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APR 5 2000

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

Dear Mr. Speaker:

The Department of Defense proposes the enclosed legislation relating to the management of the Department of Defense. These proposals are part of the departmental legislative program for the Second Session of the 106th Congress and we urge their enactment. The purpose of each proposal is stated more fully in its accompanying sectional analysis.

We recommend extending our computer and electronic accommodations program for employees with disabilities to other Federal agencies. We also propose an undergraduate training program for critical skills for employees of the National Imagery and Mapping Agency similar to programs currently authorized the military departments and certain other Federal agencies.

We suggest the use of sampling methods in the auditing of payments for transportation services instead of post payment audits. We propose a modification to current test authorities to encourage greater use of innovative procurement procedures and recommend that current authority in the Defense Production Act relating to the analysis of the National Technology and Industrial Base be revised to conform to very similar authorities in title 10 to avoid duplications of work and efforts in this area. Finally, we propose clarifying authority for the recovery of critical and sensitive defense property that has not been properly demilitarized.

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

Only these proposals and legislative proposals formally submitted by officials of the Department accompanied by a clearance certification, similar to that above, should be considered Administration initiatives. Other legislation relating to Department of Defense activities that may appear to have come from the Department of Defense should not be considered official proposals.

Sincerely,

Douglas A. Dworkin
Acting General Counsel

Enclosures
As Stated





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APR 5 2000

The Honorable Al Gore
President of the Senate
Washington, D.C. 20510

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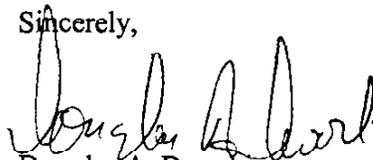
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SEC. ____ . COMPUTER/ELECTRONIC ACCOMMODATIONS PROGRAM.

1 (a) PROGRAM EXPANSION.— The Secretary of Defense may expand and administer the
2 Computer/Electronic Accommodations Program to serve other Federal agencies.

3 (b) FUNDING.—From amounts authorized to be appropriated for any fiscal year for the
4 Defense Health Program, not to exceed \$2,000,000 shall be available for the purpose of
5 expanding and administering the Computer/Electronic Accommodation Program as authorized in
6 subsection (a).

Sectional Analysis

The Computer/Electronic Accommodations Program (CAP) is the centrally funded program that provides assistive technology and services to DoD employees with disabilities and to DoD activities that need to make programs and facilities accessible to and usable by individuals with disabilities. The principal focus is computer and telecommunication systems. Customer groups include individuals with visual, hearing, dexterity, and cognitive disabilities.

The CAP provides accommodations at no cost to the requesting activity. By centrally funding accommodations and centrally managing requests, the CAP provides state-of-the-art accommodations quickly and cost effectively. Expanding the CAP will be particularly useful in allowing small Federal agencies with limited budgets to recruit, hire, and promote qualified individuals with disabilities without making the cost an issue.

**SEC. ____ . REVISION OF ACCOUNTING PROCEDURES REGARDING AUDITING
PAYMENTS FOR TRANSPORTATION SERVICES.**

1 Subsection 3726(a) of title 31, United States Code, is amended—

2 (1) in paragraph (2), by inserting “either complete or based on sampling methods, and”
3 after “require a post payment audit,”; and

4 (2) by adding at the end the following new paragraph (5):

5 "(5) Where the Administrator of General Services has approved an exemption,
6 authorizing, certifying and disbursing officers shall be relieved from the liabilities
7 contained in sections 3527, 3528 and 3322, respectively, of this title, if they are in
8 compliance with the provisions required by the Administrator in approving such
9 exemption. Postpayment auditing of these bills shall be the responsibility of the General
10 Services Administration."

Sectional Analysis

This section would amend section 3726(a) of title 31, United States Code, to provide accountable, certifying and disbursing officers the authority to use sampling methods in lieu of postpayment audits, in cases where the Administrator of General Services has authorized an exemption from the requirement for a prepayment audit. The section also provides the authority to set reasonable personal liability standards for any loss to the government occasioned by negligence. While, the provisions of title 31, United States Code, section 3527, for accountable officials; section 3528(c), for certifying officers; and section 3322, for disbursing officers, provide similar relief, those sections mainly address the use of the Government Bill of Lading.

