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United States Government Accountability Office
Washington, DC 20548

B-307351

July 12, 2006

The President
The White House

Subject: *Violation of the 210-Day Limit Imposed by the Federal Vacancies Reform Act of 1998*

Dear Mr. President:

Pursuant to section 3349(b) of title 5 of the United States Code, we are reporting a violation of the Federal Vacancies Reform Act of 1998 at the Department of Commerce. As you know, the Vacancies Reform Act established new requirements for the temporary filling of vacant executive agency positions that require Presidential appointment and Senate confirmation. The Act generally limits the period of time that such a position may be filled with an acting official to 210 days. 5 U.S.C. § 3346. Section 3349(b) requires the Comptroller General, upon a determination that an acting official is serving longer than the 210-day period and any applicable extensions, to report such finding to Congress, the President, and the Office of Personnel Management.

As required by the Vacancies Reform Act, the Department of Commerce reported to us that a vacancy in the position of the Assistant Secretary for Import Administration began on January 8, 2005, when Assistant Secretary James Jochum resigned. This position requires Presidential appointment and Senate confirmation under the provisions of 15 U.S.C. § 1505, and thus is subject to the Vacancies Reform Act. 5 U.S.C. § 3345(a). The Department also reported to us that on January 9, 2005, Joseph Spetrini, Deputy Assistant Secretary for Antidumping Countervailing Duty Policy and Negotiations, began serving as Acting Assistant Secretary.

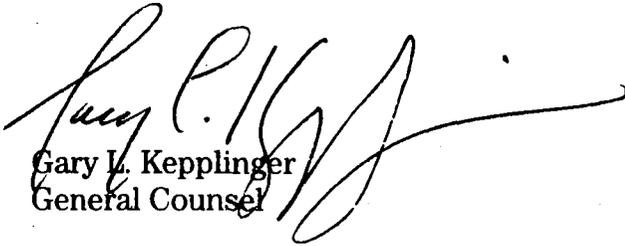
The Vacancies Reform Act generally limits the service of acting officials to 210 days from the date of the vacancy. 5 U.S.C. § 3346. In this instance, the 210-day period ended on September 7, 2005, taking the Senate recess into consideration. The Act also contains a spring-back provision that allows an acting official to resume performing the duties of the office once a nomination is submitted to the Senate for the period that such nomination is pending in the Senate. 5 U.S.C. § 3346(a)(2). Thus, Mr. Spetrini could resume his service as Acting Assistant Secretary on November 10, 2005, when the President submitted the nomination of David Spooner for the position to the Senate. However, Mr. Spetrini's service as Acting Assistant

Secretary between the dates of September 7, 2005, and November 10, 2005, was in violation of the time limitation in the Vacancies Reform Act.

The Vacancies Reform Act contains an enforcement provision, 5 U.S.C. § 3348(d), which nullifies certain actions taken by an acting official who is serving in violation of the Act. However, the Department of Commerce reported to us that Mr. Spetrini did not undertake any agency actions relating to an exclusive function or duty, as defined by 5 U.S.C. § 3348, during the period between September 7, 2005, and November 10, 2005. While we did not verify the accuracy of this statement, our review of the *Federal Register* provided no evidence that Mr. Spetrini performed an exclusive function or duty during the relevant time period.

In accordance with the requirements of the Vacancies Reform Act, we are sending identical letters to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Government Reform, the House and Senate Appropriations Committees, the Senate Committee on Commerce, Science, and Transportation, the House Committee on Energy and Commerce, the Senate Committee on Finance, the House Committee on Ways and Means, and the Director of the Office of Personnel Management. If you should have any questions regarding this matter, please call me on 202-512-5400, or Associate General Counsel Robert J. Cramer on 202-512-7227.

Sincerely yours,



Gary L. Kepplinger
General Counsel