluation Results

The Chief, DPS, did not formalize crime statistics development and reporting, based on collecting and analyzing DPS crime data, and relevant statistics from other law enforcement organizations in the NCR, as recommended and as previously suggested by the Director, Administration and Management. DPS still lacks written policy regarding the analysis and publication of crime data, and crime data sharing with other police agencies in the NCR. Current DPS crime statistics do not reflect multi-jurisdictional trends and patterns that could affect PFPA operations.

We previously reported that the DPS criminal investigations section collected and reported monthly crime statistics. The Commander, Operations Services Branch, watch commanders, and other supervisors used these reports to advise officers about recent crimes and trends, and to reassign personnel based on reported trends. DPS management also attached these reports to a daily newsletter "Roll Call," which is available to all DPS officers. Our follow-on evaluation indicates

that the CI/IAD has not prepared monthly reports regarding crime trends since we completed our prior evaluation. In June 2002, the CI/IAD began collecting and analyzing DPS crime statistics to again publish the monthly reports; however, the data in these reports are limited to property crimes only.

The Commander, Communications and Records Branch, a trained crime analyst, does the majority of crime statistics reporting at DPS. One of the commander's many responsibilities is to provide daily crime summaries to the operations staff, as well as to DPS senior management. Operations managers use the daily summary reports in responding tactically to prevent and suppress criminal activity. The commander publishes an annual report of criminal activity and other significant incidents.

Additionally, the PFPA AT/FP division analyzes suspicious activity reports prepared by DPS officers. They in turn brief the officers regarding their findings, as well as other intelligence received. They also provide terrorist threat information to the Air Force Office of Special Investigations,[59] for further analysis and dissemination.

The data necessary to support a viable criminal intelligence operation appears to be contained in the Incident Crime Information System; however, its use is sporadic.

Follow-on Recommendation E.2.

We recommend that the Director, Pentagon Force Protection Agency, take action to:

a. Prescribe written policy for crime statistics development and reporting, based on collecting and analyzing Defense Protective Service crime statistics and relevant statistics from other law enforcement organizations in the National Capital Region, as outlined in the Commission on Accreditation for Law Enforcement Agencies, Inc., standards.

b. Establish a central crime analysis office within the Pentagon Force Protection Agency capable of supporting overall agency needs, including Defense Protective Service operations, criminal investigations, staffing and planning, antiterrorism/force protection, security services, community relations, and crime prevention.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendations E.2.a & b). The Director concurred, advising that PFPA was in the process of establishing a more robust capability in this area. Whether it will be a stand-alone office or part of another has not yet been determined.

Evaluation Response. The management comments are responsive, but not sufficiently specific. In commenting on the final report, PFPA should include greater detail on the actions planned, including the estimated completion date.

[59] The executive agent for the Office of the Secretary of Defense for counterintelligence matters.

Prior Recommendation E.3.

"The Chief, DPS, take action to:

- establish formal guidelines for the DPS Shooting Board, including whether the Shooting Board has decision-making or advisory authority, when it must be convened, criteria for its membership, and the coordination required with individual DPS operating elements, such as Internal Affairs.

- modify current general orders to include specific time targets for completing internal affairs and related administrative actions. The modifications should allow time extensions from specified targets when justified, but should require documented reasons for the delay."

The Director, Administration and Management, agreed. The Director advised that a general order was being developed to establish formal guidelines for the DPS Shooting Board and the general order would be completed no later than September 30, 1999. The Director also advised that General Order 1100.25, "Internal Affairs Investigations, May 7, 1999, included specific time targets for completing internal affairs and related administrative actions.

We asked the Director to provide a copy of General Order 1100.25 and the new General Order establishing guidelines for the DPS Shooting Board.

Follow-on Evaluation Results

The Chief, DPS, established guidelines for DPS internal affairs investigations in General Order 9000.02, "Internal Affairs Investigations," December 17, 2001. The general order established specific time targets for completing internal affairs investigations, but did not address criteria and justification for time extensions. Pending revision of General Order 9000.02, the Commander, CI/IAD published CI/IAD Policy Memorandum #4, June 14, 2002, which established criteria for extensions and the justification required.

The Chief, DPS, issued draft General Order 9000.03, "Discharge of Firearm by DPS Personnel and Subsequent Action," as formal guidelines for the DPS shooting board. As recommended, the draft General Order specifies that the board has advisory authority, when it must be convened, and the coordination required within DPS entities. However, it did not establish board membership criteria. The Commander, CI/IAD, subsequently developed enclosure 1 to draft General Order 9000.03 that specifies who shall select the board chairman and members, and specifies criteria for board chairmanship and membership. Paragraph 30 of the draft General Order requires that the Deputy Chief, Law Enforcement Services, select the board chairman; however, enclosure 1 states "[t]he Assistant Chief, DPS, Law Enforcement Directorate from either the DPS Law Enforcement Operations or Support Services Branch, or from the CI/IA Directorate, will select the Chairman."

Follow-on Recommendation E.3.

We recommend that the Director, Pentagon Force Protection Agency, further revise:

a. General Order 9000.02, "Internal Affairs Investigations," December 17, 2001, to include specific criteria and justification for internal affairs investigation time extensions.

b. Draft General Order 9000.03, "Discharge of Firearm by DPS Personnel and Subsequent Action," prior to publishing in final form, to eliminate any confusion regarding selection and membership criteria for board chairmanship and membership.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation E.3.a). The Director concurred, advising that the GO would be revised, with an estimated completion date of September 30, 2003.

Evaluation Response. The management comments are responsive.

Director, Administration and Management Comments (Recommendation E.3.b). The Director concurred, advising that the GO would be revised, with an estimated completion date of September 30, 2003.

Evaluation Response. The management comments are responsive.

Prior Recommendation E.4.

"The Chief, DPS, take action to assign additional personnel to the Inspections Section and:

- ensure the additional personnel are trained on implementing inspections policy and adhering to policy requirements during inspections;

- ensure that senior managers give the inspections program higher priority, closer supervision, and act on inspection findings;

- consider relocating the Inspections Section to the Pentagon where the staff would be closer to most DPS personnel, and through better staff and management interaction, could better identify inspection needs; and

- amend General Order 1100.22, "Line Inspection," November 10, 1992, establishing clear standards and procedures for file maintenance and retention, and management reporting."

The Director, Administration and Management, agreed. According to the Director:

- "adequate additional personnel have been added to the inspections cadre and properly trained in their duties;

- senior managers now hold periodic meetings to assure inspections are receiving proper priority, and annual inspections have been scheduled;

- DPS considered relocating the Inspections Section to the Pentagon, but determined the new emphasis on internal inspections made the move unnecessary;

- the personnel who monitor contracts, however, have been moved to the Operations Division; and

- before April 30, 1999, General Order 1100.22 will be amended to establish clearer standards and procedures for inspection file maintenance and retention, and management reporting."

We asked the Director to provide a copy of amended General Order 1100.22.

Follow-on Evaluation Results

During 1999, in response to Recommendation E.4., the staff inspections section was established under the direction of a captain and staffed with a lieutenant and a sergeant. Later that year, the Chief, DPS, reassigned the captain as a watch commander. The lieutenant was promoted and then reassigned in January or February 2002, to fill a watch commander vacancy. The sergeant was promoted and reassigned during January or February 2001, to the AT/FP division. Another sergeant was assigned to the inspection section in December 2001. When this follow-on evaluation began, he was the only staff inspector assigned. Furthermore, the lone inspector is not dedicated to inspections and expends a great deal of time performing community relations and crime prevention activities, as well as recruiting. Newly hired patrol officers awaiting training occasionally augment the inspections function. At the time of our follow-on evaluation, a summer-hire administrative clerk also staffed the section.

Three of the four individuals assigned to the staff inspections section since May 1999, were adequately trained to conduct inspections. The current inspector completed the U.S. Army Inspector General Course in February 2002.

The projected inspection schedules for calendar years 2000 through 2002 indicate that since January 1, 2000, DPS has completed only 5 of the 46 staff inspections scheduled. They covered evidence accountability, overtime procedures, radio and pager accountability, and weapons accountability in both 2001 and 2002.[60] In 2000 they scheduled 10 inspections and completed 2; in 2001 they scheduled 18 and completed 2, and in 2002 they scheduled 18 and thus far have completed one (on weapons accountability). We could not determine why these ambitious schedules are advanced and approved by the Chief, DPS.

We also previously recommended that the Chief, DPS, consider relocating the inspections section to the Pentagon where the staff would be closer to most DPS personnel, and through better staff and management interaction, could better identify inspection needs. The management comments indicated that DPS considered relocating the inspections section to the Pentagon but determined that the new emphasis on internal inspections made the move unnecessary. When interviewed, the chief stated that he did not see relocating the inspections section as critical to their success, not to mention Pentagon space constraints.

In June 2001, DPS inspectors attempted to initiate a self-inspection program. DPS commanders would establish checklists based on requirements outlined in DoD, WHS, and DPS policies affecting their areas of responsibility. The use of

[60] Although specifically requested, we did not receive either the 2002 weapons or evidence inspections.

the checklists would allow managers to effectively inspect their own areas. DPS inspectors would then review and affirm that self-inspections were accomplished. They were not able to implement the program because inspections staffing was reduced.

In response to Recommendation E.4, General Order 1100.22, "Line Inspection," was amended indicating that files would be maintained in accordance with Administrative Instruction 15, "Office of the Secretary of Defense Records Management Administrative Procedures and Records Disposition Schedules," August 11, 1994. The General Order reflects that an active file will be kept for one calendar year, an inactive file for one additional calendar year, and files will be destroyed after two calendar years. A review of Administrative Instruction 15, paragraph 217-02, requires the following disposition for line inspection records: "cut-off annually, and destroy after one year." This means that files generated during calendar year 2002 are cut off on December 31, 2002, and will be destroyed in January 2004.

The Acting Director, PFPA, advised that he intends to establish an oversight organization manned with a major, a captain, a lieutenant, and a GS-080, Security Specialist (grade GS11-13). They would inspect the entire agency to include DPS, and the AT/FP division to ensure compliance with a whole series of DoD antiterrorism regulations and standards, and to ensure that the AT/FP division has contingency plans for all the buildings under their responsibility. They would also have one person responsible for ensuring that management controls are in place.

Follow-on Recommendation E.4.

We recommend that the Director, Pentagon Force Protection Agency,

a. Follow through with the Acting Director's stated intention to establish an oversight organization staffed by senior officers and a security specialist that are capable of inspecting the entire Pentagon Force Protection Agency.

b. Identify key organizational components that require periodic staff inspection, and establish a realistic inspection schedule to enable inspection of those components once every 3 years.

c. Tailor the goals of the inspection program to reflect those developed by the organization's strategic goals and management control programs.

d. Implement a self-inspection program as a way to supplement the capabilities of the inspection section and to enhance the organization's responsiveness to the management control program.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendations E.4.a – d). The Director concurred, advising that PFPA was in the process of establishing an Inspections Section to accomplish standardization within operational aspects of the PPD and PFPA. This section, in conjunction with other PFPA initiatives such as the IMC Program and an

Administration and Logistics Assistance and Review Program, will give PFPA ample self-inspection capability.

Evaluation Response. The management comments are responsive. In commenting on the final report, PFPA should detail specific actions and include estimated completion dates for each.

Part III. Senator Grassley's Concerns

At the request of Senator Charles E. Grassley, Ranking Member, U.S. Senate Committee on Finance, we expanded this follow-on evaluation to include:

A. National Crime Information Center (NCIC) checks for DPS officers hired since 1998, and private security guards employed at DoD sites under DPS cognizance;

B. an examination of DPS background check procedures and policies; and,

C. accountability of DPS weapons and, a determination as to whether any missing DPS weapon had been used in a crime.

A. National Crime Information Center Checks

We performed NCIC checks on all DPS police officers and security guards (law enforcement personnel) as part of our previous evaluation of DPS. For the current follow-on review, 297 DPS personnel were hired between January 1, 1998, and May 14, 2002.[61] No current or former DPS officer had a criminal record that would disqualify the individual from employment as a police officer.[62] DPS is in compliance with Public Law 106-554, App C, Subchapter VII, Section 7371, entitled, "Mandatory removal from employment of law enforcement officers convicted of felonies" (5 U.S.C. 7371).

In addition, 406 private security personnel were working at 10 contractor firms that support the DPS law enforcement and security mission. Complete review and verification of NCIC results disclosed that one individual had a felony conviction, and one individual had a domestic assault conviction. The DPS contract services representative advised that the employment of the individual with the domestic assault conviction was terminated in November 2002. Additionally, the security guard with the felony conviction had transferred to another contract at another Federal agency. We notified the other Federal agency as well as the Bureau of Alcohol, Tobacco and Firearms regarding the possible violation of law.

On January 9, 2003, we contacted the GSA Office of Federal Protective Service, regarding GSA procedures for clearing contract guard personnel for permanent hire and arming. The GSA representative advised that when his office receives an application from the hiring contract company, the applicant is fingerprinted and an initial NCIC check is conducted. If the NCIC check contains no disqualifying information, the company is given a pre-employment favorable certificate for the applicant. The applicant's fingerprints are then sent to the FBI for a criminal history check. When the FBI results are received, GSA determines the applicant's

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[61] During the prior evaluation of DPS we conducted NCIC checks on all DPS officers hired before January 1, 1998.

[62] This includes convictions for misdemeanor domestic assault, as defined in the domestic violence amendment to the Gun Control Act of 1968 (18 U.S.C. 922(d)(9) and (g)(9)), commonly known as the "Lautenberg Amendment."

suitability for hire. If suitability is approved, a final suitability certificate for hire is forwarded to the hiring company.

When queried about the arming of new hires, the GSA representative told us that the security companies were responsible for sending a letter to his office requesting that the security guards be given firearms qualification training. Upon completing the GSA training, GSA clears the individual for arming by the security company. The GSA representative further advised that records indicate that the security guard that we identified as a felon had completed the GSA firearms course and was qualified by GSA to carry a firearm. The GSA representative advised that GSA reviewed the file, was aware of the criminal record, and determined that the security guard could attend the firearms training course. The GSA representative further advised that the security guard with the domestic assault conviction had not received a final suitability certificate and had not received firearms training from GSA.

B. Compliance with Background Check Requirements

We reviewed 48 randomly selected DPS law enforcement applicant personnel files for the period 1999 through 2002 (12 per year). The DPS background investigations and the DoD security clearance background investigations conducted on those applicants satisfied the elements in DPS policy. Several of the applicants in the files that we reviewed were denied employment because of adverse criminal histories, driving records, or previous employer comments when appropriate. We did not find noncompliance problems now or since our last evaluation.

DPS policies[63] require a background investigation as detailed in DoD Regulation 5200.2-R, "Personnel Security Investigation," February 23, 1996, of job applicants for law enforcement positions. Requirements include checks of criminal history (NCIC), military history (if applicable), driving record history, employment references, and suitability for a security clearance. Grounds for nonselection include a felony conviction, multiple misdemeanor convictions, a court-martial conviction, multiple nonjudicial punishments (Article 15) under the Uniform Code of Military Justice, unsatisfactory driving record, and employment references, or matters precluding a security clearance.

C. DPS Weapons Concerns

Accountability of DPS weapons

We conducted a comprehensive review of DPS weapons management procedures and weapons accountability. There were significant problems regarding the DPS weapons management process as noted in our discussions and recommendations regarding Prior Recommendation D.2, on pages 28 through 35. Additionally, investigations related to the loss of several weapons were not conducted in accordance with the standards established in DoD Manual 5100.76-M and DoD

[63] DPS General Order 1300.23, "Conditions of Employment and Selection Standards for Police Officer Applicants," January 19, 1993, and Standard Operating Procedure 594-01, "Conditions for Employment," July 1, 2001.

Regulation 7000.14-R, as well as the "Quality Standards for Investigations," established by the President's Council on Integrity and Efficiency (PCIE).

DPS Weapon Used in the Commission of a Crime

One DPS weapon was used in the commission of a crime; however, the circumstances surrounding the recovery of one additional stolen DPS weapon is also noteworthy.

A DPS 9mm Beretta handgun stolen from a DPS officer's residence in Maryland on November 15, 2001, was recovered on March 5, 2002, by the Washington Metropolitan Police Department, Washington, D.C. The recovery of the weapon occurred during the arrest of a 23-year-old male who had this weapon loaded with 16 rounds, concealed on his person, while selling drugs to an undercover police officer.[64]

A DPS 9mm Beretta handgun that was stolen from the DPS operations arms room in March 1995 was recovered in October 1998, during a police drug raid at a residence in Martinsburg, West Virginia.

[64] This incident brought to our attention that DPS personnel deviated from the DoD weapons storage policy.

Part IV. Other Problem Areas

There were other specific instances involving deviations from Federal law and DoD policy associated with the requirements for DoD law enforcement personnel. This included storing weapons in designated control points upon completing tours of duty, using only Government weapons during the performance of official duties, and obtaining Secretary of Defense approval to use Government vehicles for domicile-to-duty transportation.

A. Take-Home Weapons Practice

According to the Chief, DPS, soon after the terrorists attack on the Pentagon, the Director, WHS orally authorized all DPS law enforcement officers to transport their assigned Government-owned 9mm handguns to their residences for storage purposes, to ensure that DPS officers would be armed and ready for duty upon arrival at the Pentagon. Since that time, the Chief, DPS, has continued this practice, even though it exceeds the arming authority established in Section 2674, Title 10, United States Code, "Operation and control of Pentagon Reservation and defense facilities in National Capital Region," and violates DoD Directive 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties," November 1, 2001.

