Committee Reports

102d Congress

House Report 102-966 Part 4

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NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993

**DATE:** October 1, 1992. Ordered to be printed

**SPONSOR:** Mr. Aspin, from the committee of conference, submitted the following

CONFERENCE REPORT

(To accompany H.R. 5006)

**TEXT:**

TITLE III OPERATION AND MAINTENANCE

Overview

The House bill would authorize $77,816,268,000 for operation and maintenance for the Department of Defense and $16,600,000 for Working Capital Fund accounts in fiscal year 1993.

The Senate amendment would authorize $81,703,819,000 for operation and maintenance for the Department of Defense and $1,123,800 for Working Capital Fund accounts in fiscal year 1993.

The conferees recommend authorization of $80,805,502,000 for operation and maintenance for the Department of Defense and $1,145,000,000 for Working Capital Fund accounts in fiscal year 1993, as reflected in the following tables.

(PLEASE REFER TO ORIGINAL SOURCE FOR TABLES)

Items of Special Interest

Defense business operations fund technical adjustments

The conferees agree to the technical adjustments contained in the House bill and discussed in the House report (102-527) for the Defense Business Operations Fund (DBOF) capital program and for DBOF overcharges, including depreciation of military construction projects.

Automatic data processing

The conferees continue to support the basic goals of the DOD corporate information management (CIM) initiative. However, the military departments still have not coordinated all of their automatic data processing (ADP) efforts with each other or under the CIM initiative, and they continue to develop their own systems under the guise of "service-uniqueness". To encourage the military departments to coordinate all of their system development efforts with each other and with the CIM program, the conferees recommend reductions of $25.0 million to the ADP requests for the Army, Navy, and Air Force.

Marine Corps intelligence training

In an attempt to help remedy Marine Corps intelligence shortfalls highlighted during Operation Desert Shield/Desert Storm, the conferees direct that $2.0 million of Marine Corps operation and maintenance funds available in fiscal year 1993 be set aside for intelligence training.

Air Force depot maintenance workload carryover

The conferees agree to a reduction of $50.0 million in the Air Force operation and maintenance account because of the significant growth in excess depot maintenance workload carried over from one fiscal year to the next. While making this reduction due to excess workload carryover, the conferees continue to support a level of depot maintenance funding necessary to ensure a steady flow of work through the industrial activities of the military Services.

Office of Economic Adjustment

The conferees agree to authorize an increase of $50.0 million above the requested amount for the Office of Economic Adjustment (OEA). This increase is necessary to support the expanded scope of OEA assistance programs authorized in title XLIII of this act.

Defense Commissary Agency

The conferees agree to a $55.0 million reduction to the amount requested for the Defense Commissary Agency (DeCA). This reduction is possible due to reduced inventories and increased cash levels in the commissary system. Funds to offset this reduction should be transferred to the DeCA from the Defense Business Operations Fund (DBOF).

The conferees are concerned about the systemic bill paying problems being encountered by the Defense Commissary Agency since its creation on October 1, 1991. By the end of February 1992, DeCA had approximately 187,000 overdue invoices unpaid, totalling between $350-$400 million. Corrective action, initiated in response to Congressional attention, has resulted in more timely payment of current invoices. However, at the end of August 1992, DeCA still had an unacceptable level of overdue invoices.

The conferees expect DeCA to fully comply with the letter and intent of the Prompt Payment Act. DeCA should review its current compliance program and procedures to ensure that staff are adequately trained and understand the requirements of the Act. In addition, DeCA should review its procedures to ensure that it has not imposed practices that frustrate compliance with the law.

Specifically, the conferees note that DeCA has imposed restrictions on the submission of invoices by its vendors for the purpose of reducing the number of invoices to be processed. Certain vendors have been directed to submit twice-monthly roll-ups for product delivered. Since the time available to the government to make a timely payment is triggered by receipt of the invoice (or acceptance of the product or service, whichever is later), agency action to delay submission of a vendors invoice for work performed can circumvent the statutory payment protections afforded by the Prompt Payment Act. Under the Act, a vendor may submit an invoice any time after performance. Within 60 days after enactment of this act, the conferees direct DeCA to provide to the Committees on Armed Services of the Senate and the House of Representatives a plan to revise its policies regarding roll-ups to conform to industry practices, assuring that vendors covered by the 7-day or 10-day payment terms specified in the Act are permitted to submit invoices on the schedule employed by the vendor in the private sector.

Arms control compliance

The amended budget request contained $505.2 million for Department of Defense funding for arms control-related programs.

The House bill would authorize $482.8 million.

The Senate amendment would authorize $465.6 million.

Based on thorough consultation with officials from the Office of the Secretary of Defense, the military Services, and the On-Site Inspection Agency (OSIA), the conferees recommend several funding adjustments to the budget request for activities related to arms control. The adjustments reflect delays in the anticipated date of entry into force of the Strategic Arms Reduction Talks (START), as well as changes in inspection requirements for ongoing and anticipated activities related to the Intermediate-range Nuclear Forces (INF) Treaty, the Conventional Forces in Europe (CFE) Treaty, the Bilateral Chemical Weapons Agreement, and the Open Skies (OS) Treaty.

The adjustments result in reductions to the amended budget request of $.6 million in procurement, $5.6 million in military construction, and $33.4 million in operation and maintenance accounts. The recommended adjustments result in an overall savings of $39.6 million in DOD funding for arms control-related programs, which are listed in the table below and reflected in the appropriate account tables.

(PLEASE REFER TO ORIGINAL SOURCE FOR TABLES)

Drug interdiction and counter-drug activities

To fund congressional priorities, including the detection and monitoring systems evaluation and plan and the expanded demand reduction pilot program, the conferees recommend the following changes to the amounts requested for drug interdiction and counter-drug activities.

Although the conferees have decided to grant considerable discretion to the Department in taking reductions in individual programs, the conferees direct that no reductions be taken in project 1403. The conferees believe that the various activities funded under this project offer the best chance for a significant breakthrough with great impact on the national counter-drug effort. In this connection, the conferees direct the Department to evaluate chemical detector devices consisting of an infrared detector coupled with a high-speed signal processor and, if test results warrant, to use funds from Research and Development, Drug Interdiction accounts to evaluate and fully develop this device.

Drug interdiction and counter-drug activities, operation and maintenance (In thousands of dollars)

Fiscal year 1993 drug interdiction and counter-drug activities, O&M request $1,263,400

Reductions:

Undistributed operating tempo ($20,000)

Undistributed general reduction ($41,000)

Classified programs ($89,300)

Total reductions ($150,300)

Increases:

Project 9499 support to law enforcement $30,000

Project 4499 Civil Air Patrol $1,000

Counter-drug detection and monitoring systems plan $5,000

Consolidated detection and monitoring systems $89,300

Demand reduction, military departments $15,000

Demand reduction, National Guard $10,000

Total increases $150,300

Recommendation $1,263,400

Television operating scoring system

Since 1985, the Air Force has invested millions of dollars in engineering capabilities to build the worlds only integrated electronic range at Nellis Air Force Base. The television operated scoring system (TOSS) program is a critical component to testing and evaluating the performance of combat aircrews at the Nellis Range, contributing to the success of U.S. air power in the Persian Gulf conflict. The conferees believe that the Air Force should continue to support this program at a level that results in the maintenance of current capability through fiscal years 1993 and 1994.