As the Department of Defense expands its use of Commercial Bills of Lading to fulfill its transportation needs, thousands of transactions per day will be conducted using computer automated ordering and payment systems, such as PowerTrack. Under such circumstances, the authority to use sampling methods for prepayment audits provides accountable, disbursing and certifying officers the only reasonable means available to them to audit and verify individual transactions. In summary, the proposed change capitalizes on the best business practices available to ensure accountability in such government contracts, while providing the Administrator of General Services the authority to set reasonable standards for accountable, certifying and disbursing officers to follow. The proposed change also would clarify that postpayment auditing of these bills shall be the responsibility of the General Services Administration. It has no cost or budgetary effect.

SEC. ____ . FINANCIAL ASSISTANCE TO CERTAIN EMPLOYEES IN

ACQUISITION OF CRITICAL SKILLS.

1 The Secretary of Defense may provide the Director, National Imagery and Mapping
2 Agency, the authority to establish an undergraduate training program with respect to civilian
3 employees of the National Imagery and Mapping Agency that is similar in purpose, conditions,
4 content, and administration to the program that the Secretary of Defense is authorized to
5 establish for civilian employees of the National Security Agency under section 16 of the National
6 Security Agency Act of 1959 (50 U.S.C. 402 note).

Sectional Analysis

The proposal would allow the Secretary of Defense to provide the Director, NIMA the authority to set up a critical skills undergraduate training program parallel to those authorized to NSA, DIA, CIA, and the military departments. This program may prove useful in furthering the goal of enhanced recruitment of minorities for careers in the Intelligence and Defense Communities. No costs are anticipated in FY 01. FY 02 costs are currently estimated at less than \$1,000,000. This proposal imposes no costs on other organizations.

**SEC. ____ . PROGRAM FOR THE ANALYSIS OF THE NATIONAL TECHNOLOGY
AND INDUSTRIAL BASE.**

1 Section 722 of the Defense Production Act of 1950 (50 U.S.C. App. 2171) is amended to
2 read as follows:

3 **“SEC. 722. DEFENSE INDUSTRIAL BASE INFORMATION SYSTEM.**

4 **“(a) ESTABLISHMENT REQUIRED.—**(1) The President, acting through the Secretary of
5 Defense, and the heads of such other Federal agencies as the President may determine as
6 appropriate, shall establish a program for the analysis of the national technology and industrial
7 base. The functions of the program shall include, with respect to the national technology and
8 industrial base, the following:

9 **“(1) The assembly of timely and authoritative information.**

10 **“(2) Initiation of studies and analyses.**

11 **“(3) Provision of technical support and assistance to the Secretary of Defense for**
12 **the preparation of periodic assessments of the capability of the national technology and**
13 **industrial base to meet national security objectives; the defense acquisition university**
14 **structure and its elements; and other departments and agencies of the Federal Government**
15 **as needed.**

16 **“(b) DEPARTMENTAL GUIDANCE.—**(1) The Secretary of Defense shall prescribe
17 departmental guidance for the attainment of national security objectives. Such guidance shall
18 provide for technological and industrial capabilities considerations to be integrated into the
19 budget allocation, weapons acquisition, and logistics support decision processes.

20 **“(c) NATIONAL TECHNOLOGY AND INDUSTRIAL BASE: PERIODIC DEFENSE CAPABILITY**
21 **ASSESSMENTS.—**(1) Each fiscal year, the Secretary of Defense shall prepare selected assessments

1 of the capability of the national technology and industrial base to attain national security
2 objectives. The Secretary of Defense shall prepare such assessments in consultation with the
3 Secretary of Commerce, the Secretary of Transportation, and the Secretary of Energy.

4 “(A) ASSESSMENT PROCESS.—The Secretary of Defense shall ensure that
5 technology and industrial capability assessments –

6 “(i) describe sectors or capabilities, their underlying infrastructure and
7 processes;

8 “(ii) analyze present and projected financial performance of industries
9 supporting the sectors or capabilities in the assessment; and

10 “(iii) identify technological and industrial capabilities and processes for
11 which there is potential that the national technology and industrial base will not be
12 able to support the achievement of national security objectives.

13 “(B) ASSESSMENT OF IMPACT OF DEPENDENCY ON FOREIGN SOURCE ITEMS.—Each
14 assessment shall include an assessment as to whether identified instances of foreign
15 dependency adversely impact national security objectives. The discussion and
16 presentation regarding foreign dependency shall -

17 “(i) identify cases that pose an unacceptable risk, as determined by the
18 Secretary; and

19 “(ii) present actions being taken or proposed to be taken to remedy the risk
20 posed by the cases identified under paragraph (i), including efforts to develop a
21 domestic source for the item in question.

22 “(C) INTEGRATED PROCESS.—The Secretary of Defense shall ensure that
23 consideration of the technology and industrial base assessments is integrated into the

1 overall budget, acquisition, and logistics support decision processes of the Department of
2 Defense.