This matter came to our attention while reviewing documentation that DPS provided in support of the follow-on evaluation. A Prince George's County Police Department report documented the theft of a DPS officer's assigned weapon from his residence in Maryland on November 21, 2001. The Chief, DPS, told us that in response to his request, the former Director, WHS (now deceased), allowed DPS officers to store their weapons at their residences, based on difficulties that some officers experienced trying to access the Pentagon's DPS operations armory. These difficulties occurred immediately following the terrorists attack on the Pentagon, as well as some weeks earlier when a fire generated smoke in the Pentagon and reportedly blocked access to the armory.

We also determined that no weapon safety lock[65] had been issued to the officer whose weapon was stolen, although weapon safety locks had been issued to some DPS officers around October 15, 2001. In response to the theft of the weapon, during January 2002, the Chief, DPS, purchased and issued locking storage boxes[66] and published General Order (Interim Guidance), "Carrying and Securing Government Weapons and Ammunition From Residence to Duty Station or Official Travel," which, "…authorizes off-duty officers to carry their duty weapons to and from home during their commutes, rather than store their

[65] Required by DoD Directive 5210.56, paragraphs 4.1. and E1.1.7.

[66] DD Form 1262, Administrative Service Request, number RPO – 02 – 072, reflects the purchase of 350 gun lockboxes at a cost of $15,732.50 to support this unauthorized take-home weapons program.

weapons at the DPS Armory," and requires DPS officers to proceed home by the most direct route.[67]

The OIG DoD "Evaluation of the Policies and Practices of the Defense Organizations Employing Criminal Investigators with Respect to Control Over Firearms," March 2003, documents that since November 1999, the Chief, DPS, granted a written exception[68] to the DoD weapon storage policy for DPS criminal investigators, which became standard operating procedure.[69] Similarly, publication of this policy occurred within weeks following the theft of an on-call duty investigator's weapon, which he stored improperly in his private vehicle while he socialized in Washington, DC.

Under the governing statute (10 U.S.C. 2674), the Secretary of Defense has the authority to appoint personnel to perform law enforcement and security functions for "…property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region...." Those personnel "may be armed with appropriate firearms required for personal safety and for the proper execution of their duties, whether on DoD property or in travel status."[70] DPS law enforcement powers, described as that of sheriffs and constables, is limited to "…property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region." This statute also limits the authority to bear arms to the geographic area specified in the statute. The governing statute grants no law enforcement authority and/or authority to carry weapons to PFPA personnel in an off-duty status.

In a separate and broader statute, Section 1585, Title 10 United States Code, "Carrying of Firearms," states:

> "Under regulations to be prescribed by the Secretary of Defense, civilian officers and employees of the Department of Defense may carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary may prescribe"

The law serves as the basis for DoD Directive 5210.56, which establishes policy for arming law enforcement and security personnel DoD-wide. The Directive also controls DoD weapons storage policies, and precludes DoD law enforcement and security personnel from storing Government-owned weapons at their residences, with certain exceptions. Paragraph E1.1.6, states:

> "Firearms shall be returned to a designated control point on completion of the assignment for storage and accountability in accordance with

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[67] The Chief, DPS, issued the interim guidance pending a legal review by WHS OGC attorneys of the draft policy guidance regarding the practice.

[68] RE&F-DP-OI memorandum, Subject: Designated Criminal Investigations Firearm's Custodian, November 29, 1999.

[69] Standard Operating Procedure CI-900.03, "DPS Criminal Investigators Take Home Weapons Procedures," November 22, 1999.

[70] Because 10 U.S.C. 2674, provides no law enforcement authority or authority to carry weapons when PFPA (DPS) personnel are off-duty or outside the National Capital Region, travel status is interpreted to mean travel between DoD property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region.

> Component procedures. The Secretaries of the Military Departments and the Inspector General, Department of Defense may authorize exceptions to this requirement for the DCIOs."[71]

The position that WHS OGC articulated during the fieldwork interviews associated with this follow-on evaluation, was that DoD Directive 5210.56 did not apply, because DoD Directive 5110.4, "Washington Headquarters Services (WHS)," October 19, 2001, delegates authorities that flow from 10 U.S.C. 2674, to the Director, WHS, and those authorities are independent of DoD Directive 5210.56. However, when we checked DoD Directive 5110.4, we noted the Directive delegates the Secretary of Defense's responsibility "to prescribe such rules and regulations as the Secretary considers appropriate to ensure the safe, efficient, and secure operation of the Pentagon Reservation," and requires that actions taken by the Director, WHS, to align with existing DoD policies, Directives, and Instructions.

In summary, 10 U.S.C. 2674 is the basis for arming PFPA law enforcement personnel while on duty at DoD property in the National Capital Region or traveling between such properties. However, once outside that very limited jurisdiction, the authority to carry firearms is controlled by 10 U.S.C 1585 and the implementing regulatory guidance in DoD Directive 5210.56. The Director, Administration and Management, in responding to the related OIG DoD "Evaluation of the Policies and Practices of the Defense Organizations Employing Criminal Investigators with Respect to Control Over Firearms," (draft version), did not concur with the recommendation in that report to take immediate action to ensure PFPA criminal investigators' firearms were returned to a designated control point at the end of their duty shifts in accordance with DoD Directive 5210.56. The Director commented that our recommendation is not a requirement of DoD Directive 5210.56, and that PFPA is currently in compliance with the plain and reasonable interpretation of DoD Directive 5210.56.

Paragraph 4 of DoD Directive 5210.56 prescribes DoD policy to limit and control the carrying of firearms by DoD military and civilian personnel. It establishes that DoD personnel regularly engaged in law enforcement or security duties shall be armed. In addition, safety lock devices and instructions for their proper use shall be provided with all firearms issued to such personnel who have been authorized to retain firearms at their residence or non-government locations. Paragraph 4 does not establish who may grant such authorization; however, it states that enclosure 1 of the Directive establishes procedures regarding authorization to carry and the carrying of firearms. Importantly, paragraph E1.1.2. states, "[a]n authorization to carry firearms may be granted to personnel authorized to be engaged and *in fact engaged in* (emphasis added) the following activities…" citing specific law enforcement and security actions common to maintenance of law and order, national security, and guarding prisoners.

With regard to returning weapons to a "designated control point" for storage and accountability upon completion of assignment, and what personnel constitute those "DoD security and law enforcement personnel" who have been authorized

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[71] The DCIOs (Defense Criminal Investigative Organizations) are defined in DoD Directive 5210.56 as the Air Force Office of Special Investigation, the Defense Criminal Investigative Service, the Naval Criminal Investigative Service, and the US Army Criminal Investigation Command.

to retain such firearms at their residence or non-government locations, a representative of the proponent for DoD Directive 5210.56 (Assistant Secretary of Defense, Command, Control, Communications and Intelligence (C3I)), wrote on May 21, 2002:

> "As regards paragraphs E1.1.6 and E1.1.7 (of DoD Directive 5210.56), DoD security and law enforcement personnel are interpreted to mean members (investigators) of the DCIOs. Installation security guards and police are not permitted to take their issued weapons home, and component heads (including the Director, Administration & Management (WHS) do not have authority to grant such practice. If an installation commander wants to allow his installation law enforcement and security personnel to take their government weapons home, he/she must submit a request up the chain of command for approval and forwarding to C3I for decision."

Additionally, in a August 27, 2002 memorandum, Subject: "Defense Protective Service (DPS) Weapons Storage and Accountability- Follow-on Evaluation of the DPS (project No. 2002COO2)," the proponent stated:

> "The Director, WHS, and the Chief, DPS, are not permitted to permanently deviate from DoDD 5210.56 requirements. Nor is any other DoD Component. When relief is necessary from DoD policy requirements, the affected Component must formally request an exception to policy from the OSD office responsible for the policy in question. Such a request must, of course, state the rationale for the exception and the adverse effect on mission performance should the request be denied."

Because the Director, Administration and Management, is sanctioning off duty DPS officers to carry Government-owned handguns, loaded with Government-issued ammunition, into the adjacent civilian communities where they carry no police power or authority, we believe this practice raises significant liability concerns and is tantamount to arming private citizens. As demonstrated by the aforementioned November 2001 theft from the officer's residence, things can and do go wrong. In that particular instance, a drug dealer was carrying the stolen DPS weapon, loaded with DPS ammunition, when he was arrested in March 2002, after selling narcotics to a Washington Metropolitan Police Department undercover officer.

Certain DPS officers carry Government weapons during official Government travel outside the National Capital Region (NCR). Three DPS weapons were stolen in February 2003, when DPS officers traveled to Fort Lewis, Washington, where the DPS officers were recruiting DPS candidates. DPS Interim General Order 0000, "Carrying and Securing Government Weapons and Ammunition from Residence to Duty Station or Official Travel," paragraph 3.a. makes reference to official travel outside the NCR where authorization to carry duty weapons has been granted and provides instructions regarding security of those weapons. Interim General Order 0000 does not specify the conditions when such authorizations may be granted or who may approve such authorizations. Again, 10 U.S.C. 2674 provides no authority for PFPA law enforcement and security personnel to travel armed outside the National Capital Region. Accordingly, the Director, PFPA, must rely on the guidance specified in DoD Directive 5210.56, to allow PFPA personnel to travel armed outside the National Capital Region. As

previously stated, that Directive requires DoD law enforcement and security personnel to in fact be engaged in specified law enforcement and security duties in order to be armed. Therefore, it is incumbent on the Director PFPA to ensure specific law enforcement and security missions necessitate armed travel outside the National Capital Region.

Recommendation A.

We recommend that the Director, Administration and Management, and the Director, Pentagon Force Protection Agency, take immediate action to abide by the provisions of:

1. Section 2674, Title 10, United States Code, "Operation and control of Pentagon Reservation and defense facilities in National Capital Region," regarding the arming of Pentagon Force Protection Agency personnel while off-duty, and during official travel outside the National Capital Region, and

2. DoD Directive 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties," November 1, 2001, regarding the storage of weapons at designated control points.

Management Comments and Our Evaluation

Under Secretary of Defense for Intelligence Comments. On behalf of the Under Secretary, the Associate Director of Security concurred, advising that PFPA should take action to comply with DoD 5100.76-M regarding the security of DoD issued weapons, and DoDD 5210.56 regarding the storage of weapons at designated control points. The Associate Director also advised:

> ". . . this office is coordinating a change to DoDD 5210.56 that clearly prohibits DoD security and law enforcement personnel (excluding DCIO personnel) from taking government issued weapons home after their tours of duty."

Evaluation Response. The management comments are responsive. We encourage the Under Secretary's office to proceed with the planned change to DoDD 5210.56 as quickly as possible to discontinue the substantial liability risks inherent in the current PFPA take-home weapon practice.

General Counsel of the Department of Defense Comments. The General Counsel concurred, based on supporting the Deputy General Counsel (Inspector General) review of the draft report.

Evaluation Response. The General Counsel comments are responsive.

Director, Administration and Management Comments (Recommendation A.1 & 2). The Director nonconcurred. According to the Director, this finding is based on an improper and incomplete reading of DoD Directive (DoDD) 5210.56, as well as both 10 U.S.C §2674 and 10 U.S.C §1585, and is antithetical to the authorities and responsibilities of the Secretary of Defense to provide for the physical security, protection and readiness required for literally hundreds of DoD activities throughout the National Capital Region in full

accord with these authorities. The draft report also, in part, mischaracterizes or misunderstands the position of the Office of General Counsel, WHS.

Simply stated, this is a policy matter. It is the Deputy Secretary of Defense who approved the policy contained in this Directive. In our view, the reasonable interpretation of DoDD 5210.56, as it is currently written, is that Component Heads, including the Director of PFPA, and ultimately the DA&M for both PFPA and OSD elements, have been delegated the authorities contained in that Directive. This includes authorization for transport and storage of duty weapons and authorization to report armed to various assigned duty locations in accordance with DoDD 5210.56, and with "component procedures" promulgated there under. We see no authority reserved or implied in the Directive for OUSD (C3I) to "grant a waiver" to the policies in the Directive. Therefore, should the provisions of DoDD 5210.56 remain of concern to your office, or should the Department wish to prospectively effect the policy purported by this finding in the Draft Report, the proponent should seek a formal change to the subject Directive. The proponent would be required to seek such formal change because only the Secretary or Deputy Secretary of Defense may change the provisions of DoDD 5210.56.

<u>PFPA remains in compliance with the legal and policy requirements of DoDD 5210.56.</u> On its face, the authorities and responsibilities assigned under the Directive with respect to "Carrying of Firearms" are broadly vested in Component Heads as defined in the Directive. This clearly includes the Director, PFPA and the Director, DA&M for OSD as well as PFPA. To parse out the section on "returning firearms to a designated control point" while ignoring the meaning of the remainder of that Directive (where authorization for residential storage of duty firearms "by DoD security and law enforcement personnel" [and not merely DCIOs] is contemplated in numerous places) is simply not a sound or appropriate analysis.

Essentially, the Draft report erroneously relies on part of ¶E1.1.6 of Enclosure 1 of DoDD 5210.56 as conclusive of its position, while failing to address other parts of the Directive (as well as sound rules of construction) that need to be reconciled with that section. Both the sections preceding and following ¶ E1.1.6 are especially necessary and instructive in understanding, in part, the PFPA application of the Directive.

¶E1.1.6 states that, "Firearms shall be returned to a designated control point on completion of *the assignment* for storage and accountability … in accordance with component procedures." It seems plain that "*the assignment*" referred to in E1.1.6 is a direct reference to the previous section ¶E1.1.5. For instance, that section in part refers to "*the duration of specific assignments or threats"* for which personnel are given authorization to carry firearms for "*personal protection*." Thus, it is clear that in this circumstance, weapons must be turned in when the limited specific assignment or threat is over. In this case there is no continuing authorization beyond a limited "assignment." This can be contrasted to the first sentence of ¶E.1.1.5, which provides that "DoD military and civilian personnel *regularly assigned* to law enforcement or security duties may be given *continuing authorization* to carry firearms….". Here, "assignment" is more open-ended and contemplates a continuing authorization. Thus, the phrase "the assignment" must be read in context when applied in ¶E.1.1.6. Another way to view this is that ¶E.1.1.6 does not by its plain words require weapons to be returned at the end of each "shift" or "duty" or "day" but instead uses the term

"assignment" as used in the section immediately preceding. Thus, in accordance with *component procedures*, once PFPA officers are properly authorized to carry duty weapons and are authorized in writing to transport such weapons to and from their duty stations, they are still on their "assignment" under the Directive until they are no longer assigned security or law enforcement duties in accordance with component procedures. (Emphasis added)

Furthermore, the section that follows is instructive. ¶E.1.1.7, specifically refers to "*DoD security or law enforcement personnel, who have been authorized to retain such firearms at their residence…*". This plainly is not limited to DCIOs, who surely are not the only "security or law enforcement personnel" in DoD. Otherwise, if the policy was as purported in the Draft report, ¶E1.1.7 would say "DCIOs" authorized to retain such firearms at home….". Thus, the narrow reading of DoDD 5210.56 in the Draft Report is not tenable and cannot obviate the reasonable interpretation of this authority by the current D, A&M, the previous D, A&M (D.O. Cooke), the current Director of PFPA, as well as the Office of General Counsel, WHS.

Compliance with 10 U.S.C. § 2674

Finally, the draft report makes a curious argument limiting the Secretary in his exercise of 10 USC §2674 responsibilities to provide for the security for DoD facilities in the NCR, and concluding that he cannot authorize security and law enforcement officers to carry arms such that officers can report to the various NCR duty locations armed. We believe that the authorization in 10 USC § 2674 (b) to arm the law enforcement and security personnel necessary *"for the proper exercise of their duties"* places such discretion in the hands of the Department absent any law to the contrary. We see nothing in the statute that would so limit the Department's authority to achieve a central purpose of the statute - to provide for the security for the Pentagon Reservation and for the hundreds of DoD facilities in the NCR.

In addition, a legal opinion of the Office of General Counsel, WHS dated January 28, 2003, provides further analysis and is attached for your information. Should you have any further questions on these issues, please feel free to contact the Office of General Counsel, WHS at (703) 693-7374.

PFPA actions subsequent to September 11, 2001.

As stated above, PFPA is currently in compliance with the plain and reasonable interpretation of DoDD 5210.56. However, recognizing the seriousness of the responsibilities and authorities with regard to the carrying of firearms under 10 USC § 2674 and 10 USC §1585, and DoDD 5105.68, the D, A&M and Acting Director, PFPA, have been undertaking a comprehensive review of PFPA's firearms practices and policies (including whether or not, and under what circumstances, to continue its current authorizations for transport and storage of assigned duty weapons). PFPA is currently putting into place updated comprehensive written policies and guidelines consistent with all legal and policy requirements of these serious responsibilities.

We are pleased to report that PFPA has made substantial progress in implementing new stringent and comprehensive written safeguards and procedures, and in implementing a new training program, with respect to authorization, transport and residential storage of PFPA-issued duty weapons.

Such written policies and strict guidelines include a new PFPA General Order (proposed General Order 1005.07 entitled "Carrying and Securing Government Weapons and Ammunition between Duty Station and on Official Travel") covering duty weapon transport and storage practices and policies, and an accompanying "Acknowledgement of Responsibilities" to be executed by all officers and investigators authorized to transport and store duty weapons. This new General Order with "Acknowledgement of Responsibilities" will go into effect as soon as our bargaining obligations are complete in accordance with DoDD 5210.56. In addition, PFPA is implementing a mandatory ongoing training program on firearms duties and responsibilities with respect to home transport and storage of duty weapons. PFPA conducted comprehensive new training of almost all PFPA officers concerning the revised General Order on May 8 and 9, 2003, and will complete training of the remaining officers by the end of May 2003. This comprehensive program, with its significant accountability and procedural safeguards, should serve as a model for any DoD component with authorized transport and home storage of duty weapons.