C-141 secondary exhaust nozzle procurement

The conferees are aware of the program to design and develop a new C-141 secondary exhaust nozzle that could reduce maintenance costs and contribute to extending the life of the aircraft. The conferees are disturbed that the Air Force has not announced a decision on whether to proceed with new nozzle production. Therefore, the conferees direct the Secretary of the Air Force to submit his recommendation on the secondary nozzle procurement program, including the relevant cost analysis supporting the recommendation, to the congressional defense committees by February 1, 1993.

Airlift support for the United States Antarctic program

The conferees understand that when the two previously authorized and appropriated LC-130 aircraft are delivered to the Air National Guard, two of their older model LC-130 aircraft are scheduled to be transferred to the Navy. If this proposed transfer takes place, as much as $20 million could be required to re-configure these aircraft to Navy operational standards. At the present time, both the Air National Guard and the Navy operate these ski-equipped aircraft to provide logistical support to the United States Antarctic program.

The conferees direct that no LC-130 aircraft be transferred from the Air National Guard to the Navy until the Secretary of Defense conducts a complete review of the current allocation of heavy airlift resources to support the United States Antarctic program. This review shall include future equipment needs; a cost analysis of transferring LC-130 aircraft from the Air National Guard to the Navy; whether any reorganization of this mission could improve the efficiency of operations; and whether the Air National Guard could assume a greater role in providing this support. The results of this review should be provided to the congressional defense committees by March 1, 1993.

Intelligence and threat analysis center

The House bill would deny authorization for the Armys Intelligence and Threat Analysis Center (ITAC) and would implicitly reallocate ITAC personnel billets. The House position is that the creation of joint intelligence centers, increased capabilities at the Defense Intelligence Agency, and the restructuring and reinforcing of intelligence brigades, call into question the need to maintain ITAC.

The Senate amendment did not deny authorization for ITAC.

The House recedes.

In addressing this issue, the conferees reviewed the missions of ITAC. The conferees conclude from this review that some of these missions are appropriate for a Service-level intelligence production organization, while others may not be appropriate. Some of these missions have also been assigned to other organizations or are being performed by more than one organization.

The conferees agree that the issues of duplication of effort and mission, and of separate overhead costs, raised in connection with ITAC by the House are applicable across the general military intelligence production units within the Department of Defense. These issues should be addressed in a larger review of the roles and missions of defense intelligence and departmental general military intelligence production units, all of which are located in the Washington, D.C. metropolitan area. The conferees also agree that in light of continued severe budget constraints and personnel reductions, more needs to be done to optimize the dwindling resources of our intelligence production units. The conferees direct the Chairman of the Joint Chiefs of Staff to examine these issues as part of his comprehensive roles and missions review and make recommendations to the Secretary of Defense.

Army backlog of facility maintenance and repair

The conferees are concerned that the Army has funded real property maintenance activity at U.S. bases at less than 75 percent of the annual requirements. This low level of funding means that necessary work to maintain the $200 billion of Army infrastructure cannot be accomplished. These shortfalls caused the backlog of maintenance and repair to continue to rise alarmingly.

Even an installation the size of Fort Gillem, Georgia, with a real property value of about $650 million, has a carryover backlog of approximately $18 million with no ability to apply annual funding toward the reduction of these requirements.

The conferees believe that the Army must place more attention on the condition of its facilities and establish a realistic real property maintenance funding level, as well as allow a reasonable level of additional funding to reduce the size of the current backlog. Even at todays low inflation rates, an installation must spend at least seven percent of the value of its backlog requirements to stay even with deterioration and inflation and this is in addition to full funding for validated annual requirements.

The conferees want to emphasize that real property maintenance is not simply a matter confined in infrastructure. Continued deterioration of facilities risks creating the same kind of quality of life and morale problems that plagued the Army in the late 1970s. Trying to convince the highest quality personnel that the Army has ever had that they are part of a first rate organization is going to become increasingly difficult if their living and working conditions are second or third rate.

Therefore, the conferees direct the Army to prepare a special report to be submitted with the fiscal years 1994/1995 budget request which specifically addresses the amount of funding proposed for U.S. installations towards the utilities, maintenance and repair, minor construction, and other engineering support accounts, and the percentage of annual requirements for each account provided by the proposed funding level.

In addition, the conferees direct the Army to allocate seven percent of Fort Gillems backlog of maintenance and repair funds for real property maintenance in an effort to improve the serious neglect of facilities at that installation.

Hospital ship for humanitarian relief

The conferees agree to authorize $2.0 million for a ship check of the ex-U.S.S. Sanctuary, a former hospital ship, for the purpose of determining the feasibility and cost of restoring the ship for use on humanitarian relief missions. The ship is currently in the custody of a private, nonprofit organization. The conferees direct the Secretary of the Navy to use these funds to prepare a budget quality estimate of the cost to restore the ship to a status adequate to support humanitarian relief operations and, in a emergency, U.S. military operations. The Secretary of the Navy should submit this estimate to the congressional defense committees not later than March 1, 1993.

Legislative Provisions

legislative provisions adopted

Humanitarian assistance (sec. 304)

The House bill contained a provision (sec. 304) that would extend the authority contained in prior authorization acts for the transportation of humanitarian assistance to Afghanistan and Cambodia, and for other humanitarian purposes worldwide, and would authorize $13.0 million for this purpose in fiscal year 1993.

The Senate amendment contained a similar provision (sec. 304) that would authorize $25.0 million for this purpose in fiscal year 1993. The increase in funding was to meet the increased demands for transportation of humanitarian relief, especially in eastern Europe and Africa.

The House recedes with an amendment that would expand the reporting requirements for excess non-lethal supplies of the Department of Defense made available for humanitarian relief purposes under section 2547 of title 10, United States Code.

The conferees note that the report regarding humanitarian assistance for countries not specifically authorized by law shall be submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, in addition to the Committees on Armed Services of the Senate and House of Representatives.

The House conferees wish to express their strong concern over the expansion of the humanitarian assistance program and wish to state that the program will be the subject of joint hearings by the Committees on Foreign Affairs and Armed Services of the House of Representatives. In this regard, the House conferees also express concern that the humanitarian assistance program would be exempted from restrictions contained in the section of this act concerning excess defense articles. The excess defense article program would prohibit all construction and emergency equipment from being transferred to foreign countries. The House Committees joint hearings will examine the exemption for the humanitarian assistance program.

Support for the 1994 World Cup Games (sec. 305)

The Senate amendment contained a provision (sec. 305) that would authorize DOD to provide logistical support and personnel services to the 1994 World Cup Games to be held in nine American cities during the summer of 1994.

The House bill contained no similar provision.

The House recedes.

Transfer authority (sec. 306)

The Senate amendment contained a provision (sec. 306) that would authorize the Secretary of Defense, to the extent provided in appropriations acts, to transfer funds from two sources into the O&M accounts during fiscal year 1993. This section would authorize the transfer of $3,054.0 million from the Defense Business Operations Fund to the O&M accounts to the extent that the military department concerned has received credit from the Defense Business Operations Fund for unneeded secondary items returned to the Fund for credit by the military department. Transfers under this authority may also be made if the Secretary of Defense certifies to the congressional defense committees that the military department concerned has, to the extent practicable, returned to the Defense Business Operations Fund all unneeded secondary items under the control of the military department. This section would also authorize the transfer of $612.0 million from the National Defense Stockpile Transaction Fund to the operation and maintenance, defense agencies account.

The House bill contained no similar provision.

