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APR 30 2003

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

The Department of Defense requests that Congress enact the enclosed legislative initiatives as part of the National Defense Authorization Act for Fiscal Year 2004. The purpose of each legislative initiative is stated in its accompanying section-by-section analysis.

These initiatives comprise the final set of legislative initiatives presently pending consideration by the Department of Defense for submission to the first session of the 108th Congress. The Department of Defense may submit further initiatives based on unforeseen, significant developments or other compelling circumstances.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of this Bill for your consideration and the consideration of the Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Haynes II".

William J. Haynes II

Enclosure:
As Stated





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APR 30 2003

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

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**SEC. ____ . COMMON OCCUPATIONAL AND HEALTH STANDARDS FOR
DIFFERENTIAL PAYMENTS AS A CONSEQUENCE OF EXPOSURE TO
ASBESTOS.**

1 (a) PREVAILING RATE SYSTEMS.—Section 5343 of title 5, United States Code, is
2 amended—

3 (1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g),
4 respectively; and

5 (2) by inserting after subsection (c) the following new subsection (d):

6 "(d)(1) For purposes of subsection (c)(4), when the working condition or hazard
7 involves exposure to airborne asbestos, such differential shall not be payable unless the
8 level of airborne asbestos exceeds the permissible exposure limit for asbestos as stated in
9 the occupational safety and health standards promulgated by the Secretary of Labor under
10 the Occupational Safety and Health Act of 1970.

11 "(2) No attorney shall charge, demand, receive, or collect for services rendered
12 fees in excess of 10 percent of any arbitration judgment, award, compromise, or
13 settlement for back pay of a differential established under subsection (d). Any attorney
14 who charges, demands, receives, or collects for services rendered in connection with such
15 claim any amount in excess of that allowed under this section, if recovery be had, shall be
16 fined not more than \$2,000 nor imprisoned for not more than one year, or both."

17 (b) GENERAL SCHEDULE PAY RATES.—Section 5545 of such title is amended by adding
18 at the end the following new subsection:

19 "(e)(1) For purposes of subsection (d), when the hardship or hazard involves exposure to
20 airborne asbestos, such differential shall not be payable unless the level of airborne asbestos

1 exceeds the permissible exposure limit for asbestos as stated in the occupational safety and
2 health standards promulgated by the Secretary of Labor under the Occupational Safety and
3 Health Act of 1970.

4 "(2) No attorney shall charge, demand, receive, or collect for services rendered fees in
5 excess of 10 percent of any arbitration judgment, award, compromise, or settlement for back pay
6 of a differential established under subsection (e). Any attorney who charges, demands, receives,
7 or collects for services rendered in connection with such claim any amount in excess of that
8 allowed under this section, if recovery be had, shall be fined not more than \$2,000 nor
9 imprisoned for not more than one year, or both."

10 (c) EFFECTIVE DATES.—The amendments made by this section shall be effective
11 immediately, and, subject to any vested constitutional property rights, shall apply to any
12 administrative or judicial determination concerning back pay for a differential established under
13 sections in effect prior to the enactment of subparagraphs 5343(d)(1)(A) or 5545(e)(1)(A) of
14 such title for any employee whose position description does not contemplate occupational
15 exposure to asbestos-containing materials and shall be based on occupational safety and health
16 standards described in the amendments made by this section.

Section-by-Section Analysis

This proposal would create an objective standard to govern the payment of pay differentials to federal employees exposed to asbestos. Section 5343(c)(4) of title 5, United States Code, requires that a differential for duty involving "unusually severe working conditions or unusually severe hazards" be included in determining the wages to be paid a Federal employee under a prevailing wage system. Similarly, section 5545(d) requires that a differential be paid to a Federal employee paid under general schedule pay rates during any period the employee is "subjected to physical hardship or hazard not usually involved in carrying out the duties" of the employee.