In conclusion, I assure you that the Director, A&M and the Director, PFPA take very seriously our responsibilities as set forth under DoDD 5210.56 and DoDD 5105.68. We have determined that residence-to-duty transport of firearms by selected PFPA personnel is essential to the effective accomplishment of PFPA's mission. In order to exercise the significant responsibilities of PFPA under DoDD 5105.68 regarding the safety, security, law enforcement, anti-terrorism and force protection of Defense Department facilities in the National Capital Region (which includes the Pentagon Reservation as well as the numerous DoD occupied facilities throughout the National Capital Region), the Director, PFPA has determined that there is an operational requirement for most PFPA officers to report to assigned duty locations armed and ready to react to any situation that presents itself. This determination is supported by the Director, A&M and updates and improves upon the prior emergency determination of the former Director, WHS, authorizing DPS officers to report to duty armed after the terrorist attacks of September 11, 2001.

Other matters in this finding.

The draft report indicates that PFPA had three firearms "reported stolen" during a recruiting trip "for which the carrying of firearms was not authorized." This statement is inaccurate and misleading. Although three PFPA weapons were stolen while being transported via commercial airline, the transport was in full accord with DoDD 5210.56 section 4.3. The weapons were subsequently recovered in the home of an airline employee, and federal criminal action is underway. PFPA's proposed General Order 1005.07 (currently awaiting review by the union) entitled "Carrying and Securing Government Weapons and Ammunition between Duty Station and on Official Travel," also specifies the conditions when such authorizations may be granted and who may approve such authorizations, in compliance with DoDD 5210.56.

Finally, the Draft Report, at page 68 first full paragraph, also mistakenly misinterpreted the position of the Office of General Counsel, WHS, when it stated that the Office of the General Counsel "articulated" that DoDD 5210.56 did not apply to PFPA officers. On the contrary, this has always been clear that from OGC that the Directive does apply to PFPA officers as well do the authorities of both 10 USC §§ 2674 and 1535. The Office of General Counsel's position on this

issue is clearly stated in the January 28, 2003 legal opinion. Indications to the contrary should be removed from the final report.

Evaluation Response. We do not agree with the PFPA position. If DoDD 5210.56 were open to the type of interpretation that PFPA is attempting to apply, it would not have been necessary for the Directive to specifically identify the four DoD components with take home weapons authority.[72] Furthermore, the PFPA position completely ignores the fact that the action it has taken under its erroneous interpretation has resulted in improperly arming individual police officers and investigators who have law enforcement authority only when on duty at a DoD installation. As we pointed out in the draft report, allowing these individuals to carry their duty weapons to and from work is tantamount to arming civilians. This means that these individuals may be violating individual state law while traveling armed through various jurisdictions to and from their residences. The PFPA position also ignores the unnecessary risks to safety and security for weapons, and the potential liability to both the individuals and the Government, that its current practice poses. As for the PFPA disagreement with our view that DPS officers were not authorized to transport firearms on a trip to recruit perspective employees, the regulatory paragraph cited in the disagreement is predicated on "when personnel must carry firearms aboard aircraft." We do not agree that recruiters must carry weapons to recruit perspective employees, and recruiting perspective employees is not one of the reasons for carrying firearms authorized by the directive. Overall, we do not believe there is any legitimate basis for the PFPA position, and that the agency should take immediate action to comply with current DoD policy. In commenting on this final report, the Director, Administration and Management, should advise us as to the date on which the Pentagon Force Protection Agency has or will begin complying with the weapons storage requirements in DoD Directive 5210.56.

USDI Comments. The Office of the Under Secretary of Defense for Intelligence (USDI), which is now proponent for DoDD 5210.56, concurred with our finding and recommendation. In addition to concurring that PFPA should take action to comply with the current policy, USDI advised it was coordinating a change to DoDD 5120.56 to clearly prohibit DoD security and law enforcement personnel (excluding DCIO personnel) from taking Government-issued weapons home after their tours of duty.

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[72] Unlike PFPA police officers and investigators, DCIO Special Agents are law enforcement officers 24 hours a day and either on duty or available for duty. PFPA officers are also unlike civilian police officers, whom are sworn law enforcement officers with authority to enforce law within their jurisdictions 24 hours a day. PFPA officers are police officers only while on duty at a DoD facility in the National Capital Region.

B. Carrying of a Private Weapon by a Service Member

> The Chief, DPS, without proper authority authorized an active duty Service member assigned to DPS to carry a personal firearm for personal protection while off-duty and traveling between the Service member's domicile and duty location. In at least two instances, the Service member carried the private weapon while in a duty-status, in violation of DoD Directive 5210.56, paragraph E.1.1.9.[73]

Following the terrorists' attack on the Pentagon, and in response to a perceived threat, the Chief, DPS, authorized an active duty Service member assigned to DPS to carry a personal firearm for personal protection. For several months the Service member carried the weapon on his person in a concealed manner, between his residence in Herndon, Virginia, and his place of duty with DPS at the Navy Annex in Arlington, Virginia. The practice continued until May 31, 2002, when DPS made an on-the-spot correction by terminating the practice after we questioned its propriety in light of DoD policy. This practice is not consistent with DoD Directive 5210.56, paragraph E1.1.3.[74] DoD Directive 5210.56 makes no provision for the carrying of firearms (Government issued or personal) by DoD military and civilian personnel for personal protection in the contiguous United States.

The Chief, DPS, informed us that the Service member carried the weapon only in an off-duty capacity while in transit between home and work, and not while on duty. However, we noted in official DPS training records that the Service member had qualified with the weapon in April 2002, and he carried the weapon to the weapons inventory that we conducted at the Pentagon on May 31, 2002. During both of these instances the Service member was on duty.

In addition, we reviewed DPS General Order 1000.8, "Use of Force," July 30, 1996, which states, "[w]hile on duty DPS police officers shall carry only DPS issued weapons and ammunition." Officers are defined as GS-083 and GS-1811 employees. The general order does not address the Service members assigned to PFPA.

Recommendation B.

We recommend that the Director, Pentagon Force Protection Agency:

1. comply with the provisions of DoD Directive 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties," November 1, 2001, with regard to the carrying of firearms and ammunition by DoD personnel; and

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[73] "[o]nly Government-owned and issued weapons and ammunition are authorized to be carried by DoD personnel while performing official duties."

[74] "DoD military and civilian personnel may be authorized to carry firearms for personal protection in overseas areas when the DoD Component headquarters intelligence center identifies a credible and specific threat against DoD personnel in that regional area. Firearms shall not be issued indiscriminately for that purpose."

2. revise Defense Protective Service general orders to account for the Service members now assigned to the Pentagon Force Protection Agency.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Recommendation B.a & b). The Director concurred, advising that PFPA would revise its GOs to include Service members assigned to PFPA. The estimated completion for the revisions was September 30, 2003.

Evaluation Response. The management comments are responsive.

C. Improper Domicile-to-Duty Transportation

Between September 12, 2001, and August 27, 2002, numerous PFPA personnel used DPS Government vehicles to travel between home and their place of duty without Secretary of Defense approval as required by Federal law and DoD policy.

The Acting Director, PFPA, advised that as a result of the circumstances created by the terrorists attack on the Pentagon, the former Director, WHS, verbally authorized him to allow DPS personnel to use DPS Government vehicles to travel between their homes and their places of duty. We estimated that the number of PFPA personnel using Government vehicles for domicile-to-duty transportation may have exceeded 20, including the chief and deputy chief, and there is some evidence that even the security services division may have used Government vehicles.

Our evaluation developed substantive information that the Chief, DPS, probably knew as early as December 2001, that Secretary of Defense approval of the practice in question was doubtful; however, the practice continued until August 27, 2002. The Acting Director, PFPA said that as part of his August 2002 review of programs implemented following the terrorists' attack on the Pentagon, he stopped the domicile-to-duty transportation practice on August 27, 2002. Despite the Acting Director's order, we observed a DPS officer's assigned Government vehicle parked at the officer's residence at 1:48 AM, September 6, 2002.

On November 26, 2002, we provided the Director, Administration and Management, with the information pertaining to PFPA domicile-to-duty transportation practices citing Section 1344, Title 31 United States Code, "Passenger Carrier Use," and DoD Instruction 4515.7, "Use of Motor Transportation and Scheduled DoD Bus Service in the National Capital Region, July 31, 1985." We requested that he initiate an inquiry into the circumstances surrounding the unauthorized domicile-to-duty transportation to determine whether the use of Government vehicles by PFPA personnel violated law or policy. We asked that he consider the manner in which the practice was initiated; the length of time it continued; the use of required documentation, including logs and records; the number of vehicles and personnel involved and the resulting costs; and efforts undertaken to formalize the practice within DPS. Finally, we asked that he provide us the results of the inquiry, including conclusions, and decisions and rationale concerning administrative or disciplinary actions.

Recommendation C.

We recommend that the Director, Administration and Management, establish management control procedures to ensure that all Pentagon Force Protection Agency personnel comply with Federal law and DoD Regulation 4500.36-R, "Management, Acquisition and Use of Motor Vehicles," March 1994, regarding the use of Government vehicles for domicile-to-duty transportation.

Management Comments and Our Evaluation

Director, Administration and Management Comments (Finding C). The Director nonconcurred. According to the Director, the Chief, DPS, did not know that Secretary of Defense approval was doubtful. The concern of further terrorist attacks and for the need to return to the Pentagon at all hours went well beyond December 1, 2001.

Evaluation Response. As indicated above,

> On November 26, 2002, we provided the Director, Administration and Management, with the information pertaining to PFPA domicile-to-duty transportation practices citing Section 1344, Title 31 United States Code, "Passenger Carrier Use," and DoD Instruction 4515.7, "Use of Motor Transportation and Scheduled DoD Bus Service in the National Capital Region, July 31, 1985." We requested that he initiate an inquiry into the circumstances surrounding the unauthorized domicile-to-duty transportation to determine whether the use of Government vehicles by PFPA personnel violated law or policy. We asked that he consider the manner in which the practice was initiated; the length of time it continued; the use of required documentation, including logs and records; the number of vehicles and personnel involved and the resulting costs; and efforts undertaken to formalize the practice within DPS. Finally, we asked that he provide us the results of the inquiry, including conclusions, and decisions and rationale concerning administrative or disciplinary actions.

As yet we have not received a response to our request for the results of the inquiry. In our correspondence we included a December 14, 2001 e-mail that included the Chief, DPS, as an addressee that contained the opinion of a representative of the WHS/GC stating,

> …you should be citing DoD publication 4500.36-R, Management, Acquisition, and Use of Motor Vehicles instead of the GSA regs. Also, this is definitely not a "pilot program," and if the number of vehicles changes, it's going to go down (not up). I get the impression from reading your draft memos that someone has misled you about how the Department (and Congress, for that matter) views take-home vehicle programs. It's probably enough for me to simply say that DPS will be lucky if the Secretary approves even the current request for twelve people.

This was the basis for our statement that, "the Chief, DPS, probably knew as early as December 2001, that Secretary of Defense approval of the practice in question was doubtful." We did not interview the Chief, DPS, regarding the e-mail but referred the matter to management for action. The Director, Administration and Management, should provide the results of the inquiry including conclusions, and decisions and rationale concerning administrative or disciplinary action, as requested.

Director, Administration and Management Comments (Recommendation C). The Director concurred, advising that PFPA is developing the Agency Vehicle Program and the PFPA Regulation on the management, care, maintenance, allocation, assignments, and operation of assigned vehicles has been developed

and is in coordination. The regulation clearly defines and identifies the policy, procedures and responsibilities associated with the Vehicle Program. The regulation is expected to be published not later than August 30, 2003 and will be distributed throughout PFPA. All PFPA employees operating or managing vehicles will be required to read, acknowledge, and comply with the regulation. PFPA has established vehicle assessable units (AUs) with assigned AU managers as part of its recently expanded and improved Management Control Program (MCP). These AUs will be regularly reviewed as part of the PFPA MCP processes.

Evaluation Response. The management comments are responsive.

Appendix A. Scope and Methodology

This evaluation focused on whether DPS implemented or adequately addressed the recommendations in evaluation report no. 9950006F, "Evaluation of the Defense Protective Service," May 14, 1999. We also incorporated the items of concern to Senator Grassley as part of our evaluation process. We began by comparing our prior recommendations with the information in Audit Followup's Audit Recommendation Tracking System to determine what information DPS provided to satisfy Audit Followup's requirements. We then reviewed the information provided by DPS to determine the extent that it satisfied the intent of our recommendations. This provided a baseline to establish a comprehensive work plan when combined with Senator Grassley's concerns. We reviewed DPS policies and practices regarding hiring and retaining police officers and security guards, as well as contracting private security guards, to determine whether the processes were adequate to identify individuals with felony records. We examined DPS practices in arming police officers and security guards to determine whether they comply with existing statutes and regulations. We completed an inventory of all DPS weapons to determine whether they have accounted for all missing and unaccounted weapons, and to determine whether they have full and effective controls over their weapons inventory. We completed NCIC checks on missing or unaccounted DPS weapons to determine whether they were used in the commission of a crime. We reviewed evidence management procedures to include collection, documentation, marking, temporary and long-term storage, physical security, temporary transfers, evidence custodian qualifications, inspection and inventory procedures, disposal and return; and we completed a 100 percent inventory of the DPS evidence repository.

Prior Coverage

During the last 5 years, in addition to the "Evaluation of the Defense Protective Service," May 14, 1999, the OIG DoD has issued one report discussing DPS. Unrestricted OIG DoD reports can be accessed at http://www.dodig.osd.mil/dcis/cipo/evals.htm. Additionally, in 1990 the OIG DoD issued an inspection report regarding the Washington Headquarters Services.

Inspector General of the Department of Defense

IG DoD Report No. 2002C001, "Evaluation of the Policies and Practices of the Defense Organizations Employing Criminal Investigators with Respect to Controls Over Firearms," March 28, 2003.

IG DoD Inspection Report, "Washington Headquarters Services," January 23, 1990, described various operational and organizational problems that either resulted from or followed the GSA delegation of authority to DoD. The DPS operational problems that were identified included weakened building security, excessive overtime, discipline issues, and inadequate personnel management and training. Organizational problems included fragmentation, duplication of effort, and overlap in WHS directorates or operations, including security. These problems were generally attributed to inadequate planning and preparation for the approximately tenfold increase in size resulting from the assumption of responsibilities formerly administered by GSA. The 1990 inspection found specific problems with DPS overtime, which were described as follows:

> "...[d]elays in hiring caused extensive vacancies in the DPS, which resulted in excessive overtime, improper use of personnel, and . . . [DPS not performing] the assigned mission. For example, the DPS was unable to perform some administrative functions such as writing . . . general orders and standard operating procedures...
>
> ...DPS was using over 5,000 hours of overtime in a pay-period, with some employees working over 80 hours of overtime per pay period. Because of the large overtime requirement, the DPS was not requesting overtime in the prescribed manner, i.e., personnel listed by name and position. Furthermore, employees were working overtime and taking annual leave in the same pay-period, a practice not normally allowed under OSD Administrative Instruction 28, Overtime, Administrative Workweek, and Prescribed Hours of Duty of Civilian Employees. However, with the severe personnel shortages and continuing mission requirements, managers could not exclude employees who took annual leave from working overtime for the entire pay period."

The OIG DoD recommended that DPS improve its controls on overtime approval and usage. WHS concurred and indicated that DPS had formulated new procedures for projecting and controlling its overtime.

Appendix B. Details Regarding Prior Recommendation C.1. to Reclassify Fixed-Post DPS Officers as Security Guards

OIG DoD previously recommended that the Chief, DPS, with WHS support, take action to reclassify as GS-085 (security guard) those GS-083 (police officer) positions used to staff fixed posts on a nonrotating assignment basis; and determine whether all DPS fixed posts should be staffed with GS-085 security guards, rather than GS-083 police officers.

The Director, Administration and Management, disagreed with our recommendation. According to the Director, nothing would be gained from reclassifying those officers who normally staff fixed posts and the action would have a severe impact on morale, which DPS management has worked long and hard to repair. The Director advised that if the officers were reclassified, they would retain their current pay levels and most likely would file grievances or other complaints against the reclassifications. The Director also advised that DPS had studied this issue many times and concluded that it was in the best interest of both DPS and Pentagon employees for all DPS officers to be classified as GS-083 Police Officers. As further support for this position, the Director advised:

- Personnel in the GS-085 (Security Guard) series cannot be graded any higher than pay grade GS-05, and it is difficult to recruit and motivate able employees for positions in this series. It is more desirable to have young, quality employees (like those who can be recruited for the GS-083 series) guarding the doors at the Pentagon.

- Unlike the GS-083 series, there is no viable training for GS-085s. Employees in the GS-083 series receive extensive training and are ready and able to react to any eventuality that might present itself. A recent example was an incident at the Pentagon Mall Entrance where a properly trained police officer was able to thwart a possibly-disastrous circumstance, largely because of his training.

- Having all officers working in the same series allows for greater flexibility in assignments. Rotating officers to different duties allows for training and keeping current in all aspects of the job.

- The White House and Capital are both protected by forces made up entirely of GS-083s. Department of Defense employees in the National Capital Region certainly deserve no less protection.

Our draft version of the "Evaluation of the Defense Protective Service" recognized some of these reasons for staffing DPS with GS-083 police officers and not hire GS-085 security guards, and we fully understood these reasons. However, these reasons do not justify misclassifying actual employee positions. As discussed in our draft report, at the time of our fieldwork, DPS had at least 30 GS-083 police officers who were not routinely rotated to police officer duties, and instead, were used to staff fixed-post (security) positions. In addition,

although contrary to its general policy, DPS had 10 GS-085 security guards who had been reclassified into those positions after they were unable to successfully complete basic police officer training at the Federal Law Enforcement Training Center. This factor operated against the rationale for the DPS hiring policy at that time. Furthermore, as discussed in our draft report, DPS police officers are subject to general civil service retirement (30 years service and 55 years old), and DPS needed to provide for its aging police officers. Finally, as pointed out in our draft report, the employee survey that we conducted identified a morale problem among older police officers assigned to fixed-post positions and younger, more physically capable police officers. Accordingly, while we fully understood and appreciated the reasons for the Director's nonconcurrence with our recommendation, we could not accept those reasons and asked the Director to reconsider the position in responding to our final report.