The House recedes with an amendment that would authorize the transfer of $400.0 million from the National Defense Stockpile Transaction Fund to the operation and maintenance accounts of the Army, Navy, Air Force, and defense agencies fiscal year 1993.

subtitle b limitations

Prohibition of the use of certain funds for Pentagon Reservation (sec. 311)

The House bill contained a provision (sec. 312) that would prohibit the use of contributions to the Pentagon Reservation maintenance funds for any purpose other than the day-to-day operation of these facilities. It would also require a report by the Secretary of Defense no later than December 31, 1992, regarding the proposed renovation of the Pentagon.

The Senate amendment contained no similar provision. However, the Senate report (S. Rept. 102-352) addressed the renovation of the Pentagon within the context of the Defense Departments presence in the National Capital Region. It was the Senate Armed Services Committees view that the Department should reassess the need of each activity which is currently within the region to remain there, along with a strategy to meet each activitys long-term facility needs. This effort should be undertaken as part of the Departments 1993 base closure and realignment review.

While the Committee supported the renovation of the Pentagon complex, it questioned whether the current scope of the project could be justified in light of the reduced size of the Defense Department. It also recognized that the first phase of this effort, the replacement of the central heating and cooling plant which was authorized at $80.1 million in fiscal year 1992, has been delayed until fiscal year 1993 because of the fiscal year 1992 rescission act. The Senates proposed authorization level for the Pentagon Reservation maintenance fund was adjusted to provide funding for this project, which is badly needed regardless of the size or pace of the renovation of the Pentagon itself.

The Senate report directed the Secretary of Defense to provide the congressional defense committees with a report regarding the Departments long-term plans for the National Capital Region, as well as a revalidation of its plans to renovate the Pentagon facility, no later than April 15, 1993.

The Senate recedes with an amendment that would modify the prohibition of renovation funds to permit the replacement of the Pentagons central heating and cooling plant during fiscal year 1993; broaden the scope of the required report to include all Defense Department activities within the National Capital Region; and adjust the reporting date to follow the Defense Secretarys submission of recommendations to the Defense Commission on Base Closures and Realignments.

Prohibition on the use of funds for certain service contracts (sec. 312)

The House bill contained a provision (sec. 313) that would prohibit the Department of Defense from entering into any contract for the performance of a commercial activity in any case in which the contract results from a cost comparison study conducted by the Department of Defense under OMB Circular A-76. This prohibition would not apply to a contract, or the renewal of a contract, for the performance of an activity under contract on September 30, 1992.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would limit this prohibition to fiscal year 1993.

subtitle c environmental provisions

Extension of reimbursement requirement for contractors handling hazardous wastes from defense facilities (sec. 321)

The House bill contained a provision (sec. 321) that would extend the reimbursement requirement of 28 U.S.C. 2708(b)(1) through fiscal year 1993.

The Senate amendment contained no similar provision.

The Senate recedes.

Extension of prohibition on use of environmental restoration funds for payment of fines and penalties (sec. 322)

The Senate amendment contained a provision (sec. 318) that would prohibit the use of funds appropriated for fiscal year 1993 for the environmental restoration account in the Department of Defense from being used to pay fines or penalties except to the extent that the fine or penalty imposed arises out of activities funded by the account.

The House bill contained a similar provision (sec. 322).

The Senate recedes.

Pilot program for expedited environmental response actions (sec. 323)

The House bill contained a provision (sec. 323) that would establish a pilot program to expedite the performance of on-site environmental response actions at military installations closing under the base closure process and at other military installations pursuant to the defense environmental restoration program.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would add two bases to be identified for closure by the Base Realignment and Closure Commission during fiscal year 1993 and reduce the number of open bases participating in the program from five to four per military Service.

The amendment would broaden the program to include all Department of Defense environmental restoration activities as potential program participants.

The amendment would also clarify that the other environmental restoration activities of the Department of Defense should not be delayed by the program. The conferees believe that the goal of the program should be to identify ways to expedite or reduce the costs of environmental restoration. Once identified, any new concepts, technologies, or initiatives could then be incorporated into other programs. The conferees do not intend that the implementation of any pilot program should delay in any way the other environmental restoration programs at closing bases, open bases, or formerly used defense sites.

Overseas environmental restoration (sec. 324)

The House bill contained a provision (sec. 324) that would express the sense of Congress that the cost of environmental restoration at overseas military bases should be borne by the host nation.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that there be an equitable division, with the host country, of the environmental restoration costs.

Evaluation of use of ozone depleting substances by the Department of Defense (sec. 325)

The Senate amendment contained a provision (sec. 311) that would direct the Defense Logistics Agency (DLA) to identify and evaluate the use of class I ozone depleting substances by the military Services and to plan for future uses. The provision would also require an evaluation and report on the anticipated future usage of class II ozone depleting substances.

The House bill contained no similar provision.

The House recedes.

This evaluation is necessary to plan adequately for the 1995 phaseout of production of class I ozone-depleting substances and to plan for the use of these substances in certain mission critical instances into the 21st century. The conferees believe that the Department of Defense Chlorofluorocarbons Advisory Committee can continue to provide valuable assistance to DOD during this period of transition, and are pleased that the Committees charter has been extended. The conferees urge the Department to utilize the Committees talents to the maximum extent practicable.

Elimination of use of class I ozone-depleting substances in certain military procurement (sec. 326)

The Senate amendment contained a provision (sec. 312) that would prohibit the Department of Defense from entering into any new contracts, or modifying, extending, or amending existing contracts after June 1, 1993 that would require the use of class I ozone-depleting substances chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform unless the use of these substances is specifically justified by the senior acquisition official. This provision would also encourage DOD contractors to identify suitable non-ozone-depleting substitutes for class I substances, and, where deemed appropriate, recover reasonable costs, if any, associated with identification of acceptable substitute materials or processes.

The House bill contained no similar provision.

The House recedes with an amendment.

The conferees agree that the Department must move quickly to review its uses and requirements for class I ozone-depleting substances. The provision would prohibit the Department from entering into any new contracts after June 1, 1993, that require the use of any class I ozone-depleting substance.

The provision would also require DOD to review existing contracts, as part of the routine process of contract modification, extension, and amendment, to determine if there are any contractual requirements to use class I ozone-depleting substances. If the contract contains such a requirement, the senior acquisition official or designee must determine if there is a suitable substitute for the requirement that avoids the use of class I ozone-depleting substances. If such substitute exists, the contract must be further modified to include the alternative.

This review must be conducted within 60 days after any contract is modified, extended, or amended. The requirement to review applies to all contracts entered into before June 1993 that have a contract value in excess of $10 million, and that have at least one year remaining in the term of the contract following the modification, extension, or amendment that triggered the review.

The amendment would provide that any adjustment in the price of the contract as a result of this section would be made pursuant to the federal acquisition regulations.

In addition, the amendment would direct the Secretary to provide reports on this effort to Congress. Quarterly reports would be required for four years, followed by two annual reports beginning with fiscal year 1996.

Prohibition on the purchase of surety bonds and other guarantees for the Department of Defense (sec. 327)

The Senate amendment contained a provision (sec. 321) that would prohibit the use of appropriated funds during fiscal year 1993 to obtain surety or performance bonds to guarantee the direct performance of the United States to fulfill a legal requirement.

The House bill contained no similar provision.

The House recedes.

Legacy resource management fellowship program (sec. 328)

The Senate amendment contained a provision (sec. 322) that would establish a fellowship program. The program would bring into the Department of Defense up to three fellows to receive training in natural resources management and stewardship and to participate in program implementation.

The House bill contained no similar provision.

The House recedes.