3 “(d) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense shall transmit to the
4 Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on
5 Banking and Financial Services of the House of Representatives by March 1 of each year a report
6 which shall include the following:

7 “(1) A description of departmental guidance prepared pursuant to paragraph (b).

8 “(2) A description of the methods and analyses being undertaken by the
9 Department of Defense alone or in cooperation with other Federal agencies, to identify
10 and address concerns regarding the technological and industrial capabilities of the
11 national technology and industrial base.

12 “(3) A description of the assessments prepared pursuant to paragraph (c) and other
13 analyses used in developing the budget submission of the Department of Defense for the
14 next fiscal year.

15 “(4) Identification of each program designed to sustain specific essential
16 technological and industrial capabilities and processes of the national technology and
17 industrial base.”.

Sectional Analysis

Section 722 of the Defense Production Act of 1950, as amended, requires that the President, acting through the Secretary of Defense and the heads of other Federal agencies as the President may determine to be appropriate, establish an information system on the defense industrial base. It specifies the types of evaluations to be supported, the types and sources of information to be collected, and the capabilities of the information system. Section 722 also requires that a task force establish guidelines and procedures to ensure that all Federal agencies and departments that acquire such information participate effectively in the system. Finally, Section 722 requires that the President issue a comprehensive biennial assessment of the supplier

and subcontractor base necessary to meet defense requirements.

The Department of Defense strongly supports the policy objectives of section 722 of the Defense Production Act. However, these requirements essentially duplicate requirements contained in sections 2501, 2502, 2503, 2504, 2505, and 2506 of title 10 of the United States Code. The Department has prepared the guidance, has established the organization structures, is collecting the information, and is performing the analyses necessary to address industrial capabilities issues within the Department's key budget, acquisition, and logistics processes. We recommend that section 722 of the Defense Production Act of 1950 be amended to correlate with the requirements of title 10 of the United States Code.

In Title 10 of the United States Code:

Section 2501 establishes national security objectives concerning the national technology and industrial base.

Section 2502 establishes requirements to ensure effective cooperation among departments and agencies concerning the national technology and industrial base.

Section 2503 requires that the Secretary of Defense establish a national defense program for analysis of the national technology and industrial base.

Section 2504 requires that the Secretary of Defense submit an annual report to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives, by March 1st of each year. The report is to include descriptions of:

Department industrial and technological guidance issued to facilitate the attainment of national security objectives, including that guidance providing for the integration of industrial and technological capabilities considerations into its budget allocation, weapons acquisition, and logistics support decision processes.

Methods and analyses undertaken by the Department alone or in cooperation with other Federal agencies, to identify and address industrial and technological capabilities concerns.

Industrial and technological capabilities assessments prepared pursuant to section 2505, and other analyses used in developing the Department's budget submission for the next fiscal year, including a determination as to whether identified instances of foreign dependency adversely impact warfighting superiority.

Department programs and actions designed to sustain specific essential technological and industrial capabilities.

Section 2505 requires that the Secretary of Defense prepare selected assessments of the capability of the national technology and industrial base to attain the national security

objectives set forth in section 2501.

Section 2506 requires that the Secretary of Defense prescribe departmental guidance necessary to meet the requirements specified in the other sections, above.

As required by section 2504, the Department has provided an "Annual Industrial Capabilities Report to Congress" prior to March 1st of each year, since 1997. We expect that the report required by section 2504 will, with minor modifications, serve the purposes of both that section and section 722 of the Defense Production Act.

**SEC. ____ . TESTS OF INNOVATIVE PROCUREMENT METHODS AND
PROCEDURES.**

1 (a) FEDERAL ACQUISITION STREAMLINING ACT. – Section 5061 of the Federal Acquisition
2 Streamlining Act of 1994 (41 U.S.C. 413 note) is amended –

3 (1) in subsection (a) by striking “6” in the third sentence and inserting “7”;

4 (2) in subsection (c)(2) –

5 (A) by striking “The total estimated life-cycle cost” and inserting “(A) Except as
6 provided in subparagraph (B), the total estimated life-cycle cost”; and

7 (B) by inserting after subparagraph (A), the following new subparagraph (B):

8 “(B) The total estimated life-cycle cost to the Federal Government of the
9 test conducted pursuant to the procedures developed under the authority of
10 subsection (f) may not exceed \$500,000,000.”;

11 (3) in subsection (c)(3) by –

12 (A) striking “one” in subparagraph (B) and inserting “two”; and

13 (B) inserting “including the test conducted pursuant to the procedures developed
14 under the authority of subsection (f),” after “subsection (a),”;