Currently, for asbestos there are different standards regarding pay differentials for general schedule and wage system employees. The hazardous pay differential covering general

schedule employees for asbestos is paid when exposure exceeds the Occupational Safety and Health Act (OSHA) permissible exposure limit. Environmental differential pay covering wage system employees is paid when asbestos concentrations "may expose employees to potential illness or injury." The environmental differential pay standard is open to interpretation and allows local arbitrators to determine subjectively the amount of asbestos exposure warranting the payment of the differential. This lack of an objective standard has resulted in questionable arbitration awards (totaling millions of dollars) in cases where air sampling results showed airborne asbestos concentrations to be well below the OSHA standard.

This proposal would provide an objective asbestos standard for both wage system and general schedule employees. Differentials would be based on occupational safety and health standards consistent with those promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.). This would ensure consistency and fairness in agency responses to environmental differential pay and hazardous pay differential claims by providing an objective, scientifically-based standard that could be relied upon by all parties.

This proposal also would limit attorneys' fees to no more than ten percent of the arbitration award in any case based on the above standard.

**SEC. ____ . QUALITY CONTROL IN PROCUREMENT OF CRITICAL AIRCRAFT
SPARE PARTS AND REPAIR SERVICES.**

1 (a) AVIATION CRITICAL SAFETY ITEM AND DESIGN CONTROL ACTIVITY.—Section 2302
2 of title 10, United States Code, is amended by adding at the end the following new paragraphs:

3 "(9) The term 'aviation critical safety item' means any aircraft part, assembly,
4 installation, launching or recovery equipment, or support equipment containing a critical
5 characteristic whose failure, malfunction, or absence may cause a catastrophic or critical
6 failure resulting in the loss of or serious damage to the aircraft or weapon system, an
7 unacceptable risk of personal injury or loss of life, an uncommanded engine shutdown
8 resulting in an unsafe condition, or the failure of a military mission.

9 "(10) The term 'design control activity' means the Military Department Systems
10 Command specifically responsible for ensuring the airworthiness of the aviation system
11 or equipment in which the aviation critical safety item will be used."

12 (b) QUALITY CONTROL IN PROCUREMENT.—(1) Chapter 141 of such title is amended by
13 adding at the end the following new section:

14 **"§ 2410p. Procurement of flight safety critical aircraft parts and repair services: quality**
15 **control**

16 "In procuring any aviation critical safety item or modification, repair, or overhaul service
17 for these items, the Secretary of Defense shall require that:

18 "(1) the head of the design control activity establish processes to identify and manage
19 aviation critical safety items or modification, repair, or overhaul services for these items;

20 "(2) the head of the contracting activity award contracts for aviation critical safety items
21 or the modification, repair, or overhaul of these items only to sources approved by the design

1 control activity; and

2 "(3) the aviation critical safety items or modification, repair, or overhaul services meet all
3 technical and quality requirements specified by the design control activity unless the Secretary of
4 Defense determines in writing that any or all such requirements are unnecessary."

5 (2) The table of sections at the beginning of such chapter is amended by adding at the end
6 the following new item:

7 "2410p. Procurement of flight safety critical aircraft parts and repair services: quality control."

Section-by-Section Analysis

This proposal would ensure that safety concerns are not subordinated to other contracting mandates established by legislation.

Aviation critical safety items represent those parts whose failure would be potentially catastrophic or critical and, thus, whose risk of failure is unacceptable. Within the Department of the Navy, approximately two percent of aviation spare and repair parts are aviation critical safety items. Because of the extreme consequences of failure, however, rigorous evaluations are conducted on both the item design and potential suppliers' manufacturing processes to ensure safe and reliable flight safety parts can be repeatedly produced. Aviation critical safety items are typically evaluated during the development of a system to determine the specific circumstances that would cause a failure and the effects of such a failure on safety and performance. These evaluations help establish design and manufacturing requirements and life and operational limits. The process of validating the design and manufacturing details of aviation critical safety items, and subsequently confirming the manufacturing capability and controls of potential sources is essential to ensure operational safety and effectiveness. The process is comparable to requirements established by the Federal Aviation Administration prior to issuing production certification or parts manufacturer approval for civil aircraft parts.

The Department of Defense's logistics management practices centralize management and acquisition of spare and repair parts. As a result, aviation critical safety items are often purchased by a DoD organization other than the organization that understands the item's design intent, criticality, limitations, and critical design or manufacturing characteristics. There have been numerous recent instances where procuring activities purchased flight safety critical aircraft parts from other than qualified sources, and did so without the knowledge or approval of the cognizant design control activity. Essentially, the Navy has experienced numerous failures of these unapproved parts.