Supplemental authorization of appropriations for fiscal year 1992 (sec. 329)

The Senate amendment contained a provision (sec. 323) that would authorize the supplemental appropriations requested by DOD for fiscal year 1992 for environmental restoration, defense programs and for the base realignment and closure account, II. If these funds are not appropriated during fiscal year 1992, this authorization may be applied to fiscal year 1993.

The House bill contained no similar provision.

The House recedes.

At the time the Department of Defense submitted its budget request for fiscal year 1992, the base closure process had not identified the military installations to be closed that year. As a result, the Defense Department, unable to submit a detailed request for the base closure account based upon specific needs of the closing bases and the receiving bases, submitted an estimated request of $100 million. Funding for cleanup of all bases, except those previously identified for closure in 1990, was included in the request for the defense environmental restoration account (DERA).

During the Senate Armed Services Committee (SASC) mark-up of the defense authorization bill for fiscal years 1992 and 1993, the Committee shifted $69 million, the funding requested for those bases that had been identified for closure following submission of the budget request, from the DERA to the base closure account. In addition, the SASC increased funding to expedite the cleanup at these closing bases. Following the lead of the SASC, the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) included the full amount of the funding needed to clean up the bases identified for closure in 1992. In addition, the Act provided that the base closure account was the exclusive source of funding for those bases identified for closure during 1992. This limitation was identical to that which was in effect for the base closure account established for those bases identified for closure in 1990.

Unfortunately, the Department of Defense Appropriations Act for Fiscal Year 1992 contained only the originally requested $100 million. As a result, DOD did not have adequate funds in the base closure account in fiscal year 1992 to carry out the environmental restoration program at the newly closing bases. Thus, it became necessary for DOD to submit a request for supplemental appropriations to ensure adequate funding for the environmental restoration programs at the newly closing bases. This request was submitted in January 1992 at the time that the amended DOD budget request for fiscal year 1993 was submitted. The supplemental appropriation was enacted into law on September 23, 1992. Delay in approval of the supplemental request has seriously delayed the environmental restoration program at the bases identified for closure in 1992.

Indemnification of transferees of closing defense property (sec. 330)

The Senate amendment contained a provision (sec. 317) that would require the Secretary of Defense to hold harmless, defend, and indemnify transferees of closing military facilities, from all suits, claims, demands, judgments, costs, or other fees arising out of the release or threatened release of any hazardous substance, pollutant, or contaminant as a result of DOD activities at the closing military installation. This indemnification provision would not apply where the transferee caused or contributed to the release or threatened release. The provision would require that the Secretary of Defense be notified of the claim for indemnification within two years after such claim accrues. This would establish a statute of limitations for handling any such claim. The provision would also require that the person seeking indemnification cooperate fully with the Department of Defense in handling the claim.

The House bill contained no similar provision.

The House recedes with an amendment that would ensure that the indemnification provided pursuant to this section does not conflict with or modify section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601-9657). In addition, the amendment would clarify when a claim accrues.

Extension of authority to issue surety bonds for certain environmental programs (sec. 331)

The Senate amendment contained a provision (sec. 320) that would extend existing law through December 31, 1995 to ensure that the liability of surety and performance bond providers, who provide performance bonds for environmental restoration work, does not extend beyond the scope of the bond.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Risk sharing in environmental restoration contracts of the Department of Defense (sec. 332)

The Senate amendment contained a provision (sec. 313) that would direct the Department of Defense to issue regulations to ensure, where appropriate, that contracts entered into by the Secretary of Defense for environmental restoration activities at current and former military installations provide for risk sharing. The provision would also provide independent authority to the Secretary of Defense to indemnify fully DOD environmental response action contractors from all liability founded upon federal, state, or local law and arising out of work performed pursuant to the defense environmental restoration program (DERP). The provision would preclude the Secretary from providing indemnification for liability arising from the contractors gross, willful, and intentional negligence. In addition, the provision would provide that in providing indemnification, the Secretary shall include deductibles and shall place limits on the amount of indemnification.

The House bill contained no similar provision.

The House recedes with an amendment that would direct the Secretary of Defense, in consultation with the Attorney General, Administrator of the Environmental Protection Agency (EPA), and the Director of the Office of Management and Budget (OMB), to review and report on indemnification issues in lieu of issuing regulations.

subtitle d defense business operations fund

Limitations on the use of the Defense Business Operations Fund (sec. 341)

The House bill contained a provision (sec. 331) that would extend the limitation on the period of management by the Department of Defense of the Defense Business Operations Fund (DBOF) until April 15, 1994 and would add a requirement for separate accounting, reporting, and auditing of funds and activities. The provision would further establish milestones that the Department must achieve for the implementation of the fund and that are to be monitored and evaluated by the Comptroller General.

The Senate amendment contained a provision (sec. 351) that would extend the limitation on the period of management by the Department of Defense of the DBOF until April 15, 1994.

The Senate recedes with an amendment.

Capital asset subaccount (sec. 342)

The House bill contained a provision (sec. 332) that would limit the use of the capital asset subaccount within the Defense Business Operations Fund and would also require a report by the Secretary of Defense on this account.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.Limitations on obligations against Defense Business Operations Fund (sec. 343)

The Senate amendment contained a provision (sec. 352) that would prohibit the Secretary of Defense from incurring obligations against the Defense Business Operations Fund during fiscal year 1993, except for obligations for fuel, subsistence and commissary items, retail operations, repair of equipment, and the cost of operations, in excess of 65 percent of the sales from the Defense Business Operations Fund during the fiscal year. This provision would allow the Secretary of Defense to waive this 65 percent limitation cap if he determines that such action is essential to the national security of the United States.

The House bill contained no similar provision.

The House recedes.

subtitle e depot-level activitiesCompetitive bidding for tactical missile maintenance (sec. 351)

The House bill contained a provision (sec. 341) that would require the Secretary of Defense to use competitive procedures if the Secretary decides to consolidate tactical missile maintenance.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of Defense to ensure that the Systems Management Activity and the Depot Systems Command are relocated to Rock Island Arsenal, Illinois, in accordance with the recommendation of the Base Closure and Realignment Commission dated July 1, 1991.Limitations on the performance of depot-level maintenance of material (sec. 352)

The House bill contained a provision (sec. 342) that would establish a limit of no more than 40 percent of the depot-level maintenance workload by each type of equipment and materiel that may be offered for contract by non-governmental personnel. The provision would also extend the limitations on the performance of depot-level maintenance by the Army and Air Force in section 2466 of title 10, United States Code, to the Navy.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

The conferees agree to include the Navy under the limitations on the performance of depot-level maintenance in section 2466 of title 10, United States Code. The conferees do not agree to establish a limit of no more than 40 percent of the depot-level maintenance workload by each type of equipment and materiel that may be offered for contract by non-governmental personnel. However, the conferees agree that the Secretary of the Army shall provide for the performance by employees of the Department of Defense of not less than 50 percent in fiscal year 1993, 55 percent in fiscal year 1994 and 60 percent in fiscal year 1995 of Army aviation depot-level maintenance. The Secretary concerned may not cancel a depot-level maintenance contract in effect on the date of enactment of this act in order to comply with the requirements of this provision.

Requirement of competition for the performance of workloads previously performed by depot-level activities of the Department of Defense (sec. 353)

The House bill contained a provision (sec. 343) that would require the Department of Defense to use competitive procedures for awarding any workload currently being performed in a military depot.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would provide that the Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a threshold value of $3.0 million and that is being performed by a depot-level activity of the Department of Defense to performance by a private contractor unless, prior to selection of the private contractor, the Secretary uses competitive procedures for the selection.