The Director in responding to the final report stated that the assessment resulted from their determination that trained police officers are required because the Pentagon symbolizes the DoD and is an obvious focus for terrorist groups and disgruntled persons. Further, policing a large reservation such as the Pentagon is very similar to policing a small city. The Pentagon is also susceptible to other threats, for example, hostage situations, bombings, and biological and chemical threats. Only police officers, as opposed to security guards, receive the training necessary to respond to bomb, biological, and chemical threats, and to deal with psychologically dysfunctional persons and hostage situations.

Appendix C. Details Regarding Weapons Accountability

Because of its magnitude, we separated the task of assessing DPS weapons accountability into the following categories: conducting the inventory; verifying the inventory; examining the accountability process; and the status of lost, stolen, or recovered weapons.

1. Conducting the inventory.

As requested by Senator Grassley, and to determine whether DPS could account for their assigned weapons, we conducted a 100 percent inventory of the 640 weapons assigned to DPS. In doing so, we physically compared the serial numbers of all weapons on-hand (either issued to DPS employees, or stored in DPS arms storage facilities), against the master weapon inventory lists provided by DPS and WHS Property Management.[75] We accounted for all 640 weapons.

We spent considerable time around the arms rooms, and even though a systematic approach was not used to evaluate physical security and weapons safety, we did make the following observations:

a. Physical Security. DPS arms storage facilities did not always meet the requirements of DoD Manual 5100.76-M, "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives," August 12, 2000; and DoD Standard 6055.9-STD, "DoD Ammunition and Explosives Safety Standards," July 1999, with regard to restricted areas, use of access rosters, and posting of firefighting symbols. For example, the DPS operations armory (Pentagon room 2E165B) was not marked as a restricted area in accordance with DoD Manual 5100.76-M, paragraph C2.4. There was no authorized unaccompanied personnel access roster, as required by DoD Manual 5100.76-M, paragraph C2.6.1. On June 6, we inquired about an access list, and a list dated June 6, 2002, signed by the Watch Commander-First Relief, who is not responsible for the weapons, was provided. This is contrary to paragraph C2.6.1, which states, "Persons authorized unaccompanied access will be authorized in writing by the head of the Arms, Ammunition, and Explosives (AA&E) activity." Also, the rubber matting in the safe drawer that holds the MP5s was decomposing and getting in the barrels and the sights of the weapons.

b. Safety. The protective services unit was lax regarding weapons safety requirements. Their clearing barrel was full of papers and rags and could not be properly used. These housekeeping methods suggest that proper weapons clearing practices may not be routinely followed. Additionally, on May 24, 2002, an officer left his loaded duty weapon in the Protective Services Unit safe while doing physical fitness training. Storing loaded

[75] When the two lists were compared for discrepancies, only one was found. The WHS PM did not have the 37mm Gas Launcher, serial number DO1475, on their list because they failed to verify their list when they switched to the Defense Property Accountability System database.

weapons violates established safety procedures and DPS General Order 1500.7.

c. Security of weapons. On May 30, 2002, we inventoried the remaining ceremonial rifles. There were a total of 11 weapons in the room, but 3 (096927, 296958, and 3742247) were not stored in accordance with DoD Manual 5100.76-M, paragraph C.4.2.2. They were left lying against the wall and were not secured in a weapons rack or metal container. No unaccompanied access list was present. One ceremonial weapon had a partially obliterated serial number caused by pitting that has occurred over the years. On the weapon list provided by WHS PM, the serial number reflected is 512532; however, we could not distinguish the "3" in the number. WHS PM did not bring this to the attention of the DoD Registry as required by DoD Manual 4000.25-2-M, "Defense Logistics Management System," September 19, 2001, paragraph C12.2.3.

d. There were three unserviceable weapons (one was assigned to the firing range and the other two were unassigned). Two had inoperable slides. These weapons were not marked or recorded as unserviceable. Administrative Instruction (AI) 94, 6.4.1, requires that the custodian and/or subcustodian ensure that all property assigned to the custodial area is in serviceable condition and available for use.

2. Verifying the inventory.

Because of the accountability problems identified in the "Evaluation of the Defense Protective Service," May 14, 1999, we verified the accuracy of the master weapon inventory list. This entailed detailed coordination with the DoD Registry. We requested a listing of both active and inactive weapons that DPS had reported to the DoD Registry. Additionally, DoD Registry personnel attempted to ascertain whether DPS had reported lost, stolen, or recovered weapons, as required by DoD 4000.25-2-M, paragraph C12.2.8, and DoD Manual 5100.76-M, paragraph C7.6.1. During this process, we learned that Fort Belvoir reports the status of the DPS weapons to the DoD Registry. However, this reporting process was inaccurate because DPS had not provided weapon information to Fort Belvoir since 1999 and also because Fort Belvoir did not conduct annual reconciliation as required by DoD 4000.25-2-M, paragraph C12.5.2.10.

Because of the aforementioned problems related to DoD Registry reporting, we acquired all shipping, transfer, and turn-in documents in order to recreate a master weapon inventory list. However, as stated in the 1999 report, acquiring GSA and the U.S. Park Service transfer documents was futile. As such, we chose to use the July 1996 DPS inventory for comparison against their November 1996 inventory[76] and our June 2002 inventory as a baseline. Additionally, because DPS did not have all the shipping documents, we contacted weapon manufacturers (Beretta-U.S.A., Sig Arms, and Heckler & Koch (H&K)), and the Bureau of Alcohol, Tobacco and Firearms to obtain a list of all weapons DPS has ever acquired. We compared this information with weapons that were turned in to the Anniston Depot and subsequently verified by the DoD Registry. As a result

[76] In November 1996, WHS PM and DPS conducted their first-ever joint inventory.

of these actions, we are relatively certain that the Berettas, Sig Sauers, and H&Ks are accounted for. However, we cannot say the same for the Smith and Wessons. It appears that the Smith and Wesson revolvers that were present in 1996 are also accounted for. We accounted for all Smith and Wessons listed as being on-hand in the July and November 1996 inventories. However, because of problems that existed prior to 1996, to include flawed inventories, lack of transfer documents, and no joint inventory between DPS and WHS PM being conducted since the formation of DPS in 1987 until November 1996, we cannot say that Smith and Wessons were not lost prior to 1996.

3. Process for procuring weapons, turning in weapons, and conducting inventories

DPS lacks a consistent procurement process. DPS does not have any specific guidance, such as a table of distribution and allowances, regarding the types and quantities of weapons they are authorized. The 280 unassigned handguns in its inventory suggest an inefficient process. DoD Manual 5100.76-M, paragraph C5.3.1, mandates that "the DoD Components shall establish procedures for item managers to ensure the adequacy of requisition verification of Category II-IV arms. Such procedures shall include positive steps for rejecting excess and unauthorized requisitions." Not only does the number of weapons raise concerns but also the type of weapons being acquired. Although there is no DoD standard to guide procurement of specific models of weapons, the last requisition of Beretta 9mm handguns included both the 92D and 92FS models. These two models are similar; however, the safety mechanisms are different and could confuse an officer forced to use a different model in an emergency.

The process used by DPS and WHS PM is different from that required by General Order 1500.7, "Weapons Accountability," July 16, 1999. Despite some confusion as to the exact procedures, it appears that a joint DPS and WHS PM inventory of newly acquired weapons was the norm. General Order 1500.7, should be rewritten to delineate where the weapons should be shipped to, how the joint inventory is to be conducted, who is responsible for entering newly acquired weapons into DPAS, and who shall verify it. It should also specify that the primary and sub-weapon custodians must sign for weapons immediately after the serial numbers are verified. Currently, the primary custodian does not sign for the new weapons until the next scheduled quarterly inventory. Lastly, General Order 1500.7 needs to address how inventories will be conducted. Specific wording should be included to ensure that the "serial number" is visually examined.

The DoD Registry confirmed that numerous mistakes were made with respect to erroneous national stock numbers and military control numbers, as well as non-existent shipping documents during DPS weapon turn-ins. This resulted in the Fort Belvoir Serialization Officer (DPS weapons account) and the Anniston Depot reporting the same weapons as being on-hand, when they were actually at the Anniston depot.

A lack of knowledge of applicable guidance and regulations also contributed to the PFPA weapon accountability problems. Notwithstanding the listing of the applicable reference material in the "Evaluation of the Defense Protective Service," numerous weapon custodians claimed ignorance to basic procedures because they lacked training. DoD Manual 5100.76-M, paragraph C2.1.6,

requires training for all individuals responsible for the accountability of Arms, Ammunition & Explosives (AA&E) to ensure that they are aware of their responsibilities.

4. Status of lost, stolen, and recovered weapons.

DPS WEAPONS LISTED AS LOST OR STOLEN SINCE 1996

MANUFACTURER	MAKE& MODEL#	SERIAL NUMBER[77]	CURRENT STATUS	ENTERED IN NCIC
S&W	Revolver/65	2D46532 (ALC2D46532)	Unknown	Yes, but cancelled
S&W	Revolver/65	6K93569	Unknown	No
S&W	Revolver/65	D787912	Found Mar 2002	No
S&W	Revolver/10	ALC5571	Unknown	No
S&W	Revolver/10	BBD9167	Unknown	No
Mossberg	12 Gauge Shotgun	USO8905 (USO9805)	Anniston Depot has weapon.	No
Springfield	1903	646790	Found. DPS has weapon.	Yes
Beretta	92 D	BER175757Z	Found during raid. DPS now has weapon.	Yes
Beretta	92F	BER011918Z	Found. DPS has weapon.	N/A
Beretta*	92D	BER000676	Found drug bust. DC Metro police has weapon	Yes
Beretta*	92F	BER011837Z	Unknown	Yes
Beretta*	92D	BER127159Z	Unknown	Yes

(*Determined to be missing since publication of the 1999 report)

Twelve weapons that have been listed as lost or stolen since 1996 are reflected in the Table above. We have accounted for 6 of the 12 listed weapons. Of the remaining six unaccounted weapons, four are the Smith and Wesson revolvers[78] that we previously recommended that DPS aggressively and thoroughly investigate to determine the total weapons for which DPS is accountable and to determine the circumstances surrounding each missing or otherwise unaccounted weapon. The management response to our prior report, states, "The Director, Administration and Management, agreed. The investigation that we

[77] Some entries have two serial numbers because PFPA and WHS/PM were uncertain on some serial numbers.

[78] There were actually five missing S&Ws that we recommended be investigated, but one .357 caliber revolver, serial number D787912, was found in March 2002 in the Operations Arms Room in a drawer of a desk that was being moved to facilitate renovation. The investigation of this weapon was substandard. The weapon's loss was discovered in October 1996, but the DD Form 200 was not initiated until December 1997 and says, "[i]tem does not exist due to transposition of ID numbers during inventory." Additionally, according to a memorandum by the Support Services Branch Commander, the ATF reported this weapon as never being in the possession of the Federal government. Furthermore this weapon was never entered into NCIC.

recommended has been completed and there are no missing or unaccounted weapons."

To the contrary, the Chief, DPS has not accounted for all weapons. In fact, the effort to locate these weapons did not comport with guidelines set forth in DoD Manual 5100.76-M, paragraph C5.5, which states, "…no AA&E loss shall be attributed to an accountability or inventory discrepancy unless determined through investigation that the loss was not the result of theft." Additionally, DoD Regulation 7000.14-R, "Financial Management Regulation," volume 12, chapter 7, calls for an inquiry that,

> [s]hall be initiated immediately after discovery of the loss, damage, or destruction. This inquiry shall be an informal proceeding designed to determine the facts and circumstances leading to the loss, damage, or destruction. At a minimum, this inquiry should identify: what happened, how it happened, where it happened, who was involved, when it happened, and any evidence of negligence, willful misconduct, or deliberate unauthorized use or disposition of property.

From examining the DPS Supervisory Criminal Investigator's October 1999 weapon accountability report and the Support Services Branch Commander's December 1999 memorandum to the Chief, DPS (one contradicts the other), it appears that based on conversations with the Supervisory Criminal Investigator, they were only concerned with the lost Beretta (serial number BER175757Z) and did not take steps to investigate the missing Smith and Wessons in spite of DoD guidelines. For example, according to the Supervisory Criminal Investigator's memorandum, two Smith and Wesson revolvers were never sold to the Federal Government. The memorandum did not reconcile that assertion with the fact that both weapons were signed for in 1992 by the DPS primary weapon custodian, as well as the sub-custodian. Eventually, in March 2002, one of the two weapons, a Smith and Wesson .357 caliber revolver (serial number D787912), was found in the operations arms room in a drawer of a desk. Furthermore, despite this weapon being found, the DPS leadership did not re-examine the aforementioned weapon issues.

The circumstances surrounding the recovery/accounting of the remaining weapons are described below:

BER175757Z. This 9mm loss was discovered in March 1995 when a DPS officer reported to work and discovered that his assigned weapon was missing from the operations arms room. Although the loss was discovered in March 1995, the criminal investigation was not initiated until July 1997, and the DD Form 200, "Financial Liability Investigation of Property Loss," was not initiated until December 1997. The West Virginia State Police seized this weapon during a drug related raid on a Martinsburg, West Virginia, residence on October 15, 1998.

BER000076. This 9mm was reported as stolen on November 15, 2001, when a female acquaintance stole a DPS officer's assigned weapon, with magazine and ammunition, from his residence in Capital Heights, Maryland.[79] The officer did not have a gun safety lock as required by DoD Directive 5210.56. Maryland's

[79] As detailed in Part IV of this report the Chief, DPS, citing verbal permission from the former Director, WHS allowed DPS officers to take their weapons home in response to the terrorist attack.

Prince George's County Police failed to enter the weapon into NCIC. This mistake was eventually caught and corrected by a DPS criminal investigator on April 24, 2002. The investigator then waited until May 22 to request an "off-line" NCIC search. During June 2002, DPS received the results of this search and learned that on March 6, 2002, the Washington D.C. Metropolitan Police Department (MPD) made an NCIC inquiry about the weapon. This followed an arrest by an MPD narcotics officer on March 5, 2002, of a 23-year-old male selling drugs who had this weapon loaded with 16 rounds concealed on his person.

USO9805. The shotgun was listed as missing on June 21, 1994, and the financial liability investigation of property loss was initiated on December 9, 1997. The financial liability investigation states, "[d]ue to an ineffective inventory process at the time of the noted loss, possession or transfer to DPS could not be determined." Additionally, the Support Services Branch Commander's memorandum states that the manufacturer confirmed that this weapon never existed. As such, he assumed that the serial number was transposed, but he never took steps to verify his assumption. Our inquiry to the DoD Registry on June 5, 2002, disclosed that on December 3, 1990, DPS submitted paperwork to the DoD Registry to change the serial number of USO8905 to USO9805 because the numbers had been transposed. This weapon (USO9805) was among 23 weapons turned-in to Anniston Depot in March 2000. Lastly, the DoD Registry advised that USO8905 actually did exist and belonged to a Navy unit.

646790. This ceremonial weapon's loss was discovered in February 1999, but the DD Form 200, "Financial Liability Investigation of Property Loss," was not initiated until April 1999. On May 4, 1999, an ERT officer found the weapon in the ERT equipment storage cabinet shortly after it became known that an investigation was being conducted for the missing weapon.

BER011918Z. On August 24, 1996, a DPS officer discharged this weapon at the clearing barrel. The officer stated that there was something wrong with the weapon because he had not squeezed the trigger and the weapon fired anyway. On the same date, a DPS investigator took charge of the weapon and sent it Potomac Arms Company, Alexandria, Virginia, for testing. On June 12, 1997, a DPS lieutenant while conducting a 100 percent inventory went to the investigator to report that the weapon could not be found. The investigator then called the company and found that the weapon was still there.

In our previous evaluation we recommended, "The Chief, DPS, in concert with the WHS Property Management Branch, take action to standardize the accountability process for DPS weapons to conform with DoD policy." In spite of our recommendation, three weapons have been stolen since publishing the "Evaluation of the Defense Protective Service," May 14, 1999. Of these three weapons, two were stolen outside DPS jurisdiction (one of which is the aforementioned BER000076, and another that was stolen from a DPS criminal investigator in September 1999). We also determined that the Chief, DPS permitted officers assigned to certain sections, such as criminal investigations, to store their assigned weapons at home in violation of DoD Directive 5210.56. A DPS employee may have stolen the third weapon because it had been stored in the DPS logistics section (where numerous unassigned weapons were stored in a manner that did not meet DoD physical security requirements for arms storage).

Appendix D. Results of DPS Evidence Room Inventory

Some of the discrepancies detected on SD Forms 558, "Defense Protective Service Evidence/Property Custody Document" include,

- the majority are poorly and improperly completed (by the law enforcement personnel who seized the evidence);
- several required sections were incomplete; and,
- several have improper quantities and inadequate descriptions of the evidence.

Based on the number of poorly documented SD Forms 558, it appears that the evidence custodian did not review them thoroughly before accepting the evidence into the facility.