15 (4) in subsection (d) by striking “\$600,000,000” each place it appears in the subsection
16 and inserting in each such instance “\$1,100,000,000”;

17 (5) in subsection (e) by –

18 (A) striking “Tests” and inserting “Except as provided in subsection (f), tests”;

19 and

20 (B) in paragraph (9)(A), by striking “publication in the Commerce Business Daily
21 of a notice that” and inserting “a notice published in the Commerce Business Daily or

1 made accessible electronically through the automated version of the Commerce Business
2 Daily published by the Secretary of Commerce or through the single Government-wide
3 point of entry designated in the Federal Acquisition Regulation to implement section 30
4 (c)(4) of this Act, that”;

5 (6) by redesignating subsections (f), (g), (h), (i), (j), and (k) as subsections (g), (h), (i), (j),
6 (k), and (l), respectively;

7 (7) by inserting after subsection (e), the following new subsection (f):

8 “(f) ADDITIONAL PROCEDURES AUTHORIZED. – The Administrator may authorize one test
9 of alternative and innovative acquisition procedures, notwithstanding subsection (e), to determine
10 whether a specified change in acquisition procedures would result in improved mission
11 performance.”;

12 (8) in subsection (h), as redesignated by paragraph (6), –

13 (A) in paragraph (1), by striking “At least 270 days before a test may be
14 conducted under this section” and inserting “At least 60 days before a test may be
15 conducted under this section, and at least 270 days before a test may be conducted under
16 this section if using the authority set forth in subsection (f)”;

17 (B) by striking “subsection (h)(1)(B)” and inserting “subsection (i)(1)(B)”;

18 (9) in subsection (i), as redesignated by paragraph (6)–

19 (A) in paragraph (1)(B), by inserting “or developed pursuant to subsection (f)”
20 after “described in subsection (e)”;

21 (B) in paragraph (3) in the second sentence, by striking “subsection (g)” and
22 inserting “subsection (h)”;

1 (10) in subsection (j), as redesignated by paragraph (6), by striking “January 1, 2001” and
2 inserting “January 1, 2005”.

3 (b) CLINGER-COHEN ACT. – Section 5312 of the Clinger-Cohen Act of 1996 (divisions D
4 and E of Public Law 104-106; 40 U.S.C. 1492) is amended --

5 (1) in subsection (a), by striking “subsection (d)(2)” and inserting “subsection (d)”;

6 (2) in subsection (c)(9), by striking “(funded in the case of the source ultimately
7 awarded the contract, by the Federal Government)”;

8 (3) in subsection (d), by striking out “Pilot program design” and all that follows through
9 the end of the subsection and inserting in lieu thereof the following:

10 **“Limitations**

11 The Administrator shall provide for use of the pilot program authority in this
12 section for a total of –

13 (1) not more than 10 projects, each of which has an estimated cost of between
14 \$25,000,000 and \$100,000,000; and

15 (2) not more than 10 projects, each of which has an estimated cost of between
16 \$1,000,000 and \$5,000,000, to be set aside for small business concerns.”.

Sectional Analysis

This proposal would modify the test authority provided at section 5061 of the Federal Acquisition Streamlining Act of 1994 (FASA) and section 5312 of the Clinger-Cohen Act of 1996 to encourage greater agency use of innovative procurement procedures.

Subsection (a) would amend section 5061 of FASA, which authorizes the conduct of a program of tests of alternative procurement procedures, to: (a) delay expiration of the authority from January 1, 2001 to January 1, 2005, and (b) reduce the number of days to sixty which agencies must wait before initiating a test of one of the enumerated procedures. In addition, the amendments would authorize one additional test beyond those currently provided in section 5061 that, unlike the other tests, could employ procedures other than those specifically enumerated.

Subsection (b) would amend section 5312 of the Clinger-Cohen Act, the solutions-based contracting pilot program, to remove detailed statutory requirements concerning the development of a pilot plan, including the requirement to form a public-private working group. The amendments also would eliminate a requirement to fund the awardee's efforts during the program definition phase and instead leave this decision to the contracting officer's discretion on a case-by-case basis.

The ability to test in a meaningful way alternative and innovative procurement procedures remains an important component of acquisition reform. The proposed amendments to section 5061 of FASA would further this goal. Agencies' focus on implementing the many acquisition reforms put in place by the Administration and Congress --during the same general period that new test authority was being authorized -- limited agencies' ability to identify and test additional changes that may be necessary to take account of changing commercial practices and conditions and new technologies. Extending the sunset for section 5061 from January 1, 2001 to January 1, 2005 would give agencies and the Administrator the opportunity to craft tests and evaluate whether tested practices could have beneficial government-wide application.