Repeal of requirement for competition pilot program for depot-level maintenance of materials (sec. 354)

The House bill contained a provision (sec. 345) that would amend section 314 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) to increase the limit of non-core workload that can be competed among depots or with private industry from 10 percent to 20 percent.

The Senate amendment contained a provision (sec. 358) that would amend section 314 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 by deleting the limitation on the amount of depot maintenance workload in the Army and the Air Force above the core level that can be opened to competition during fiscal year 1993.

The House recedes. The conferees direct that depot maintenance workload selected for competition not be drawn disproportionately from one or several depot maintenance activities of the military Services.

subtitle f commissaries and military exchanges

Standardization of certain programs and activities of military exchanges (sec. 361)

The House bill contained a provision (sec. 351) that would require the Secretary of Defense to standardize among the military departments certain programs and activities of the military exchanges of the military departments not later than October 1, 1993. The provision would also require the Secretary of Defense to submit to the Congress a report on other programs and activities of the military exchanges that the Secretary determines can be economically and efficiently managed through standardization or consolidation under a single nonappropriated fund instrumentality.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would change the date for standardization of these programs and activities to March 31, 1994.

Accountability regarding the financial management and use of nonappropriated funds (sec. 362)

The House bill contained a provision (sec. 352) that would require the Secretary of Defense to establish regulations governing the management and use of nonappropriated funds. The provision would also establish penalties for violations of these regulations.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

Demonstration program for the operation of certain commissary stores by nonappropriated fund instrumentalities (sec. 363)

The House bill contained a provision (sec. 353) that would establish a demonstration program to determine the feasibility of operating commissary stores by nonappropriated fund instrumentalities at selected locations. The period of the demonstration program would be one year. A report by the Secretary of Defense would be required at the end of the demonstration period concerning recommendations as to whether similar programs should be carried out at other military installations.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize the Secretary of Defense to conduct the demonstration program at not less than one but not more than three military installations, including at least one installation that supports predominant numbers of reserve and National Guard personnel.Release of information regarding sales at commissary stores (sec. 364)

The House bill contained a provision (sec. 354) that would repeal 10 U.S.C. 2487, which provides that certain data and reports generated by electronic scanners used in military commissaries may not be released to the public except under a written agreement that requires payment for the information.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment which would amend 10 U.S.C. 2487 to provide that the Secretary of Defense, in his discretion, may: (1) authorize such information to be released under written agreements, awarded under competitive procedures, if he determines that release of such information under such agreements to be in the best interests of the Department of Defense; or (2) authorize such information to be released to the public under the procedures that normally apply to the release of government information to the public.Use of commissary stores by members of the Ready Reserve (sec. 365)

The House bill contained a provision (sec. 355) that would extend commissary benefits to members of the Ready Reserve who have satisfactorily completed 50 or more reserve points in a year without regard to whether the reservist was paid for duty.

The Senate amendment contained no similar provision.

The Senate recedes.

subtitle g other mattersExtension of guidelines for reductions in the number of civilian positions in the Department of Defense (sec. 371)

The House bill contained a provision (sec. 361) that would expand the requirements contained in section 322 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) for the annual DOD civilian personnel master plan. The provision would also amend the guidelines for civilian personnel reductions in section 322.

The Senate amendment contained a provision (sec. 354) that would repeal the guidelines and the requirements for this master plan.

The Senate recedes with an amendment. The conferees agree to the changes in the guidelines for reductions for civilian positions in the Department of Defense for fiscal year 1993 only. The conferees also agree that the changes in the civilian positions master plan that would be made by the House provision should apply only to the plan submitted by the Secretary of Defense with the fiscal years 1994/1995 budget request.Annual report on security and control of supplies (sec. 372)

The House bill contained a provision (sec. 362) that would continue the requirement in section 2891 of title 10, United States Code, for the Secretary of Defense to submit an annual report to the Senate and the House of Representatives on security and control of DOD supplies. The provision would also expand the areas to be included in this report.

The Senate amendment contained a similar provision (sec. 353) that would extend the requirement for this report through fiscal year 1994.

The House recedes.

Transportation of donated military artifacts (sec. 373)

The House bill contained a provision (sec. 363) that would allow the Department of Defense to use military assets to demilitarize and transport excess or donated military items in the United States

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would allow the Secretary concerned to demilitarize, prepare, and transport an item authorized to be donated by the military department to a recognized war veterans association in the United States under section 2572 of title 10, United States Code, without cost to the recipient, if the Secretary determines the demilitarization, preparation, and transportation can be accomplished as a training mission without additional budgetary requirements for the unit involved.Subcontracting authority for Air Force and Navy depots (sec. 374)

The House bill contained a provision (sec. 364) that would expand the authority contained in section 2208(j) of title 10, United States Code, concerning subcontracting authority for the Air Force and Navy.

The Senate amendment contained no similar provision.

The Senate recedes. The conferees note that over the years, statutes affecting the military Services depots and arsenals have been enacted that are often oriented toward an individual Service rather than being applied to each Service consistently. The conferees direct the Secretary of Defense to submit a report to the congressional defense committees not later than April 15, 1993, that identifies all of the provisions or statutes affecting the depots and arsenals of one or more military Services, and includes any recommendations to make these provisions and statutes consistent throughout the Department of Defense.Consideration of vessel location for the award of layberth contracts for sealift vessels (sec. 375)

The House bill contained a provision (sec. 369) that would require the Secretary of the Navy to establish military effectiveness as a major criteria in the award of contracts for the layberthing of sealift vessels.

The Senate amendment contained no similar provision.

The Senate recedes.Pilot program to use National Guard medical personnel in areas containing medically underserved populations (sec. 376)

The House bill contained a provision (sec. 370) that would establish a pilot program in Tennessee, Florida, and Ohio to use National Guard medical personnel to provide health care to medically underserved populations.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize the Chief of the National Guard Bureau, under regulations prescribed by the Secretary of Defense, to enter into an agreement with the Governors of one or more states to carry out a pilot program during fiscal years 1993 and 1994 to provide training and professional development opportunities for members of the National Guard through the provision of health care to medically underserved populations in those states. The provision would authorize not more than $5.0 million for the Chief of the National Guard Bureau to fund activities of the National Guard under these agreements.

Authority for the issue of uniforms without charge to members of the armed forces (sec. 377)

The House bill contained a provision (sec. 371) that would allow the Department of Defense to issue a military uniform without charge to certain members of the armed forces.

The Senate amendment contained no similar provision.

The Senate recedes.

Program to commemorate World War II (sec. 378)

The House bill contained a provision (sec. 374) that would authorize the Department of Defense to conduct a program to commemorate the 50th anniversary of World War II.

The Senate amendment contained a similar provision (sec. 1048).

The House recedes with an amendment that would subject the program to the Trademark Act and would delete the application of chapter 171 of title 28, United States Code, for voluntary services.

Extension of demonstration project for the use of proceeds from the sale of certain lost, abandoned, or unclaimed personal property (sec. 379)

The House bill contained a provision (sec. 375) that would extend for one year the authority contained in section 343 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) to conduct a demonstration program at Naval Base, Norfolk and Naval Air Station, Norfolk, under which proceeds from the sale of lost, abandoned, or unclaimed property on the installation will be credited to the operation and maintenance account of that installation.

The Senate amendment contained no similar provision.

The Senate recedes.