Our review of SOP 516.01, "Evidence Management and Storage Procedures," May 22, 2001, revealed that the evidence custodian was not required to review the SD Forms 558 against the evidence seized prior to accepting it. It appears that he received all new evidence from temporary storage lockers, and not from the officers actually documenting the seizure. We think that temporary storage should only occur during non-duty hours. If a seizure occurs during duty hours when the evidence room is open, there is no reason to place the evidence in temporary storage. If evidence is seized during swing or mid shifts, the officer or investigator should place the evidence in temporary storage and then turn it in to the evidence custodian either at the beginning of the officer's shift (swing shift) the next day, or the end of the officer's shift the next morning (midnight shift), unless it is a weekend. The evidence custodian should not accept evidence until he reviews the SD Form 558 and all items of evidence with the seizing official and can make corrections on the spot. The evidence custodian advised that he did not open bags sealed by the seizing officer to verify the contents prior to signing the SD Form 558 and accepting the evidence. Although there is no pertinent CALEA standard or DoD policy, the U.S. Army requires that evidence acquired during nonduty hours be secured in a temporary storage container that is controlled by the person securing it until the evidence is released to the custodian.[80] This is a sound practice that would serve to correct many of the problems noted during our inventory. Another problem posed by the failure of the evidence custodian to open sealed bags, is the loss of accountability and break in the chain of custody. Unless the custodian verifies the contents of containers he cannot testify regarding evidence integrity and chain of custody maintenance, which could have a devastating impact on the Government's ability to prosecute criminal cases. Furthermore, if at a later date the evidence custodian opens the container and the contents do not match the quantity listed on the SD Form 558, the evidence custodian cannot substantiate that evidence items are unaccounted.

Additionally, communication between evidence section personnel and seizing officials appears to be inadequate. This is a major factor contributing to problems

[80] Army Regulation 195-5, "Evidence Procedures" September 28, 1992, paragraph 2–4 a.

associated with the evidence custodian identifying and properly disposing of evidence that is no longer needed.

The evidence custodian admitted that the certifying witnesses on some SD Forms 558 did not actually observe the destruction. Further, the heating plant representative who witnessed incineration of evidence saw only a bag containing multiple items being destroyed. The evidence custodian advised that the heating plant representative did not actually see the SD Form 558 or verify that the items are those listed on a particular SD Form 558. Additionally, the evidence custodian stated that some of the witnesses' signatures on the SD Forms 558 came from DPS personnel in other sections, who also did not personally observe the destruction of the evidence on the SD Form 558, which they certified as being destroyed.

The following discrepancies became evident during the inventory:

1. 01-4735 – One small bag containing one power cord, four small cables, and one plastic accessory bag containing a plastic clip were not listed on the SD Form 558.

2. 01-3760 - Two staplers, two DoD identification cards, and one small desk calendar were not listed on the SD Form 558.

3. 02-2193 - Computer disk labeled CONFIDENTIAL was found in an unlocked evidence container. The classification of the disk is listed on seizing officer's report; however, it was not listed on the SD Form 558. The evidence custodian advised that they had no safe available to store classified evidence. Additionally, the SD Form 558 disclosed that the disk was taken on June 8, 2002, and placed into the temporary evidence locker. It was not removed from the temporary locker and placed into the vault by the evidence custodian until June 18, 2002. (We reported this to DPS senior management for a security investigation as required by DoD Regulation 5200.1, R-1, "Information Security.")

4. 01-0082 – The SD Form 558 reflects one VHS tape and 11 register tapes seized. The review of items on-hand disclosed one VHS tape, 21 used cash register rolls, and 9 unused cash register rolls. A total of 19 items were not listed on the SD Form 558.

5. 01-3620 - SD Form 558 disclosed five items seized, but only three items could be located. A radio and its case were unaccounted for. The evidence custodian advised that these items were returned to the owners; however, the SD Form 558 did not reflect this nor was there documentation showing whom the owner was or that the owner signed for the property. Additionally, the SD Form 558 reflected that the items were taken by the seizing officer on September 18, 2001, and placed into the temporary evidence locker. According to documentation, the items were not removed from the temporary locker and placed into the vault by the evidence custodian until September 23, 2002.

6. 02-0619 – One black case and seven compact disks (CDs) were not listed on the SD Form 558.

7. 01-4470 – The items were placed in temporary storage on October 11, 2001, and not removed by the evidence custodian until October 14, 2001.

8. 00-0571- The evidence was placed in temporary storage on February 26, 2000, and signed into the vault by the evidence custodian on March 6, 2000. Additionally, this evidence was forwarded to the Drug Enforcement Administration laboratory for analysis. Review of the SD Form 558 disclosed the item was not logged back in after its return from the Drug Enforcement Administration.

9. 01-0795 – We counted a total of 111 evidence items associated with this case that were taken into evidence. Our inventory revealed that 44 of the 111 items were not listed on any of the 10 accompanying SD Forms 558. Items on six SD Forms 558, were seized by the Investigator, and signed into the evidence vault by the evidence custodian on March 4 and 6, 2002. Our review of the four remaining SD Forms 558 revealed numerous discrepancies to include a missing "bit fax modem." This evidence was seized by the officer and allegedly signed into the evidence vault by the evidence custodian on March 6, 2002. Because of these problems, we interviewed the officer. He told us that all items seized were placed into evidence; however, the four SD Forms 558 were not completed at the time he provided the evidence to the evidence custodian. The officer completed the four SD Forms 558 approximately one week prior to our June 2002 inventory; therefore, the dates transcribed on the SD Forms 558 were the dates the activity occurred, but they were not the dates he prepared the forms. Additionally, all four of the officer's SD Forms 558 reflect that the items were seized and placed into temporary evidence storage on March 3, 2002 (Sunday); however, the evidence custodian did not remove the evidence from temporary storage until March 6, 2002 (Wednesday).

10. 02-3042 – One suspected rolled marijuana cigarette in a sealed plastic bag was not listed on the pertinent SD Form 558.

11. 01-4852 – The evidence custodian advised that the items were placed into temporary storage; however, the seizing officer did not fill in the temporary storage portion of the SD Form 558.

12. 01-4956 – The evidence was placed in temporary storage on February 14, 2001 (Wednesday). The evidence custodian did not remove them until February 17, 2001 (Saturday).

13. 01-4862 – The item was seized on December 8, 2001, and placed into temporary storage. The temporary storage portion of the SD Form 558 was not filled in.

14. 01-3068 – The item was seized on August 4, 2001 (Saturday) and placed in temporary storage. The evidence custodian removed it on August 9, 2001 (Thursday).

15. 01-0328 – One black case for a martial arts throwing star was not listed with star on the SD Form 558.

16. 00-427 – The items were seized on February 14, 2000, and placed into temporary storage. The evidence custodian did not sign the evidence items into the vault until March 8, 2001.

17. 00-4535 – The serial number on the radar detector is not the same as that recorded on the SD Form 558. SD Form 558 listed serial number as 071591. Number on detector is 001952.

18. 99-2303 – The item was seized on July 19, 1999. It was not officially signed into the vault until September 12, 2001, when the evidence custodian created the first SD Form 558 for the evidence.

19. 01-0576 - The item was seized on February 7, 2001. It was not officially signed into the vault until September 12, 2001, when evidence custodian created the first SD Form 558 for the evidence. The evidence custodian advised that this particular SD Form 558 was probably lost and had to be re-done.

20. 01-3427 - The item was seized on August 29, 2001, and placed into temporary storage on August 30, 2001. The evidence custodian never signed the SD Form 558 when the items were placed into the vault.

21. 01-1771 - The item was seized on April 28, 2001 (Saturday). It was placed in the vault on May 1, 2001 (Tuesday). There is no record as to where the item was between April 28 and May 1.

22. 02-1253 - Ten deposit envelopes and one Pentagon Federal Credit Union personal business card were not listed on the SD Form 558.

23. 02-0621 – One "Ms. Pacman" video game was not listed on SD Form 558.

24. 01-0061 - The item was seized on January 4, 2002 (Friday), and placed into temporary storage the same date. It was placed into the vault on January 8, 2002 (Tuesday).

25. 01-4883 - The item was seized and placed into temporary storage on December 10, 2001. The evidence custodian never signed the SD Form 558 when the item was placed into the vault.

26. 02-1164 - The item was seized and placed into temporary storage on March 26, 2002 (Tuesday). It was placed into the vault on March 28, 2002 (Thursday).

27. 02-1452 - The item was seized on April 18, 2002 (Thursday) and placed in the vault on April 23, 2002 (Tuesday). SD Form 558 does not indicate where evidence was stored between April 18 and 23, 2002.

28. 02-2068 – The SD Form 558 indicates that the items were taken as evidence on May 28, 2002, signed out on May 27, 2002, by a military police officer, and then placed back into the evidence vault on May 28, 2002. There is a conflict in the chain of custody section of the SD Form 558.

29. 02-1443 - The item was seized and placed into temporary storage on June 2, 2002 (Sunday). It was placed into the vault on June 7, 2002 (Friday).

30. 01-3156 - The item was taken on August 22, 2001, by the CI/IAD. The SD Form 558 indicates that it was placed into temporary storage on June 3, 2002. It was not placed into the evidence vault until June 10, 2002. There is no

indication where the evidence was stored between August 22, 2001 and June 3, 2002.

31. 02-0531 - The item was seized and placed into the temporary storage on February 11, 2002 (Monday). It was placed into the vault on February 13, 2002 (Wednesday).

Appendix E. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Under Secretary of Defense (Personnel and Readiness)
Under Secretary of Defense for Policy
Under Secretary of Defense (Comptroller)/Chief Financial Officer
Director, Operational Test and Evaluation
Assistant Secretary of Defense (Public Affairs)
Assistant Secretary of Defense (Intelligence Oversight)
Director, Pentagon Force Protection Agency *
Chief, Defense Protective Service *
Director for Acquisition Initiatives

Department of the Army

Commander, U.S. Army Criminal Investigation Command
Auditor General, Department of the Army

Department of the Navy

Director, Naval Criminal Investigative Service
Naval Inspector General
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Commander, Air Force Office of Special Investigations
Auditor General, Department of the Air Force

Other Defense Organizations

Director, Defense Criminal Investigative Service
Director, Defense Information Systems Agency
Director, Defense Logistics Agency
Director, National Security Agency
Inspector General, National Security Agency
Inspector General, Defense Intelligence Agency

*Recipient of draft report.

Non-Defense Federal Organization

Office of Management and Budget

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Committee on Government Reform
House Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform

Appendix F. Management Comments

OFFICE OF THE UNDER SECRETARY OF DEFENSE
5000 DEFENSE PENTAGON
WASHINGTON, DC 20301-5000

INTELLIGENCE

May 22, 2003

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL (INSPECTIONS AND POLICY)

SUBECT: Follow-on Evaluation of the Defense Protective Service (Project No. 2002C002)

In response to your memorandum of April 18, 2003, subject as above, the following OASD(C3I) comments are provided:

DoD IG Follow-on Recommendation D.3.(Page 38): That the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence develop:

(1) Policy and procedure to preclude the arming of DoD personnel determined to be unsuitable because of physical, medical, mental health, or performance related reasons; and
(2) Minimum standards for training, certification, and qualification of firearms instructors.

OASD(C3I) COMMENT: Concur. Necessary policy will be developed for inclusion in DoDD 5210.56. Normal DoD staffing via the SD Form 106 will take approximately 45 days. Expected publication date is August 30, 2003.

The OASD(C3I) also concurs that the PFPA take action to comply with DoD 5100.76-M regarding the security of DoD issued weapons, and DoDD 5210.56 regarding the storage of weapons at designated control points. As regards the latter, this office is coordinating a change to DoDD 5210.56 that clearly prohibits DoD security and law enforcement personnel (excluding DCIO personnel) from taking government issued weapons home after their tours of duty.

William F. Coleman
William Coleman
Associate Director of Security

From: Charvat, John, COL, DoD OGC [mailto:charvatj@dodgc.osd.mil]
Sent: Friday, May 30, 2003 3:18 PM
To: Holmes, David E., OIG DoD
Cc: Boyll, Mark, Mr, DoD OGC; Florio, Michael R., OIG DoD; McGrath, T. J., Maj, DoD OGC
Subject: RE: DPS Follow-on Evaluation Draft Report (2002C002)
Sensitivity: Private

Mr. Holmes,
No legal review is required beyond the legal review already provided by Mr. Boyll. Accordingly, no comments are provided.

V/R,
John L. Charvat Jr.
COL, USA
Military Assistant

ADMINISTRATION AND MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE

1950 DEFENSE PENTAGON WASHINGTON, DC
20301-1950

JUN 1 8 2003

MEMORANDUM FOR OFFICE OF THE INSPECTOR GENERAL
ATTN: MR. L. JERRY HANSEN

SUBJECT: Follow-on Evaluation of the Defense Protective Service (DPS)
(Project No. 20020002)

We have reviewed the subject report dated April 18, 2003 and appreciate the opportunity to comment. An important consideration when reviewing this report is that after the attack on the Pentagon on September 11, 2001, the former DPS, now the Pentagon Police Directorate, was seriously undermanned and for many months after that attack necessarily focused the vast majority of its efforts on its security, law enforcement, and force protection roles at the expense of many other considerations. Subsequently, the creation of the Pentagon Force Protection Agency (PFPA) on May 3, 2002 and its absorption of DPS continued to impact DPS and required prioritization of its missions.

Your recommendations and findings come at an ideal time for the PFPA. It is working to address all of the issues impacting a new organization, many of which are mentioned in your report. Given the magnitude of its tasks this process will require some time to reach full maturity. However that is the goal and PFPA is intensely focused on achieving that goal.

As requested, we have attached comments for each of your recommendations and a few of your findings. The PFPA point of contact for this response is Chris Layman, who can be reached at 703-613-3678.

Raymond F. DuBois 6.18.03
Director

Attachment:
As stated

A. Roles, Responsibilities, and Relationships

Recommendation A.1

"We recommend that the Director, Pentagon Force Protection Agency, in consultation with the Washington Headquarters Services Office of General Counsel, revise General Order 1000.02, 'Authority and Jurisdiction,' June 18, 2001:

a. To delineate an officer's authority to intervene in situations involving breaches of the peace (when violence is inflicted or immediately threatened) or when felonies are being committed in their presence, when traveling between DoD locations in the National Capital Region. If the decision to intervene remains discretionary with the officer, the revision should alert the officer to the potential civil liability that could arise as a result of his decision to intervene.

b. To set forth in plain language the specific police powers that DPS officers are authorized to exercise when they:

b.1. Provide protective services to DoD officials, visiting dignitaries, and other assigned personnel,

b.2. Monitor and show police presence at the Secretary of Defense's private residence, and

b.3. Perform protective services functions outside the NCR."

Comment Recommendation A.1.a – b.3: Concur. We believe that GO 1000.02 is clear and complete as evidenced by the lack of problems associated with our police officer's response to criminal incidents; however, PFPA, in consultation with WHS/GC, will further review and revise, if necessary, GO 1000.02 to determine whether additional clarification of officer authority to intervene is warranted.

Recommendation A.2

"We recommend that the Director, Pentagon Force Protection Agency,

a. Identify a primary point of contact or liaison for coordinating and developing MOUs and MOAs, and keep this person abreast of all communication with outside agencies with regard thereto;

b. Systematically review all existing MOUs and MOAs to ensure currency, legal sufficiency, and clarity of each organization's roles and responsibilities;

Comment Recommendations A.2.a - b: Concur. The Pentagon Force Protection Agency (PFPA) is developing a Support Agreement Program and PFPA Regulation to outline the policies, procedures, and responsibilities associated with the program. The Program will encompass all Memoranda of Agreement (MOAs), Memoranda of Understanding

(MOUs), Interagency Agreements (IAs), Inter Service Support Agreements (ISSAs), and other such documents to which PFPA is a party. The program will have a single manager to oversee it; however, each document will have a separate subject matter expert who will be responsible for functional and technical content of the document and its currency. The program manager will ensure that each document is reviewed at least once annually and properly coordinated with all affected and appropriate individuals and organizations. PFPA is in the progress of reviewing the current documents for currency, overlaps, and gaps and for potentially consolidating them as appropriate as well as establishing additional ones. It is anticipated that the PFPA Regulation will be completed by August 1, 2003. The program is expected to be fully operational by September 1, 2003.

c. Establish written MOUs and MOAs using the Arlington County, Virginia, and other after action reports as reference points to identify agencies that provided support during the terrorist attack on the Pentagon and incorporate them into a viable antiterrorism force protection plan, as recommended by the Defense Threat Reduction Agency;

Comment Recommendation A.2.c: Concur. PFPA has developed an overarching antiterrorism/force protection plan for WHS-controlled assets throughout the National Capital Region. Relevant portions of that plan address both internal and external agency's response to contingencies. Supporting MOUs will be developed once the plan is coordinated with all responsible agencies.

Finding A.2 (Page 13): "The MOA between PFPA and the County Board of Arlington County may not be legally sufficient because it purports to authorize PFPA management to direct DPS officers, while engaged in the performance of their official duties, to enforce state law off Federal property (the geographic limits established in 10 U.S.C. 2674)."

Comment Finding A.2: Non-concur. In its Follow-on Evaluation of the Defense Protective Service (DPS), the Inspector General indicated that the Pentagon Force Protection Agency's (PFPA) authority to enter into the Mutual Aid Agreement (Agreement) with the County Board of Arlington County to provide reciprocal support and assistance, and to render aid to Arlington County Police officers on the roadways and related parcels of land abutting the Pentagon Reservation "*may not be legally sufficient*." We believe that there is ample legal authority for the subject mutual aide agreement as clearly indicated in the agreement itself and as discussed below.

The draft finding is based on an unnecessarily narrow reading of the Secretary's authorities under 10 USC §2674 and is antithetical to the responsibilities of the Secretary of Defense to provide for the physical security, force protection and readiness required for the Pentagon Reservation in full accord with that statute and other Federal and State authorities. The draft report makes a curious argument both limiting the Secretary in his exercise of 10 USC §2674 responsibilities to provide for the security for the Pentagon Reservation, and concluding that the Secretary is without authority to enter into a mutual agreement with local authorities to authorize security and law enforcement officers to protect the Pentagon Reservation on land abutting the Reservation. The subject

Agreement with Arlington County relies on both Federal and State authorities to convey authority on PFPA officers to act in the best interests of DoD *"for the proper exercise of their duties"* under 10 USC §2674.