Agency contracting officials that have considered testing have hesitated to nominate projects out of reluctance to ask their customers to add 270 days to acquisition lead-times. The proposed 60-day wait period would still afford the public and Congress an opportunity to become familiar with a test before it began while increasing program and contracting office interest in using the authority. It would also reduce the risk on agencies of having funds diverted to other projects due to budget constraints.

The proposal to afford agencies the opportunity to test innovative acquisition procedures not already enumerated in section 5061 recognizes that the enumerated list is not exhaustive of the available methods that may be used to procure goods and services. This would encourage agencies to continually look for ways to improve federal acquisitions by accommodating changes occurring in the commercial marketplace. Individual contracts awarded under this additional test could exceed \$5,000,000, but the total estimated life-cycle cost of the test could not exceed \$500,000,000 and waivers would be no different from those available for other tests. (Other tests authorized by section 5061 would remain capped at \$100,000,000 each).

The proposed amendments to the solutions-based contracting pilot in the Clinger-Cohen Act include elimination of the direct participation of private IT specialists as part of a public-private work group. The process requirements otherwise envisioned for this test appropriately anticipate meaningful exchanges of communications between government and the contractor community to ensure requirements and risk are well understood and offerors can propose realistic, well-defined solutions. Eliminating the requirement for a public-private work group would not alter this type of communication, but would avoid concerns raised regarding which private industry specialists would participate on the work group and questions regarding those participants who later compete for solutions-based contracts.

SEC. ____ . DEMILITARIZATION OF SIGNIFICANT MILITARY EQUIPMENT.

1 (a) IN GENERAL.—Chapter 153 of title 10, United States Code, is amended by adding at
2 the end the following new section:

3 **“§ 2582. Demilitarization of significant military equipment**

4 “(a)(1) The Secretary of Defense may require any person in possession of significant
5 military equipment formerly owned by the Department of Defense to demilitarize such property,
6 to have such property demilitarized by a third party, or to return such property to the United
7 States Government for demilitarization. Such persons shall be solely responsible for all
8 demilitarization costs except when demilitarization is pursuant to a government contract or
9 except when the Secretary of Defense requires the return of the property for demilitarization by
10 the Government. The United States shall have the right to validate that a demilitarization has
11 been performed.

12 “(2) The Secretary of Defense or a designee may determine that physical recovery of
13 significant military equipment is necessary to assure demilitarization of the property. If the
14 Secretary decides that recovery is necessary, he may order the individual to turn the property
15 over to the Secretary who then becomes responsible for all demilitarization costs. If the person
16 in possession of the significant military equipment obtained the property, as provided for by law
17 or regulation, the person shall be reimbursed the purchase cost of the property and paid
18 reasonable transportation costs incurred for such purchase.

19 “(b) DEFINITIONS.—In this section:

20 “(1) The term “significant military equipment” means articles for which special export
21 controls are warranted because of their capacity for substantial military utility or capability, as
22 defined by Chapter 22 of the Code of Federal Regulations, or articles so designated by the

1 Department of Defense as requiring demilitarization.

2 “(2) The term “demilitarization” will be provided the meaning as determined by the
3 Secretary of Defense, in consultation with the Administrator, General Services Administration.

4 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of Chapter 153 is
5 amended by inserting after the item relating to section 2581 the following new item:

6 “2582. Demilitarization of significant military equipment.”.

Sectional Analysis

Section 1051 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261) (1998) requested the Secretary of Defense to provide “draft legislation that the Secretary considers appropriate to clarify the authority of the Government to recover critical and sensitive defense property that has been inadequately demilitarized.” In consonance with this direction, this proposal would amend Title 10, United States Code, to allow the United States to recover Significant Military Equipment (SME) that has been released by the Government without proper demilitarization. In recent years, the possession of improperly demilitarized Department of Defense property by individuals and business entities has caused grave concern and has been a topic of study for the Defense Science Board.

Questions on the amount of compensation due a possessor of these materials have arisen in those cases where confiscation has been permitted. This proposal, if enacted, would provide needed clarification on several issues. First, it would codify in law the type of material subject to recovery by specifically adopting the definition of SME as is contained in the Code of Federal Regulations. Second, it would permit a possessor to be compensated in an amount covering purchase cost, if any, and reasonable transportation costs, assuming the possessor obtained the property through legitimate channels.