Promotion of civilian marksmanship (sec. 380)

The House bill contained a provision (sec. 376) that would authorize the continued appropriation of funds for the Armys civilian marksmanship program. The provision would also authorize the Secretary of the Army to raise revenues to support the activities of the civilian marksmanship program through the sale of rifles and ammunition to authorized individuals and clubs and through the establishment of fees for participants in activities of the civilian marksmanship program.

The Senate amendment contained a similar provision (sec. 355).

The House recedes with an amendment.

Optional defense dependents summer school programs (sec. 382)

The Senate amendment contained a provision (sec. 359) that would authorize the Secretary of Defense to provide optional summer school programs in the DOD dependent schools.

The House bill contained no similar provision.

The House recedes.

Review of military flight training activities at civilian airfields (sec. 383)

The Senate amendment contained a provision (sec. 360) that would require the Secretary of Defense to carry out a review of the present practices and procedures of the military departments in utilizing civilian airfields, especially such airfields located in heavily populated or urban areas, during the course of military flying training activities.

The House bill contained no similar provision.

The House recedes.

Preference for procurement of energy efficient electric equipment (sec. 384)

The Senate amendment contained a provision (sec. 363) that would require the Secretary of a military department or the head of a defense agency to provide a preference for the procurement of certain energy efficient electrical and refrigeration equipment for Defense Department contracts. The provision would also require the Secretary of Defense to conduct demonstration projects for the use of energy efficient electric lighting and refrigeration equipment at DOD facilities.

The House bill contained no similar provision.

The House recedes.

Payment of residents of the Armed Forces Retirement Home for services (sec. 385)

The conferees agree to a provision that authorizes the residents of the Armed Forces Retirement Home to hold part-time or intermittent jobs at the Home and to receive compensation for these services.

Assistance to local educational agencies that benefit dependents of members of the armed forces and Department of Defense civilian employees (sec. 386)

The Senate amendment contained a provision (Sec. 333) that would authorize a total of $58.0 million in fiscal year 1993 Defense Department funds for payments to local school districts which are impacted by military dependents. Of this total, $50.0 million would be authorized for assistance to eligible local educational agencies that operate schools that include students who are dependent children of members of the armed forces or civilian employees of the Department of Defense and who, while in attendance at such schools, reside on federal property. The provision would also authorize the Secretary of Defense to use $8.0 million, in consultation with the Secretary of Education, to make payments to local educational agencies eligible for payment under section 3 of Public Law 81-874 (20 U.S.C. 238) which are entitled to payments adjusted in accordance with subsection (e) of that section as a result of closures and realignments of military installations. Finally, the provision would require the Secretary of Defense, in consultation with the Secretary of Education, to submit a report to the Senate and House of Representatives on local educational agencies which are affected by base closings and realignments and by redeployments of U.S. military personnel not later than February 15 of each year from 1993 through 1995.

The House bill contained no similar provision.

The House recedes.

State equalization programs (sec. 387)

The Senate amendment contained a provision (sec. 1065) that would provide that any state whose program of state education aid was certified by the Secretary of Education for fiscal year 1988, but whose program was determined by the Secretary not to meet certain requirements for one or more fiscal years from 1989 through 1992 shall be deemed to have met these requirements for fiscal years 1989 through 1992.

The House bill contained no similar amendment.

The House recedes.

legislative provisions not adopted

Prohibition on use of funds to pay for certain patron services at commissary stores

The House bill contained a provision (sec. 311) that would prohibit the Department of Defense from using its funds to pay for bagger or similar patron services at a commissary store.

The Senate amendment contained no similar provision.

The House recedes.

Prohibition on management of commissary funds through the Defense Business Operations Fund

The House bill contained a provision (sec. 333) that would prohibit the inclusion of the Defense Commissary Agency in the Defense Business Operations Fund.

The Senate amendment contained no similar provision.

The House recedes. The conferees direct the Secretary of Defense to provide an annual report to the Congress on the appropriated fund and surcharge expenditures for commissaries of the Department of Defense.

Requirement of comparable offering from private contractor contracts and Department of Defense contracts for contracts offered for competition

The House bill contained a provision (sec. 344) that would require the Secretary of Defense, in offering for competition contracts for the performance of depot-level maintenance workloads, to offer contracts for the performance of workloads that are being performed by private contractors at least to the same extent as offers for contracts performed by depot-level activities of the Department of Defense.

The Senate amendment contained no similar provision.

The House recedes. The conferees believe that in offering for competition contracts for the performance of depot-level maintenance workloads, the Secretary concerned should make every effort to achieve a balance between workload being performed by private contractors and workload being performed by depot-level activities of the Department of Defense.

Reporting requirement for funding requests for support of sporting events

The House bill contained a provision (sec. 372) that would require the Secretary of Defense to submit a report prior to any request or expenditure of funds to support a sporting event such as the Olympics.

The Senate amendment contained no similar provision.

The House recedes. The conferees expect the Secretary of Defense to include future costs for DOD support for athletic events, including justification for such costs, in the Departments budget requests. The conferees also agree that, to the maximum extent practicable, acquisition of equipment by the Department of Defense to support athletic events in the United States should be usable for other missions of the Department of Defense, including support for other athletic events.

Requirement for identification of land on which no hazardous substances or petroleum products or their derivatives were stored, released, or disposed of

The Senate amendment contained a provision (sec. 314) that would amend section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to establish a mechanism to identify clean portions of closing military facilities that are listed on the national priority list (NPL). Once identified, these clean parcels of land could then be segregated and sold or otherwise transferred in advance of those portions of the closing military facilities that are listed on the NPL and that require environmental remediation prior to transfer.

The House bill contained no similar provision.

The Senate recedes.

Clarification of covenant warranting that remedial action has been taken

The Senate amendment contained a provision (sec. 315) that would amend section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify that for the purposes of subparagraph (B)(i) of section 120(h), remedial action has been taken if the construction and installation of an approved remedial design has been completed, and the Administrator of the Environmental Protection Agency has determined that the remedy is operating properly and successfully. This provision would allow the Department of Defense and the military Services to transfer land that has long-term remediation efforts in place, such as a system to pump and treat groundwater, but which has otherwise been successfully remediated.

The House bill contained no similar provision.

The Senate recedes.Requirement to notify states of certain leases

The Senate amendment contained a provision (sec. 316) that would amend section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 by adding a new section that would direct the head of a federal agency, including the Secretary of Defense, to notify the state in which military property is located 90 days in advance of the date such property is to be leased. This provision would apply only when any hazardous substance or any petroleum product or its derivatives was stored for one year or more, known to have been released or disposed of on the military property being transferred, and only to those facilities that are being closed.

The House bill contained no similar provision.

The Senate recedes.

Modification of contract indemnification authority

The Senate amendment contained a provision (sec. 319) that would broaden the scope of contracts, to include contracts for environmental restoration, for which the Secretary of a military department may indemnify contractors for third party claims or for loss of or damage to the contractors property arising from unusually hazardous activities under the contract, to include contracts for activities carried out under the defense environmental restoration program.

The House bill contained no similar provision.

The Senate recedes.

Impact aid

The Senate amendment contained a provision (sec. 334) that would maintain impact aid funding for school districts in communities affected by military base closings.

The House bill contained no similar provision.

The Senate recedes.

Purchase of items not exceeding $100,000

The Senate amendment contained a provision (sec. 356) that would authorize the Secretary of Defense to increase the threshold on purchases made with operation and maintenance (O&M) funds from $15,000 to $100,000.

The House bill contained no similar provision.

The Senate recedes. The conferees agree to consider any future proposals by the Department of Defense to increase the threshold on purchases made with O&M funds.