We believe that the authorization in 10 USC § 2674 to provide security *for* (not on) the Pentagon Reservation places such reasonable discretion in the hands of the Department absent any law to the contrary. We see nothing in the statute that would so limit the Department's authority to achieve a central purpose of the statute - to provide for the security for the Pentagon Reservation and for the hundreds of DoD facilities in the NCR. Furthermore, the draft finding misses the import of the legal effect of the conveyance of authority by Virginia to the Department and to PFPA officers under Virginia statutes cited in the Agreement. The comity between the State and Federal Governments with respect to law enforcement, security functions and jurisdiction for federal installations within the States has long been respected by the Federal courts as well within the reasonable discretion of those parties for establishing mutual responsibilities in this area. Thus, where a State conveys, and a Federal entity duly accepts certain authorities within the jurisdiction of the States, the courts will clearly uphold such arrangements. This is not a question of obtaining "legislative jurisdiction" over property but of the practical authority of the States and Federal governments to convey on each other certain authorities within their respective domains.

The conclusion of the WHS Office of General Counsel is that there is indeed ample legal authority for the subject mutual aide agreement between DOD and Arlington County. The draft report indicates no other statute or principal of law that would lead us to a contrary conclusion.

Recommendation A.2.d In concert with Washington Headquarters Services Office of General Counsel, develop and propose legislation that allows the Director, Pentagon Force Protection Agency, to enter into agreements that allow Defense Protective Service officers to enforce laws outside the geographic limits established in Section 2674, Title 10 United States Code to ensure the safe, secure, and efficient operation of the Pentagon Reservation;

Comment Recommendation A.2.d: Non-Concur. 10 U.S.C. 2674 gives the Secretary of Defense ample authority to enter into MOAs with local jurisdictions to further enhance the safety and security of the Pentagon Reservation and DoD personnel. The MOA with Arlington County, for example, relies on both Federal and State authorities to convey authority on PFPA officers to act in the best interests of DoD *"for the proper exercise of their duties"* under 10 USC §2674.

Recommendation A.2.e: Work with the Virginia State Police and the Military Police to develop a comprehensive plan for the (Virginia) State Route 110 security operation to include:

e.1.Identification of responsibilities, establishment of clear mission and threat requirements during contingency operations, to include specific rules of engagement,

signed by the Director, Pentagon Force Protection Agency, and posted so that all involved can clearly understand their responsibilities and operational details;

e.2.Training (in coordination with the Virginia State Police) that covers the most likely use of force scenarios, to include deadly force; and

e.3.Establish information sharing protocol with Virginia State Police and the Federal Bureau of Investigation regarding suspicious activity around the Pentagon Reservation, while ensuring compliance with laws and regulations covering the collection of information concerning persons not affiliated with DoD."

Comment Recommendation A.2.e.1 - e.3: Non-concur. The Rules of Engagement (ROE), i.e., use of force, for the Pentagon Police, the Virginia State Police, and the US Army Military Police for State Route 110 are the standard use of force guidelines for the DoD and State Police. PFPA K-9 Units assist State Police with vehicle inspections on Route 110. As for training, this is a live 24-hour a day operation. Since the initiation of this process more than 5,000 stops have occurred without major incident or problem. PFPA does provide information about suspicious activities around the Pentagon to the law enforcement community. PFPA's Anti-Terrorism/Force Protection (ATFP) Directorate currently provides this information telephonically to the US Air Force Office of Investigations, which in turn prepares a TALON report and informs the FBI's Washington Joint Terrorism Task Force. All of the major agencies in the D.C. Area have representative on the task Force. PFPA AT/FP is also fielding the CYBERCOP Virtual Private Network for sharing of Unclassified but sensitive information with participating law enforcement and security agencies. Additionally we are also participating in several national level initiatives that will permit rapid sharing of threat-related information with participating law enforcement agencies, i.e. Area Security Operations Command and Control System Advanced Concept Technology Demonstrator, and Protect America, an other information sharing program being sponsored by the DoD Office of Homeland Security). Additionally, PFPA is sponsoring security clearances for local police and fire departments that support PFPA and have a need to receive intelligence data.

Recommendation A.3

"We recommend that the Director, Pentagon Force Protection Agency,

a. Renegotiate and update the memorandum of understanding with the United States Army Criminal Investigation Command, based on each agency's actual jurisdiction and authority, as previously recommended; and

b. Negotiate a comprehensive memorandum of understanding between the Director, Administration and Management, or the Director, Pentagon Force Protection Agency, and the Director, Naval Criminal Investigative Service.

Comment Recommendations A.3.a & b: Concur. A formal letter from the Director of PFPA to the Army CIC requesting an update to the existing MOU and a formal letter from the Director of PFPA to the Director, NCIS requesting a comprehensive MOU will be sent by July 31, 2003.

Recommendation A.4

"We recommend that the Director, Pentagon Force Protection Agency,

a. Take the necessary actions to implement Prior Recommendation A.4. Initially, complete the required actions to implement Prior Recommendations A.2. and A.3. Then direct that all training (Pre-Field Training and Evaluation, Field Training and Evaluation, In-Service Training, Supervisory Forum, and Master Patrol Officer) be organized and conducted to ensure that all Pentagon Force Protection Agency personnel (police officers, investigators, and security personnel) understand their law enforcement and investigative authorities, particularly with regard to the different properties on which they operate;

Comment Recommendation A.4.a: Concur. The events of 9/11 and subsequent need to maintain a high level of security disrupted our training program. PFPA is conducting a comprehensive review of the agency's training requirements at all levels, then will develop a strategy to fulfill those requirements. Prior Recommendation A.4 has been used as a starting point for the training review. This is a long-term process with an estimated closure date of July 2004.

Prior Recommendation A.2: "The Chief, DPS, in coordination with the WHS General Counsel, identify the law enforcement agencies with which DPS would work during a contingency, both on and off the Pentagon Reservation, and:

- Initiate discussions with those agencies to define each agency's authorities, roles, and responsibilities during a contingency; and,

- Prepare an appropriate MOU between DPS and each of the other agencies formalizing the agreements on these issues."

Comment Prior Recommendation A.2: Concur. Corrective action is underway. PFPA has moved beyond discussions to an interim stage and has developed an overarching antiterrorism/force protection plan for WHS-controlled assets throughout the National Capital Region. Relevant portions of that plan address both internal and external agency's response to contingencies. Supporting MOUs will be developed once the plan is coordinated with all responsible agencies.

Prior Recommendation A.3: "The Chief, DPS, in coordination with the WHS General Counsel, initiate discussions with the DCIOs [Defense Criminal Investigative Organizations] to define each organization's authorities, roles, and responsibilities when conducting investigations on the Pentagon Reservation and at DoD facilities in the National Capital Region, and then execute MOUs formalizing the agreements on these issues."

Comment Prior Recommendation A.3: Concur. MOUs exist for DCIS, Army CID and AF OSI. The Director of PFPA will send formal letters to each of these agencies requesting that these MOUs are updated. It is estimated that this will be done by July 31, 2003. Additionally, the Director of PFPA will send a formal letter to NCIS requesting that an MOU be established to define their authority, role and responsibilities for

conducting investigations on the Pentagon Reservation. It is estimated that this will be done by July 31, 2003.

Prior Recommendation A.4: "The Chief, DPS, upon completing actions in response to Recommendations A.2. and A.3. above, conduct training and take other actions as necessary to ensure that all DPS employees (police officers, investigators and security guards) are fully cognizant of, and thoroughly understand, their law enforcement and investigative authorities, particularly in reference to the different properties on which they operate."

Comment Prior Recommendation A.4: Concur. Initial training has been provided to all PPD officers. Follow-on training is being incorporated into the PPD training plan.

b. Provide oversight to ensure that all employees receive required training and that such training is tracked and properly recorded in training records; and

Comment Recommendation A.4.b: Concur. PFPA is conducting a comprehensive review of the agency's training requirements at all levels, then will develop a strategy to fulfill those requirements. Prior Recommendation A.4 has been used as a starting point for the training review. This is a long-term process with an estimated closure date of July 2004.

c. Complete the development of a measurement tool to ensure that new officers comprehend authority and jurisdiction, to include all MOUs and MOAs.

Comment Recommendation A.4.c: Concur. PFPA is conducting a comprehensive review of the agency's training requirements at all levels, then will develop a strategy to fulfill those requirements. Prior Recommendation A.4 has been used as a starting point for the training review. This is a long-term process with an estimated closure date of July 2004.

B. Organization and Management

Recommendation B.1

We recommend that the Chief, Defense Protective Service:

a. Comply with the DoD Management Control Program requirements by,

a.1. Re-establishing written management control program guidance, similar to that outlined in General Order 1100.20, "Internal Management Control Program," November 19, 1991, and

a.2. Involving managers at all levels in the program.

b. Provide training for all Defense Protective Service managers regarding the requirements of the DoD Management Control Program, Office of Management and Budget circular A-123, "Management Accountability and Control," June 21, 1995, and

the Government Performance and Results Act, 103 Pub. L. –62; 107 Stat. 285, which requires agencies to develop strategic plans, set performance goals, and report annually on actual performance compared to goals.

Comment Recommendation B.1: Concur. PFPA published and disseminated a Management Control Program (MCP) Regulation dated January 30, 2003. The Regulation establishes policies and procedures for administering an MCP program. PFPA provided MCP training in February 2003 to all senior level directors, deputies and AU managers. Training covered a multitude of areas of Management Accountability and Control including, but not limited to; OMB Circulars A-123, 127, 130; GAO Standards for Internal Controls; the Financial Manager's Financial Integrity Act; the management control process/review; risk assessment; reporting and correcting deficiencies, and the Government Performance and Results Act. Additional training will be provided to PFPA managers and supervisors as part of the standup of PFPA.

Finding B.2 (Page 21): "DPS was active for these elements of the RE&F strategic plan from September 2000 through January 2002, after which all activities under this plan ceased."

Comment Finding B.2: The comment that DPS ceased all actions on the strategic plan after January 2002 appears to disregard the major impact the September terrorist attack and requirement for high security had on an organization of our size. All of our assets were focused on the primary function, protecting the Pentagon against further terrorist attacks.

Recommendation B.2

Develop an overarching strategic plan to manage priorities of PFPA and DA&M and develop PFPA directorate strategic plans that,

a. Are based on the principles established in the Government Performance and Results Act that have a firm nexus to Pentagon Force Protection Agency management priorities;

b. Include customer satisfaction as a goal or objective;

c. Include a management process for formally reviewing accomplishments against stated goals, based on specific measurement criteria and data collection methods for the measurements; and,

d. Identify and prioritize key processes supporting the organization's core competencies, and define the essential data required for process evaluations and the method(s) used to collect the essential data."

Comment Recommendation B.2: Concur. PFPA is in the process of accomplishing a new comprehensive strategic plan with an expected completion date of September 30, 2003.

C. Personnel

Recommendation C.1

None made

Recommendation C.2

None made

Recommendation C.3

"Formalize implementation of the physical fitness program requirements by developing a general order within 90 days following receipt of the final evaluation report."

Comment Recommendation C.3: Partially Concur. PFPA has developed comprehensive physical fitness standards, which ties physical fitness and medical standards to the job elements of the position descriptions of the police officers. The standards and proposed position descriptions are in staffing with WHS. Once the PFPA position has been concurred with by the WHS HRSC and General Counsel, the next step will be to coordinate it with the FOP bargaining unit. When that process is complete, the new program will be initiated. This process is tied to many variables and it is PFPA's intent to execute it as soon as possible. Establishing an artificial "no later than date" serves little purpose and may not be achievable given union bargaining requirements.

Recommendation C.4.a: Revise and update General Order 2300.24, "Overtime Procedures," November 30, 1994, to coincide with the December 29, 2000, union agreement regarding allocation of overtime hours;

Comment Recommendation C.4.a: Concur. GO 2300.24, "Overtime Procedures" is being updated to include union agreement regarding allocation of overtime hours. Additionally, an SOP is being created, as well as, an "Acknowledgement of Responsibilities" form which the timekeepers will be required to sign. The estimated completion date is August 31, 2003.

b. Provide recurring training to administrative duty officers and supervisors regarding their responsibilities to record overtime hours worked on daily detail sheets, and employee time sheets, respectively;

Comment Recommendation C.4.b: Concur. PPD timekeepers have been trained, as well as, first-line supervisors on responsibilities for recording overtime and filling out timesheets. Additionally, all new supervisors are trained on responsibilities listed above.

c. Implement a system of effective management controls as required by the Federal Manager's Financial Integrity Act of 1982, to ensure that all overtime hours worked are accurately recorded; and,

Comment Recommendation C.4.c: Concur. A new PFPA Time and Attendance Regulation was created to set up policies and procedures for all PFPA. Responsible personnel have been briefed and trained on the Regulation and procedures. An IMC Assessable Unit manager was also appointed to monitor all timesheets to insure that they are accurate and that they include proper documentation.

d. Direct that all managers promptly evaluate and determine proper actions in response to known deficiencies, reported audit and other findings, and related recommendations.

Comment Recommendation C.4.d: Concur. PFPA published and disseminated a Time and Attendance Regulation dated May 1, 2003 which:

- Designates the requirement for program official training

- Implements policy to ensure that all overtime hours worked are accurately recorded

The PFPA Personnel Assessable Unit Manager has been delegated and trained and is responsible to ensure that all managers promptly evaluate and determine proper actions in response to known deficiencies, reported audit and other findings, and related recommendations.

Recommendation C.5

"We recommend that the Director, Pentagon Force Protection Agency revise the current policy for internal affairs investigations, to require direct internal affairs reporting to the Director, Pentagon Force Protection Agency.

Comment Recommendation C.5: Concur. Under the new PFPA organizational structure, the Director of Criminal Investigations and Internal Affairs reports directly to the Director of PFPA.

a. Further revise and promulgate General Order 3076.02, "Utilization of the Ceremonial Unit," May 1, 2000, to include the requirement that after action reports contain the nature of the event, the costs, and the actual or anticipated Government benefits derived from the participation; and

Comment Recommendation C.5.a: Concur. This will be accomplished NLT August 31, 2003.

b. Through a system of management controls, require that general orders are disseminated throughout the department and that affected work units comply with the requirements outlined therein."

Comment Recommendation C.5.b: Concur. A complete review of all General Orders will begin in July 2003. The revised products will be posted to the PFPA Intranet. Paper copies are already available to the PPD. General Orders are to be followed by personnel

in the affected work units and are to be complied with. Failure to comply becomes a supervisory issue for necessary reemphasis or disciplinary action.

D. Operations

Recommendation D.1

"We recommend that the Director, Pentagon Force Protection Agency revise General Order 5061.01, "Evidence Management," May 5, 2000, to require that the evidence custodian obtain a Rule 6(e) access letter prior to the receipt of Grand Jury information and evidence."

Comment Recommendation D.1: Concur. This action should be completed by August 31, 2003.

Recommendation D.2.a: The Director, Administration and Management:

a.1.Establish a recurring program to ensure that individuals responsible for weapons accountability are aware of their responsibilities as established by DoD Manual 5100.76-M, "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives," August 12, 2000;

Comment Recommendation D.2.a.1: Concur. PFPA has conducted the required training and is incorporating it into its annual training program. a.2. Establish procedures to ensure that Washington Headquarters Services Property Management Branch, accurately and timely report the Pentagon Force Protection Agency weapon inventory to the DoD Registry, as required by DoD Manual 4000.25-2-M, "Defense Logistics Management System," September 19, 2001, chapter C12, via the Defense Property Accountability System;

Comment Recommendation D.2.a.2: Concur. PFPA, in conjunction with Washington Headquarters Services (WHS), is working to assume full accountability for and reporting of its weapons. As a former element of WHS, PFPA's weapons are currently on its property books and under the WHS account in the Defense Property Accounting System (DPAS). WHS and PFPA have reconciled the current PFPA inventory and corrected all discrepancies between the WHS DPAS records and the component registry. The DPAS software now electronically updates the registry on a monthly or quarterly basis.

As part of the PFPA standup process, PFPA has establishing its own property book and will be using DPAS as its electronic system of record. All current data within the WHS DPAS system will be electronically transferred, via the mainframe computer at the DFAS facility in Columbus Ohio, to the PFPA database. This will ensure the data integrity within the property book and the component registry.

The PFPA logistics staff is developing the following: property management policy and procedures, physical inventory requirements, reports of survey, outside organization reporting procedures, excess property disposition instructions. These procedures will

include all necessary steps to ensure physical inventories of all firearms are completed and reported to the registry on a scheduled basis.

The following are the estimated completion dates:

30 July 2003: Publish PFPA Property Accountability Instructions

31 August 2003: Transfer weapons inventory and full responsibility to PFPA

a.3. Take immediate steps to properly secure the excess Smith and Wesson .357 and .38 caliber weapons and turn them into the Anniston Army Depot;

Comment Recommendation D.2.a.3: Concur. The Smith and Wesson .357 and .38 caliber weapons are properly secured, under the control of, and reported to the registry by the Washington Headquarters Services Property Management Branch. PFPA is working with WHS to establish a turn in schedule for these weapons.

a.4.Comply with DoD Manual 5100.76-M, DoD Manual 4000.25-2-M, and Army Regulation 710-3, "Asset and Transaction Reporting System," March 31, 1998, by issuing guidance regarding the procurement of weapons. In particular, develop weapon procurement procedures to include steps for rejecting excess and unauthorized requisitions, and to provide oversight, verification of weapon shipments, Defense Property Accountability System data entry, and custodian signature upon receipt.

Comment Recommendation D.2.a.4: Concur. PFPA General Order 1005.02 is in the process of being revised to establish the duties of the Firearms Item Manager, identify the requisitioning and authorization process, and to include the Table of Allowance (TA) of all weapon systems. No firearms shall be purchased unless approved by the FIM and authorized on the TA. The TA shall include the NSN, Manufacturer, Model, Description, Authorized Quantity and requisition criteria for each type of firearms maintained by PFPA. It is anticipated that the revised General Order will be published by July 1, 2003.