This proposal would rectify the current situation by ensuring that parts essential for flight safety are procured only from sources approved by the design activity and in accordance with

technical requirements established by the design activity. It re-institutes the essential controls that previously existed to protect military aviation safety and are comparable to those controls established by the Federal Aviation Administration on civil aircraft parts. This legislative change would not unduly restrict competition because it imposes requirements on all potential suppliers of aviation critical safety items that are identical or analogous to those required of the original item manufacturer. This proposal must be read together with existing statutory requirements in 10 U.S.C. 2319 that encourage new competitors and restrict the imposition of qualification requirements. Moreover, when this proposal is read with 10 U.S.C. 2319, it requires contracting officers to have agreement from the design control activity for a critical safety item that potential offerors or their parts meet or will meet requirements. The proposal also recognizes that deviations to the established requirements may occasionally be necessary, and therefore authorizes such deviations when justified, reviewed and approved in writing.

This proposal is budget neutral.

**SEC. ____ . REVISIONS OF AUTHORITY TO DISPOSE OF CERTAIN MATERIALS IN
THE NATIONAL DEFENSE STOCKPILE.**

1 (a) DISPOSAL REQUIRED.—Subject to conditions specified in subsection (b), the President
2 shall dispose of the following materials contained in the National Defense Stockpile in the
3 following quantities:

- 4 (1) Chromium Ferroalloy, 384,413 short tons.
- 5 (2) Chromium Metal, 4,447 short tons.
- 6 (3) Palladium, 52,643 troy ounces.
- 7 (4) Beryllium Metal, 5 short tons.
- 8 (5) Chromite Chemical, 34,000 short dry tons.
- 9 (6) Chromite Refractory, 39,887 short dry tons.
- 10 (7) Chromium Ferroalloy, 46,383 short tons.
- 11 (8) Columbium Concentrates, 1,019,907 pounds of contained Columbium.
- 12 (9) Columbium Metal Ingot, 40,751 pounds of contained Columbium.
- 13 (10) Germanium Metal, 21,109 kilograms.
- 14 (11) Platinum, 20,880 troy ounces.
- 15 (12) Tantalum Metal Powder, 35,233 pounds of contained Tantalum.
- 16 (13) Tantalum Minerals, 1,485,079 pounds of contained Tantalum.
- 17 (14) Tantalum Oxide, 34,873 pounds of contained Tantalum.
- 18 (15) Tungsten Ferro, 295,775 pounds of contained Tungsten.
- 19 (16) Tungsten Metal Powder, 456,863 pounds of contained Tungsten.
- 20 (17) Tungsten Ores & Concentrates, 67,709,090 pounds of contained Tungsten.

21 (b) MINIMIZATION OF DISRUPTION AND LOSS.—The President may not dispose of

1 materials under subsection (a) to the extent that the disposal will result in—

2 (1) undue disruption of the usual markets of producers, processors, and consumers
3 of the materials proposed for disposal; or

4 (2) avoidable loss to the United States.

5 (c) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in
6 subsection (a) is new disposal authority and is in addition to, and shall not affect, any other
7 disposal authority provided by law regarding the materials in the National Defense Stockpile.

8 (d) TREATMENT OF RECEIPTS.—Notwithstanding section 9 of the Strategic and Critical
9 Materials Stock Piling Act (50 U.S.C. 98h), the funds received as result of the disposal of the
10 materials specified under subsection (a) above shall be deposited into the Defense Working
11 Capital Funds and shall be available only for real property maintenance and minor construction
12 projects to upgrade and maintain the fuel infrastructure of the Department of Defense.

Section-by-Section Analysis

This provision would permit the sale of National Defense Stockpile materials so that receipts may be used to fund urgently needed real property maintenance and minor construction projects to maintain and upgrade the Department of Defense's fuel infrastructure. The recent campaigns in Afghanistan and Iraq highlighted the crucial importance of fuel to the success of American military operations.

Authorization is required for the sale of materials contained in the National Defense Stockpile.