Madigan Army Medical Center

The Senate amendment contained a provision (sec. 364) that would authorize $150,000 of the funds authorized to be appropriated by title III for operation and maintenance, army for a program design and feasibility study to provide a residential program for military dependents with severe behavior disorders at Madigan Army Medical Center.

The House bill contained no similar provision.

The Senate recedes. The conferees agree to authorize $150,000 within the amount authorized for operation and maintenance, army in fiscal year 1993 for this study.

TITLE IV MILITARY PERSONNEL AUTHORIZATIONS

Legislative Provisions

legislative provisions adopted

End strengths for active forces (sec. 401)

The House bill contained a provision (sec. 401) that would authorize the active duty end strengths for each of the military Services requested in the Presidents budget for fiscal year 1993.

The Senate amendment contained a similar provision (sec. 401). The Senate provision would also prescribe officer end strengths as a subset of the active duty end strengths prescribed for each military Service for fiscal year 1993.

The House recedes. The authorized levels are shown below.

| $ ACTIVE DUTY END STRENGTHS Fiscal year 1992 planned1993 request and recommendation |  |  |
| --- | --- | --- |
|  |  |  |
| Army: |  |  |
| Total $40,700 $98,900 |  |  |
| Officer | 94,885 | 88,855 |
| Navy: |  |  |
| Total $51,400 $35,800 |  |  |
| Officer $9,395 $7,455 |  |  |
| Marine Corps: |  |  |
| Total | 188,000 | 181,900 |
| Officer | 19,065 | 18,440 |
| Air Force: |  |  |
| Total $86,800 $49,900 |  |  |
| Officer | 92,020 | 84,970 |
| Totals: |  |  |
| Total | 1,866,900 | 1,766,500 |
| Officer $75,365 $59,720 |  |  |

Active and reserve force structure and end strength reductions (sec. 402)

The Senate amendment contained a provision (sec. 402) that would authorize the Secretary of Defense to exceed the active duty end strengths prescribed in section 401, and to transfer funds for such purpose, to the extent he determines that such actions are necessary to avoid involuntary separations.

The House bill contained no similar provision.

The House recedes. The conferees note that this is the second year that the conferees have recommended this authority. For fiscal year 1992, the military Services have this authority in section 664 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) to avoid any involuntary separations.

General and flag officer joint requirements (sec. 403)

The Senate amendment contained a provision (sec. 405) that would authorize the Chairman of the Joint Chiefs of Staff to exclude up to eight general or flag officer positions designated as joint service requirements from the general and flag officer end strength ceilings established for fiscal year 1995 by section 403 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510). This authority would be temporary and effective for only three years.

The House bill contained no similar provision.

The House recedes with an amendment.

The amendment would increase to twelve the number of general and flag officers that may be excluded. The conferees note that the increase compensates for action taken elsewhere in this act that would obviate the realignment of four general and flag officer positions from other sources within the Department of Defense to the control of the Chairman of the Joint Chiefs of Staff.Study on general and flag officer requirements for joint positions (sec. 404)

The conferees recommend a provision that would require the Secretary of Defense to conduct a study of general and flag officer requirements for joint positions, and to report the results of the study along with appropriate recommendations to the Committees on Armed Services of the Senate and House of Representatives within one year of the enactment of this act.

End strengths for Selected Reserve (sec. 411)

The House bill contained a provision (sec. 411) that would restore to the Selected Reserve end strength 49,050 of the 115,997 reduction (including the Coast Guard Reserve) requested by the Department of Defense.

The Senate amendment contained a similar provision (sec. 411) that would restore to the Selected Reserve end strength 103,705 of the 115,997 reduction requested by the Department of Defense by reaffirming the Selected Reserve end strengths for each of the reserve components authorized for fiscal year 1993 in the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190). The Senate amendment would also prohibit any Selected Reserve force structure or unit reductions in fiscal year 1993, except for: (1) physical relocation of units which are the direct result of mandated base realignments and closures in fiscal year 1993; (2) the deactivation of reinforcing units of the Naval Reserve tied directly to a decommissioning of an active component unit in fiscal year 1993; and (3) the deactivation of an aviation unit which results directly from the phase-out of a weapons system from both the active and reserve components in fiscal year 1993.

The Senate recedes with an amendment. The authorized levels are shown below.

| $ FY 1992 programDOD request FY 1993Conference agreement |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| Army National Guard $31,200 $83,100 $22,725 |  |  |  |
| Army Reserve $01,840 $57,500 $79,615 |  |  |  |
| Naval Reserve | 142,611 | 125,800 | 133,675 |
| Marine Corps Reserve $2,400 $8,900 $2,315 |  |  |  |
| Air National Guard | 118,100 | 119,200 | 119,300 |
| Air Force Reserve | 83,396 | 82,200 | 82,300 |
| Coast Guard Reserve | 15,150 | 12,000 | 15,150 |
| Totals | 1,134,697 | 1,018,700 | 1,095,080 |

The conference agreement would further establish the fiscal year 1993 end strength authorization for each selected reserve component as a minimum, and authorize the Secretary concerned to breach this minimum by one-half of one percent if necessary in order to permit the early and timely release of individuals prior to the end of the fiscal year in order to avoid individual hardship.

End strengths for reservists on active duty in support of the reserve components (sec. 412)

The House bill contained a provision (sec. 412) that would increase the full-time manning of the reserve components by 2,389 over the budget request.

The Senate amendment contained a provision (sec. 412) that would reaffirm the reserve full-time support end strengths for each of the reserve components authorized for fiscal year 1993 in the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190).

The Senate recedes with an amendment. The authorized levels are shown below.

(PLEASE REFER TO ORIGINAL SOURCE FOR TABLE)

Reserve component force structure (sec. 413)

The House bill contained a provision (sec. 413) that would establish a force structure allowance of not less than 425,000 for the Army National Guard during fiscal year 1993.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would require the Secretaries of the military departments to prescribe a force structure allowance, or a number of units and positions allocated to those units, for each reserve component that is consistent with the authorized end strength for that component. The amendment would further require the Secretaries concerned to prescribe the force structure allowance in accordance with historical Services policies but, in no case, prescribe a force structure allowance for any component that is less than the authorized end strength for the particular component. With regard to unit reductions, the conferees expect that no medical or aviation units in any of the reserve components be eliminated in fiscal year 1993.

Authorization of student training loads (sec. 421)

The House bill contained a provision (sec. 421) that would authorize the military training student loads for each military Service and reserve component for fiscal year 1993.

The Senate amendment contained a similar provision (sec. 421).

The Senate recedes. The authorized levels are shown below.

Fiscal year 1993 Committee Recommendation

Service:

Army 85,475

Navy 51,371

Marine Corps 18,831

Air Force 33,164

DOD Agencies 4,740

Total 193,581

Reduction in recruiting personnel (sec. 431)

The Senate amendment contained a provision (sec. 564) that would require the Department of Defense to reduce the number of military personnel assigned to recruiting activities by 10 percent from the fiscal year 1992 level over two years. Individuals in positions that are eliminated would return to work in their primary specialties.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Navy craft of opportunity program (sec. 432)

The House bill contained a provision (sec. 534) that would direct the Secretary of the Navy to ensure that none of the end strength reductions projected for the Navy Reserve in this act include personnel authorizations assigned to the craft of opportunity (COOP) mission.

The Senate amendment contained no similar provision.

The Senate recedes.

Limitation on military personnel appropriation (sec. 433)

The Senate amendment contained a provision (sec. 431) that would limit the fiscal year 1993 appropriations for military personnel to $77.3162 billion.