Recommendation D.2.b: The Director, Pentagon Force Protection Agency:

b.1. Reopen the investigations into four missing revolvers and complete all investigative leads involving the two stolen Beretta handguns. The investigations should be conducted in accordance with DoD Manual 5100.76-M, paragraph C5.5 and DoD Regulation 7000.14-R, "Financial Management Regulation," volume 12, chapter 7 (emphasizing the proper completion of DD Forms 200, "Financial Liability Investigation of Property Loss"). Furthermore, in accordance with DoD Manual 5100.76-M, paragraph C7.6.3, ensure the local Federal Bureau of Investigation field offices and local law enforcement agencies, as appropriate, are provided information pertaining to stolen weapons.

Comment Recommendation D.2.b.1: Concur. The CI/IA Directorate has initiated a Report of Investigation (ROI) pertaining to the missing weapons. Investigation continues by the PFPA CI/IAD.

b.2. Comply with DoD Manual 5100.76-M, paragraph C7.5, by furnishing the results of all stolen weapon investigations, as well as those of recovered weapons, to the Director of Security, Office of the Assistant Secretary of Defense, Command, Communications, Control, and Intelligence, Deputy Assistant Secretary of Defense (Security and Intelligence Operations), (OASD (C3I), DASD (S&IO)). Reports should include an analysis of the theft as well as actions taken to prevent future incidents and should be presented at the next Physical Security Review Board.

Comment Recommendation D.2.b.2: Concur.

b.3. Inspect all arms storage facilities to ensure compliance with DoD Manual 5100.76-M and DoD Standard 6055.9-STD, Ammunition and Explosives Safety Standards," July 1999, giving particular attention to requirements for restricted areas, use of access rosters, posting of firefighting symbols, and ensuring the physical security of all weapons.

Comment Recommendation D.2.b.3: Concur. The PFPA will conduct a thorough inspection of each facility and will ensure all facilities have the proper firefighting symbols, restricted area signs, and access rosters. The estimate completion date for this is July 30, 2003.

b.4. Revise General Order 1500.7, "Weapons Accountability," July 16, 1999, to ensure compliance with DoD Manual 5100.76-M, paragraph C5.3.2.1, regarding quarterly inventory procedures that include serial number examination.

Comment Recommendation D.2.b.4: Concur. PFPA General Order 1500.7 was changed to identify this requirement. Since PFPA has established its own property book, the General Order is being revised to reflect the current procedures. The estimated completion of this change to the General Order is August 1, 2003.

b.5. Develop procedures to ensure that all weapons are serviceable as required by WHS Administrative Instruction 94, "Personal Property Management and Accountability," November 6, 1996.

Comment Recommendation D.2.b.5: Concur. The PFPA Administration and Logistics Division staff is working with the PFPA Pentagon Police Armory staff to establish a program to maintain a controlled local bench-stock of minor parts and pieces to enable PFPA Armors to effect minor repairs. These parts coupled with a time and material service contract will ensure the serviceability of all weapons. This program is estimated to be in place by August 1, 2003.

b.6. Emphasize during training, weapon safety and firearms storage requirements to all Pentagon Force Protection Agency personnel.

Comment Recommendation D.2.b.6: Concur. This training has been conducted and will be incorporated in the annual PFPA training program.

b.7. Establish policy requiring that all investigators apply the "Quality Standards for Investigations," established by the President's Council on Integrity and Efficiency, and that weapon theft investigations, as well as others, are properly planned, executed, supervised, and reported.

Comment Recommendation D.2.b.7: PFPA is developing an SOP regarding quality standards for investigations, estimated completion date 30 July 2003.

b.8. Ensure through a system of management controls that,

b.8.a. All internal affairs investigations are properly initiated by the Director, Pentagon Force Protection Agency, or the Chief, Defense Protective Service, or his designee, and are unbiased and objective;

Comment Recommendation D.2.b.8.a: Concur. PFPA is updating existing General Order 9000.02, "Internal Affairs Investigations" to reflect this recommendation. G.O. will be updated by August 30, 2003.

b.8.b. In all instances involving the loss or theft of Defense Protective Service weapons, that financial liability investigations of property loss are completed as required by Washington Headquarters Services Administrative Instruction 94, "Personal Property Management and Accountability," November6, 1996, and the, DoD Regulation 7000.14-R, "DoD Financial Management Regulation," April 1998, volume 12, chapter 7;

Comment Recommendation D.2.b.8.b: Concur. PFPA has hired a logistics management officer who will act as the property Book Officer and has been assigned to track all Reports of Survey (ROS) to ensure they meet all applicable regulatory requirements. PFPA is now in the process of standing up its logistics program and acquiring and training the necessary staff to support it. The PFPA property accountability regulation will establish local ROS processes and will layout the oversight role of the PFPA Management Control Program Coordinator. It is anticipated that the PFPA property accountability regulation will be in place by August 1, 2003.

b.8.c. Pentagon Force Protection Agency and Defense Protective Service supervisors comply with Administrative Instruction 8, "Disciplinary and Adverse Actions," August 17, 1981, Enclosure 2, in all instances where disciplinary action is required; and,

Comment Recommendation D.2.b.8.c: Concur. All disciplinary actions initiated with PFPA are thoroughly reviewed following the guidance contained in Administrative Instruction #8. All proposed disciplinary actions are coordinated with and prepared by the proponent of AI #8, Washington Headquarters Services, Personnel and Security Directorate, Labor Management and Employee Relations Division. Disciplinary cases considered adverse actions (more than 14 days suspension) are additionally coordinated through the WHS Office of General Counsel prior to first being initiated. PFPA has stood up a human resource staff to provide advice to management and facilitate processing of personnel-related actions through WHS.

PFPA recognizes the need for consistency in disciplinary actions; that is, like-penalties should be imposed for like-offenses. PFPA conducts a thorough review of the facts and merits of each situation, considers written guidance such as that found in AI #8, and finally vets and processes all actions through WHS/LMER. An in-depth review of the three disciplinary cases mentioned in the draft IG Report shows that although the primary offense for which disciplinary action was similar, there are a number of factors unique to each individual situation that may warrant varying degrees of discipline.

b.8.d. The Defense Criminal Investigative Service is notified in all thefts or attempted thefts of Government-owned weapons or ammunition as required by the memorandum of understanding.

Comment Recommendation D.2.b.8.d: Concur. The DCIS has and will be notified of thefts or attempted thefts of Government-owned weapons or ammunition.

Recommendation D.3.a: For C3I's response.

Recommendation D.3.b: We also recommend that the Director, Pentagon Force Protection Agency:

b.1. Establish policy to require that all personnel who do not qualify, to include activated Reserve members, be placed on the "do not carry list." Additionally, make this list available to personnel responsible for issuing weapons, and those responsible for developing duty rosters, while protecting the privacy of the people on the list;

Comment Recommendation D.3.b.1: Concur. PFPA will incorporate policy for placing personnel who do not qualify on a PFPA weapon on a "do not carry list" in GO 1005.03, "Semi-Annual Weapons Qualification". This will include identifying the proper personnel who will be allowed to have access to the list. Additionally, an SOP will be developed to include specific procedures for maintaining this list. These documents and procedures will be updated, established and implemented by August 31, 2003.

b.2. Comply with DoD Directive 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties," November 1, 2001, paragraph E1.1.4 to ensure that only qualified personnel are authorized to bear firearms;

Comment Recommendation D.3.b.2: Concur. All PFPA employees authorized to carry a firearm are qualified on that firearm.

b.3. Give only qualified personnel authorization to bear firearms, and ensure that authorization letters have expiration dates;

Comment Recommendation D.3.b.3: Non-Concur. PFPA agrees that authorization letters should be issued to qualified personnel, but does not agree with the expiration date requirement. This non-concurrence is based on the logistical and administrative burden this recommendation would place on the branch. Pentagon Police officers qualify twice annually with their issued handguns and quarterly with the sub-machine gun. It would be

more beneficial to pull a few individual's letters if they fail to qualify and re-issue on a case by case basis than it would to issue approximately 600 letters 6 times a year.

b.4. Revise the general orders dealing with arming, use of force, and weapon qualification to account for Service members, security specialists, and other personnel that the Director, Pentagon Force Protection Agency deems necessary. Also, include procedures to verify the currency of qualifications, and need to bear arms before weapon issuance;

Comment Recommendation D.3.b.4: Concur. GO 1005.03 "Semi-Annual Weapons Qualifications" will be updated to include procedures for arming, use of force, and weapon qualification for all appropriate PFPA employees. This will be completed by August 31, 2003.

b.5. Develop policy guidance and training on use of force continuum for specialized weapons;

Comment Recommendation D.3.b.5: Concur. GO 1005.03 "Semi-Annual Weapons Qualifications" and GO 100.07 "Use of Force" will be updated to include policy guidance and training requirements for specialized weapons and will be completed by August 31, 2003.

b.6. Formalize weapon courses of fire, and provide oversight to ensure that all Pentagon Force Protection Agency elements use only approved courses of fire for specialized weapons qualifications;

Comment Recommendation D.3.b.6: Concur. An SOP and lesson plan is being developed to address specialized weapons qualification. The estimated completion date for the SOP and lesson plan is August 31, 2003.

b.7. Formalize procedures for the "do not carry list";

Comment Recommendation D.3.b.7: Concur. An SOP will be developed to include specific procedures for maintaining the "do not carry list". This SOP will be established and implemented by August 31, 2003.

b.8. Examine the process of scheduling Pentagon Force Protection Agency personnel for weapon qualification training to eliminate inadvertent qualification lapses (A weapons qualification schedule developed by the training section working in concert with operations, and posted well in advance, should facilitate the process);

Comment Recommendation D.3.b.8: Concur. An SOP is being developed that addresses weapons training. Personnel will be scheduled by name and within the prescribed time to eliminate "lapses". This SOP will be established and implemented by August 31, 2003.

b.9. Streamline the process for maintaining the weapons qualification database;

Comment Recommendation D.3.b.9: Concur. The current filing system and software program is being reviewed. PFPA is procuring new training-tracking software and adding additional staff for data entry and record keeping to the Training Branch. The estimated completion date for this project is undetermined due to the uncertainty of the procurement process.

b.10. Revise procedures for tracking special weapons qualifications, and expeditiously train an adequate number of officers to man posts for contingency/crisis situations. Additionally, continually monitor the number of qualified officers to ensure they remain mission capable; and

Comment Recommendation D.3.b.10: Concur. GO 1005.03 "Semi-Annual Weapons Qualifications" will be updated to include procedures for tracking special weapons qualifications, and training all PPD officers on these weapons. The estimated completion date for the updates to this GO is August 31, 2003.

d.11. Maintain qualification rosters for all weapons, to include specialized weapons, in the arms room to facilitate issuance of weapons to qualified personnel only, especially when responding to increased force protection conditions.

Comment Recommendation D.3.b.11: Concur. An SOP is currently under development that addresses a "do not carry" list. Additionally, the training program currently under development includes specialized weapons qualifications for ALL PPD personnel. The estimated completion date for the SOP is August 31, 2003. Training for all PPD.

Recommendation D.4

"We recommend that the Director, Pentagon Force Protection Agency, revise General Order 5061.01, "Evidence Management," May 5, 2001, and Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001, to include procedures for:

a. Assessing and certifying individual qualifications for the evidence custodian, to include specific qualifications, training, and experience necessary;

Comment Recommendation D.4.a: Concur. This will be accomplished NLT August 30, 2003.

b. The evidence custodian to personally receive the evidence from the seizing official and physically review each piece of evidence obtained to ensure that all items turned in to the evidence custodian are properly recorded on the accompanying SD Form 558, "Evidence/Property Custody Document";

Comment Recommendation D.4.b: The Evidence Custodian (EC) has been directed to review all evidence entering into storage in the Evidence Room (ER). There is only one EC assigned to PFPA PPD at this time. Therefore it is impossible for that individual to be on duty at all times. Another person will be identified, trained and assigned to assist. Supervisors of PPD personnel collecting evidence have been directed to conduct

supervisory inspections of evidence and EPCDs prior to submission to the ER or Temporary Evidence Storage Safes.

c. Specifying hazardous materials storage and handling requirements;

Comment Recommendation D.4.c: Concur. GO 516.01 and SOP 516.01 will be revised NLT August 30, 2003 to identify specific measures to safeguard hazardous material either stored in the ER or at a separate site when not feasible to store in the PFPA ER.

d. Establishing procedures for the transmittal packaging of evidence to entities other than the Drug Enforcement Administration. Procedures should include the physical wrapping of evidence, required transmittal documentation, and the requirements for transporting via the U.S. Postal Service or by other approved carrier;

Comment Recommendation D.4.d: Concur. GO 516.01 and SOP 516.01 will be revised NLT August 30, 2003 to identify specific measures to safeguard hazardous material either stored in the ER or at a separate site when not feasible to store in the PFPA ER. Specific measures for wrapping, transporting evidence through the U.S. Postal Service or via other approved carriers will be included.

e. Adopting a five-copy version of the SD Form 558, "Evidence/Property Custody Document," as recommended in the Defense Protective Service annual evidence accountability inspection, conducted in calendar year 2000;

Comment Recommendation D.4.e: Concur.

f. Properly conducting a joint inventory upon change of evidence custodian by requiring the presence of both old and new custodians to sign SD Forms 558, "Evidence/Property Custody Document," and properly maintain chain of custody;

Comment Recommendation D.4.f: Concur. GO 516.01 and SOP 516.01 will be revised NLT August 30, 2003 to direct that 100% a joint inventory will be conducted by the outgoing and incoming ECs. The results of the inventory will be annotated on each SD Form 558 on hand during the inventory.

g. Conducting an annual audit by a supervisor not routinely or directly connected with control or oversight of the evidence storage process;

Comment Recommendation D.4.g: Concur. GO 516.01 and SOP 516.01 will be revised NLT August 30, 2003 directing that a disinterested supervisor conduct an annual audit of the evidence room in the presence of the EC.

h. Establishing policy and procedures for investigative or other action required to resolve any discrepancy in evidence accountability; and

Comment Recommendation D.4.h: Concur

i. Establishing time requirements to return or dispose of evidence within 6 months, or another justifiable, reasonable time period after prosecution or other legal requirements have been satisfied."

Comment Recommendation D.4.i: Concur

Recommendation D.5

"We recommend that the Director, Pentagon Force Protection Agency, take action to:

a. Correct all discrepancies identified during our inventory listed in Appendix D within 30 days following receipt of the final evaluation report;

Comment Recommendation D.5.a: Concur.

b. Revise Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001, to require face-to-face verification and correction of discrepancies, between the evidence custodian and the seizing official of all evidence listed on SD Forms 558. The evidence custodian should check and inventory each piece of evidence in sealed bags (except for transparent heat sealed bags containing fungible evidence) before accepting it, to include paper bags of evidence, which have been taped shut;

Comment Recommendation D.5.b: Concur.

c. Ensure all evidence is removed from temporary storage within 24 hours as required by Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001;

Comment Recommendation D.5.c: Concur.

Recommendation D.5.d: Change all combinations semi-annually as required by General Order 5061.01, "Evidence Management," May 5, 2000, and temporary storage locks quarterly as required in Standard Operating Procedure 516.01 "Evidence Management and Storage Procedures," May 22, 2001; and

Comment Recommendation D.5.d: Concur.

e. Implement a training program for all Pentagon Force Protection Agency law enforcement personnel regarding the collection, preservation, receipt, and turn-in of evidence;

Comment Recommendation D.5.e: Concur.

f. Properly destroy or return all evidence as required by Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001, when evidence no longer has utility for investigation or prosecution.

i. Establishing time requirements to return or dispose of evidence within 6 months, or another justifiable, reasonable time period after prosecution or other legal requirements have been satisfied."

Comment Recommendation D.4.i: Concur

Recommendation D.5

"We recommend that the Director, Pentagon Force Protection Agency, take action to:

a. Correct all discrepancies identified during our inventory listed in Appendix D within 30 days following receipt of the final evaluation report;

Comment Recommendation D.5.a: Concur.

b. Revise Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001, to require face-to-face verification and correction of discrepancies, between the evidence custodian and the seizing official of all evidence listed on SD Forms 558. The evidence custodian should check and inventory each piece of evidence in sealed bags (except for transparent heat sealed bags containing fungible evidence) before accepting it, to include paper bags of evidence, which have been taped shut;

Comment Recommendation D.5.b: Concur.

c. Ensure all evidence is removed from temporary storage within 24 hours as required by Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001;

Comment Recommendation D.5.c: Concur.

Recommendation D.5.d: Change all combinations semi-annually as required by General Order 5061.01, "Evidence Management," May 5, 2000, and temporary storage locks quarterly as required in Standard Operating Procedure 516.01 "Evidence Management and Storage Procedures," May 22, 2001; and

Comment Recommendation D.5.d: Concur.

e. Implement a training program for all Pentagon Force Protection Agency law enforcement personnel regarding the collection, preservation, receipt, and turn-in of evidence;

Comment Recommendation D.5.e: Concur.

f. Properly destroy or return all evidence as required by Standard Operating Procedure 516.01, "Evidence Management and Storage Procedures," May 22, 2001, when evidence no longer has utility for investigation or prosecution.

Comment Recommendation D.5.f: Concur.

g. Ensure witnesses properly observe the destruction of evidence;

Comment Recommendation D.5.g: Concur.

h. Conduct an investigation to determine if the evidence custodian and other DPS officers improperly destroyed evidence and made false statements in violation of Section 1001, Title 18, United States Code.

Comment Recommendation D.5.h: Concur.

i. Certify the destruction of evidence by using the proper forms;

Comment Recommendation D.5.i: Concur.

j. Properly complete items 10-12 of SD Forms 558, "Evidence Property/Custody Document," to record the disposal of evidence; and

Comment Recommendation D.5.j: Concur.

k. Obtain a General Services Administration approved storage container for evidence that may contain classified Defense information;"

Comment Recommendation D.5.k: Concur. PFPA now has a GSA-approved safe for storing classified Defense evidence.

Recommendation D.6

None made

Recommendation D.7

"We recommend that the Director, Pentagon Force Protection Agency,

a. Establish written policy

a.1.Requiring the documentation in case files of supervisors' decisions to initiate, suspend, or close investigations;

Comment Recommendation D.7.a.1: Concur. Existing General Orders and SOPs are being updated to reflect this recommendation. These documents will be updated by July 30, 2003.

a.2.Requiring coordination with DoD managers responsible for the personnel or property in Pentagon Force Protection Agency criminal investigations; and

Comment Recommendation D.7.a.2: Concur

b. Purchase a commercial case management software package, as well as training, to enable supervisors to capture and use the previously recommended statistical data."

Comment Recommendation D.7.b: Concur. PFPA is currently reviewing vendor-based programs to determine which best suits the needs of CIIA. This is expected to be completed NLT August 30, 2003.

Recommendation D.8

None made

Recommendation D.9

None made

Recommendation D.10

None made

Recommendation D.11

"We recommend that the Chief, Defense Protective Service, take action to implement a general order including:

a. Specific procedures for scheduling and posting duty assignments, including rotation requirements;

b. Information regarding officer career progression with regard to difficulty of assignments;

c. The need to maintain officer alertness, as well as maintaining their proficiency on all required tasks; and

d. That the Defense Protective Service will retain the final authority over officer assignments (shifts, posts, and patrols) to ensure effective coverage and accountability."

Comment Recommendation D.11.a - d: Partial Concurrence. PFPA believes that an SOP rather than a GO is appropriate for instructions on scheduling and posting duty assignments, including rotation requirements. Specific procedures are already in place. The Administrative Desk Officer (ADO) completes a detail sheet a day in advance. The sheet is reviewed by the Administrative Supervisor and sent to the Administrative Lieutenant for signature. The final version is approved by the Watch Commander and given back to the ADO. The Administrative Supervisor approves any last minute changes. It is up to the Relief Watch Commander to determine the needs of the respective shifts, to match the criticality of the various posts with the proper personnel, and to schedule the officers accordingly. These procedures are not explained in the SOP and will be added.

Officers assigned to more difficult assignments must successfully complete PFPA training requirements, be certified in proper systems and be in physical shape required to perform the unique duties. New officers can work on any rotation due to a more robust Field Training Program insuring they are fully trained in all systems.

Regarding officer alertness and proficiency on required tasks, PPD makes every effort to match an officer with their desired assignment and rotates assignments to prevent tedium and monotony. Extensive training insures that officers are proficient in their duties. SOP OB-12 will be revised by July 31, 2003.

E. Operations Support

Recommendation E.1

"We recommend that the Director, Pentagon Force Protection Agency, take action to:

a. Identify Pentagon Force Protection Agency and Defense Protective Service customer and community needs through statistically valid surveys;

b. Conduct statistically valid sample surveys to measure the level of customer satisfaction in response to goals and objectives of strategic plans. It may be advisable to hire a professional contractor to complete the surveys. These surveys should be performed on a periodic basis;

c. Advertise Defense Protective Service involvement in the "interactive customer evaluation" program through Web-based hyperlinks, brochures, business cards, posters, building circulars, etc.;

d. Amend Defense Protective Service and Pentagon Force Protection Agency general orders to incorporate and emphasize the goal of satisfying customer and community needs;

e. Establish written policy to formalize requirements and responsibilities for the community relations program to ensure it develops and operates to effectively meet the needs of the agency, as well as the community it serves.

Comment Recommendation E.1.a – e: Concur. PFPA, as part of its Strategic Planning Process, is developing a customer satisfaction evaluation and outreach program that will achieve the recommendations' intent and satisfy GPRA needs.

Recommendation E.2

"We recommend that the Director, Pentagon Force Protection Agency take action to:

a. Prescribe written policy to formalize crime statistics development and reporting, based on collecting and analyzing Defense Protective Service crime statistics and relevant statistics from other law enforcement organizations in the National Capital

Region, as outlined in the Commission on Accreditation for Law Enforcement Agencies, Inc., standards.

b. Establish a central crime analysis office within Pentagon Force Protection Agency capable of supporting the needs of the agency to include, Defense Protective Service operations, criminal investigations, staffing and planning, antiterrorism/force protection, security services, community relations, and crime prevention."

Comment Recommendations E.2.a & b: Concur. PFPA is in the process of establishing a more robust capability in this area. Whether it will be a stand-alone office or part of another has not yet been determined.

Recommendation E.3

"We recommend that the Director, Pentagon Force Protection Agency, further revise:

a. General Order 9000.02, "Internal Affairs Investigations," December 17, 2001, to include specific criteria and justification for internal affairs investigation time extensions; and

Comment Recommendation E.3.a: Concur. GO will be revised with an estimated completion date of September 30, 2003.

b. General Order 9000.03, "Discharge of Firearm by DPS Personnel and Subsequent Action," (draft) to eliminate any confusion regarding selection and membership criteria for (DPS Shooting) board chairmanship and membership."

Comment Recommendation E.3.b: Concur. GO will be revised with an estimated completion date of September 30, 2003.

Recommendation E.4

"We recommend that the Director, Pentagon Force Protection Agency,

a. Follow through with the Acting Director's stated intention to establish an oversight organization staffed by senior officers and a security specialist that are capable of inspecting the entire Pentagon Force Protection Agency;

b. Identify key organizational components that require periodic staff inspection, and establish a realistic inspection schedule to enable inspection of those components once every three years;

c. Tailor the goals of the inspection program to reflect those developed by the organization's strategic goals and management control programs; and

d. Implement a self-inspection program as a way to supplement the capabilities of the inspection section and to enhance the organization's responsiveness to the management control program.

Comment Recommendations E.4.a – d: Concur. PFPA is in the process of establishing an Inspections Section to accomplish standardization within operational aspects of the PPD and PFPA. This section in conjunction with other PFPA initiatives such as the IMC Program and an Administration and Logistics Assistance and Review Program will give PFPA ample self-inspection capability.

Other Problem Areas:

A. Take-Home Weapons Practice

Recommendation A

"Recommend that the Director, Administration and Management, and the Director, Pentagon Force Protection Agency, take immediate action to abide by the provisions of

a. Section 2674, Title 10, United States Code, "Operation and control of Pentagon Reservation and defense facilities in National Capital Region," regarding the arming of Pentagon Force Protection Agency personnel while off-duty, and during official travel outside the National Capital Region, and

b. DoD Directive 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties," November 1, 2001, regarding the storage of weapons at designated control points."

Comment Recommendation A.a & b: Non-concur.

This finding is based on an improper and incomplete reading of DoD Directive (DoDD) 5210.56, as well as both 10 U.S.C §2674 and 10 U.S.C §1585, and is antithetical to the authorities and responsibilities of the Secretary of Defense to provide for the physical security, protection and readiness required for literally hundreds of DoD activities throughout the National Capital Region in full accord with these authorities. The draft report also, in part, mischaracterizes or misunderstands the position of the Office of General Counsel, WHS.

Simply stated, this is a policy matter. It is the Deputy Secretary of Defense who approved the policy contained in this Directive. In our view, the reasonable interpretation of DoDD 5210.56, as it is currently written, is that Component Heads, including the Director of PFPA, and ultimately the DA&M for both PFPA and OSD elements, have been delegated the authorities contained in that Directive. This includes authorization for transport and storage of duty weapons and authorization to report armed to various assigned duty locations in accordance with DoDD 5210.56, and with "component procedures" promulgated there under. We see no authority reserved or implied in the Directive for OUSD (C3I) to "grant a waiver" to the policies in the Directive. Therefore, should the provisions of DoDD 5210.56 remain of concern to your office, or should the Department wish to prospectively effect the policy purported by this finding in the Draft Report, the proponent should seek a formal change to the subject Directive. The proponent would be

required to seek such formal change because only the Secretary or Deputy Secretary of Defense may change the provisions of DoDD 5210.56.

PFPA remains in compliance with the legal and policy requirements of DoDD 5210.56.

On its face, the authorities and responsibilities assigned under the Directive with respect to "Carrying of Firearms" are broadly vested in Component Heads as defined in the Directive. This clearly includes the Director, PFPA and the Director, DA&M for OSD as well as PFPA. To parse out the section on "returning firearms to a designated control point" while ignoring the meaning of the remainder of that Directive (where authorization for residential storage of duty firearms "by DoD security and law enforcement personnel" [and not merely DCIOs] is contemplated in numerous places) is simply not a sound or appropriate analysis.

Essentially, the Draft report erroneously relies on part of ¶E1.1.6 of Enclosure 1 of DoDD 5210.56 as conclusive of its position, while failing to address other parts of the Directive (as well as sound rules of construction) that need to be reconciled with that section. Both the sections preceding and following ¶ E1.1.6 are especially necessary and instructive in understanding, in part, the PFPA application of the Directive.

¶E1.1.6 states that, "Firearms shall be returned to a designated control point on completion of *the assignment* for storage and accountability … in accordance with component procedures." It seems plain that "*the assignment*" referred to in E1.1.6 is a direct reference to the previous section ¶E1.1.5. For instance, that section in part refers to "*the duration of specific assignments or threats"* for which personnel are given authorization to carry firearms for "*personal protection*." Thus, it is clear that in this circumstance, weapons must be turned in when the limited specific assignment or threat is over. In this case there is no continuing authorization beyond a limited "assignment." This can be contrasted to the first sentence of ¶E.1.1.5, which provides that "DoD military and civilian personnel *regularly assigned* to law enforcement or security duties may be given *continuing authorization* to carry firearms….". Here, "assignment" is more open-ended and contemplates a continuing authorization. Thus, the phrase "the assignment" must be read in context when applied in ¶E.1.1.6. Another way to view this is that ¶E.1.1.6 does not by its plain words require weapons to be returned at the end of each "shift" or "duty" or "day" but instead uses the term "assignment" as used in the section immediately preceding. Thus, in accordance with *component procedures*, once PFPA officers are properly authorized to carry duty weapons and are authorized in writing to transport such weapons to and from their duty stations, they are still on their "assignment" under the Directive until they are no longer assigned security or law enforcement duties in accordance with component procedures. (Emphasis added)

Furthermore, the section that follows is instructive. ¶E.1.1.7, specifically refers to "*DoD security or law enforcement personnel, who have been authorized to retain such firearms at their residence…*". This plainly is not limited to DCIOs, who surely are not the only "security or law enforcement personnel" in DoD. Otherwise, if the policy was as purported in the Draft report, ¶E1.1.7 would say "DCIOs" authorized to retain such firearms at home….". Thus, the narrow reading of DoDD 5210.56 in the Draft Report is

not tenable and cannot obviate the reasonable interpretation of this authority by the current D, A&M, the previous D, A&M (D.O. Cooke), the current Director of PFPA, as well as the Office of General Counsel, WHS.

Compliance with 10 U.S.C. § 2674

Finally, the draft report makes a curious argument limiting the Secretary in his exercise of 10 USC §2674 responsibilities to provide for the security for DoD facilities in the NCR, and concluding that he cannot authorize security and law enforcement officers to carry arms such that officers can report to the various NCR duty locations armed. We believe that the authorization in 10 USC § 2674 (b) to arm the law enforcement and security personnel necessary *"for the proper exercise of their duties"* places such discretion in the hands of the Department absent any law to the contrary. We see nothing in the statute that would so limit the Department's authority to achieve a central purpose of the statute - to provide for the security for the Pentagon Reservation and for the hundreds of DoD facilities in the NCR.

In addition, a legal opinion of the Office of General Counsel, WHS dated January 28, 2003, provides further analysis and is attached for your information. Should you have any further questions on these issues, please feel free to contact the Office of General Counsel, WHS at (703) 693-7374.

PFPA actions subsequent to September 11, 2001.

As stated above, PFPA is currently in compliance with the plain and reasonable interpretation of DoDD 5210.56. However, recognizing the seriousness of the responsibilities and authorities with regard to the carrying of firearms under 10 USC § 2674 and 10 USC §1585, and DoDD 5105.68, the D, A&M and Acting Director, PFPA have been undertaking a comprehensive review of PFPA's firearms practices and policies (including whether or not, and under what circumstances, to continue its current authorizations for transport and storage of assigned duty weapons). PFPA is currently putting into place updated comprehensive written policies and guidelines consistent with all legal and policy requirements of these serious responsibilities.

We are pleased to report that PFPA has made substantial progress in implementing new stringent and comprehensive written safeguards and procedures, and in implementing a new training program, with respect to authorization, transport and residential storage of PFPA-issued duty weapons. Such written policies and strict guidelines include a new PFPA General Order (proposed General Order 1005.07 entitled "Carrying and Securing Government Weapons and Ammunition between Duty Station and on Official Travel") covering duty weapon transport and storage practices and policies, and an accompanying "Acknowledgement of Responsibilities" to be executed by all officers and investigators authorized to transport and store duty weapons. This new General Order with "Acknowledgement of Responsibilities" will go into effect as soon as our bargaining obligations are complete in accordance with DoDD 5210.56. In addition, PFPA is implementing a mandatory ongoing training program on firearms duties and responsibilities with respect to home transport and storage of duty weapons. PFPA

conducted comprehensive new training of almost all PFPA officers concerning the revised General Order on May 8 and 9, 2003, and will complete training of the remaining officers by the end of May 2003. This comprehensive program, with its significant accountability and procedural safeguards, should serve as a model for any DoD component with authorized transport and home storage of duty weapons.

In conclusion, I assure you that the Director, A&M and the Director, PFPA take very seriously our responsibilities as set forth under DoDD 5210.56 and DoDD 5105.68. We have determined that residence-to-duty transport of firearms by selected PFPA personnel is essential to the effective accomplishment of PFPA's mission. In order to exercise the significant responsibilities of PFPA under DoDD 5105.68 regarding the safety, security, law enforcement, anti-terrorism and force protection of Defense Department facilities in the National Capital Region (which includes the Pentagon Reservation as well as the numerous DoD occupied facilities throughout the National Capital Region), the Director, PFPA has determined that there is an operational requirement for most PFPA officers to report to assigned duty locations armed and ready to react to any situation that presents itself. This determination is supported by the Director, A&M and updates and improves upon the prior emergency determination of the former Director, WHS, authorizing DPS officers to report to duty armed after the terrorist attacks of September 11, 2001.

Other matters in this finding.

The draft report indicates that PFPA had three firearms "reported stolen" during a recruiting trip "for which the carrying of firearms was not authorized." This statement is inaccurate and misleading. Although three PFPA weapons were stolen while being transported via commercial airline, the transport was in full accord with DoDD 5210.56 section 4.3. The weapons were subsequently recovered in the home of an airline employee, and federal criminal action is underway. PFPA's proposed General Order 1005.07 (currently awaiting review by the union) entitled "Carrying and Securing Government Weapons and Ammunition between Duty Station and on Official Travel," also specifies the conditions when such authorizations may be granted and who may approve such authorizations, in compliance with DoDD 5210.56.

Finally, the Draft Report, at page 68 first full paragraph, also mistakenly misinterpreted the position of the Office of General Counsel, WHS, when it stated that the Office of the General Counsel "articulated" that DoDD 5210.56 did not apply to PFPA officers. On the contrary, this has always been clear that from OGC that the Directive does apply to PFPA officers as well do the authorities of both 10 USC §§ 2674 and 1535. The Office of General Counsel's position on this issue is clearly stated in the January 28, 2003 legal opinion. Indications to the contrary should be removed from the final report.

B. Carrying of a Private Weapon by a Service Member

Recommendation B

"We recommend that the Director, Pentagon Force Protection Agency

a. Comply with the provisions of DoD Directive 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties," November 1, 2001, with regard to the carrying of firearms and ammunition by DoD personnel; and

b. Revise Defense Protective Service general orders to account for the Service members now assigned to the Pentagon Force Protection Agency."

Comment Recommendation B.a & b: Concur. PFPA concurs and will revise GOs to include Service members assigned to PFPA. The estimated completion of these revisions is September 30, 2003.

C. Improper Domicile-to-Duty Transportation

Finding C (Page 73): "Our evaluation developed substantive information that the Chief, DPS, probably knew as early as December 2001 that Secretary of Defense approval of the practice in question was doubtful; however, the practice continued until August 27, 2002."

Comment Finding C: Non-concur. The Chief, DPS, did not know that Secretary of Defense approval was doubtful. The concern of further terrorist attacks and for the need to return to the Pentagon at all hours went well beyond December 1, 2001.

Recommendation C

"Recommend that the Director, Administration and Management, establish management control procedures to ensure that all Pentagon Force Protection Agency personnel comply with Federal law and DoD Regulation 4500.36-R,"Management, Acquisition and Use of Motor Vehicles," March 1994, regarding the use of Government vehicles for domicile-to-duty transportation."

Comment Recommendation C: Concur. PFPA is developing the Agency Vehicle Program. The PFPA Regulation on the management, care, maintenance, allocation, assignments, and operation of assigned vehicles has been developed and is in coordination. The regulation clearly defines and identifies the policy, procedures and responsibilities associated with the Vehicle Program. The regulation is expected to be published NLT August 30, 2003 and will be distributed throughout PFPA. All PFPA employees operating or managing vehicles will be required to read, acknowledge, and comply with the regulation. PFPA has established vehicle assessable units (AUs) with assigned AU managers as part of its recently expanded and improved Management Control Program (MCP). These AUs will be regularly reviewed as part of the PFPA MCP processes.

Evaluation Team Members

The Evaluations Directorate, Office of the Assistant Inspector General for Inspections and Policy of the Department of Defense prepared this report. Personnel of the Office of the Inspector General of the Department of Defense who contributed to the report are listed below.

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