The House bill contained no similar provision.

The House recedes with an amendment that would limit the fiscal year 1993 appropriations for military personnel to $76.311 billion.

Legislative provisions not adopted

Authority to increase or decrease authorized strengths

The Senate amendment contained a provision (sec. 403) that would authorize the Secretary of Defense, when he determines such action to be in the national interest, to increase and decrease the end strengths authorized for the active and reserve components by .5 percent and 2 percent, respectively.

The House bill contained no similar provision.

The Senate recedes.

Repeal of limitation on reductions in medical personnel

The Senate amendment contained a provision (sec. 404) that would repeal the current limitation on the reduction of medical personnel.

The House bill contained no similar provision.

The Senate recedes. The conferees believe that the two-year medical study mandated by the Congress in the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) should analytically address and make recommendations on the appropriate mix of active and reserve medical personnel. Until the Congress can take action on the recommendations of the study, the conferees believe that the active and reserve medical strengths of the military Services should not be reduced. In this regard, section 518 of this act would prohibit the Secretary of Defense from reducing medical personnel in the Selected Reserve below the number of such personnel in the Selected Reserve on September 30, 1992. The conferees note and endorse the discussion in the Senate report (S. Rept. 102-352) of the Senate provision with regard to the expected outcome of the medical study.

Limitation on the appropriation for permanent change of station

The Senate amendment contained a provision (sec. 563) that would limit appropriations for permanent change of station (PCS) moves to $2,863.11 million, or $150 million below the amended budget request for fiscal year 1993.

The House bill contained no similar provision.

The Senate recedes. The conferees endorse the intent of the Senate provision to reduce personnel turbulence and increase tour lengths in the military Services. In this regard, the conferees direct the Secretary of Defense to include in the justification material for the budget request for fiscal years 1994/1995 the actions being taken or that are planned within the Department of Defense to reduce personnel turbulence and increase tour lengths.

TITLE V MILITARY PERSONNEL POLICY

Legislative Provisions

legislative provisions adopted

Reference to personnel policy provisions in title XLIV (sec. 500)

This section cross-references transition benefit provisions that would normally appear in this title to the appropriate sections in title XLIV of this act.

Reports on plans for officer accessions and assignment of junior officers (sec. 501)

The Senate amendment contained a provision (sec. 521) that would require the Department of Defense to submit to the congressional defense committees a report on its plan for the procurement of officers, by source of commission, through fiscal year 1997. This provision would also require the Department of Defense to submit a report to the congressional defense committees on its plan for the assignment of officers entering on active duty, by source of commission, through fiscal year 1997.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Evaluation of effects of officer strength reductions on officer personnel management systems (sec. 502)

The Senate amendment contained a provision (sec. 522) that would require the Department of Defense to task an outside agency, such as a federally funded research and development center (FFRDC) with extensive manpower expertise, to conduct a complete review of the officer management plans of the military Services, and to make recommendations to the Department of Defense for appropriate changes to the Defense Officer Personnel Management Act (DOPMA).

The House bill contained no similar provision.

The House recedes with a technical amendment.

Submission of eligibility lists to selective early retirement boards (sec. 503)

The Senate amendment contained a provision (sec. 524) that would clarify the authority of the Secretary of a military department to exclude from eligibility lists provided to selective early retirement boards the names of officers who do not meet the eligibility criteria prescribed by the Secretary concerned. This provision would apply to the temporary, expanded selective early retirement authority provided to the Department of Defense at its request.

The House bill contained no similar provision.

The House recedes.

Temporary authority to adjust the tenure of limited duty officers in the Navy (sec. 504)

The Senate amendment contained a provision (sec. 525) that would temporarily authorize the establishment of maximum tenure points for limited duty officers (LDO) in the Navy: (1) for the grade of commander (O-5), 35 years of total active service or after twice failing of selection to the grade of captain (O-6), whichever occurs first; and (2) for the grade of captain (O-6), 38 years of total active service. This provision would expire on October 1, 1995.

The House bill contained no similar provision.

The House recedes.

Appointment of chiropractors as commissioned officers (sec. 505)

The House bill contained a provision (sec. 502) that would amend title 10, United States Code, to authorize the Secretary of Defense to appoint chiropractors as commissioned officers in the armed forces to provide chiropractic care within the military health care system.

The Senate amendment contained a similar provision (sec. 701).

The Senate recedes with a technical amendment.

Clarification of minimum service requirements for certain flight crew positions (sec. 506)

The House bill contained a provision (sec. 503) that would amend title 10, United States Code, to require reserve component members to complete a period of service obligation in an active status in the Selected Reserve.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would clarify that this provision applies to National Guard and Reserve members who have completed flight training in an active duty for training status.

Authority for temporary promotion of certain Navy lieutenants (sec. 507)

The House bill contained a provision (sec. 504) that would make permanent the authority for spot promotion of certain Navy lieutenants who possess skills for which a critical shortage exists and who are serving in positions designated to be held by lieutenant commanders. The current authorization expires on September 30, 1992.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would extend the current authorization for one year. The conferees believe that the continued need for this authority should be evaluated in the review of the defense officer management system mandated elsewhere in this statement of the managers.

Pilot program for active component support of reserves (sec. 511)

The House bill contained a provision (sec. 511) that would restructure the active Army support program for the reserve component required by sections 414 and 521 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) to make it a phased, integrated two-year test.

The Senate amendment contained no similar provision.

The Senate recedes. The conferees note and endorse the discussion of this provision in the House report (H. Rept. 102-527).

Repeal of requirement for removal of full-time reserve personnel from ROTC duty (sec. 512)

The House bill contained a provision (sec. 512) that would repeal section 559 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190), which prohibited active guard and reserve (AGR) personnel from being assigned to duty with a unit of the Reserve Officer Training Corps (ROTC) program.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would limit the number of AGR personnel assigned to ROTC duty to not more than 200 at any time.

Active Army combat support and combat service support billets (sec. 513)

The Senate amendment contained a provision (sec. 501) that would require the Army to realign the missions associated with the 19,000 combat support and combat service support spaces it retained in the active Army from deactivated units in Europe to the Army National Guard and Army Reserve as appropriate by the end of fiscal year 1993.

The House bill contained no similar provision.

The House recedes with an amendment. The amendment would strike the realignment of missions required in the Senate provision, and instead require the report on the structure and mix of active and reserve forces required by section 402 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) to include an assessment of the effect on combat readiness of realigning the missions as proposed in the Senate provision. The amendment would also modify the number of combat support and combat service support positions cited in the Senate provision from 19,000 to 13,700.

Preference in Guard and reserve affiliation for voluntarily separated members (sec. 514)

The House bill contained a provision (sec. 514) that would amend section 1150 of title 10, United States Code, as added by the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), to include voluntarily separated personnel as individuals who have preference for assignment to positions in the Selected Reserve. The House bill also contained another provision (sec. 703) that would address this subject.

The Senate amendment contained no similar provisions.

The Senate recedes with an amendment that would integrate the two House provisions.

Technical correction and codification of requirement of baccalaureate degree for appointment or promotion of reserve officers to grades above first lieutenant or lieutenant (junior grade) (sec. 515)

The House bill contained a provision (sec. 515) that would make a technical correction to section 523 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) to clarify that the section does not apply if the person was appointed to or federally recognized in the grade of captain or Navy lieutenant before October 1, 1995.

The Senate amendment contained no similar provision.

The Senate recedes.

Disability, retired, or severance pay for reserve members disabled while traveling to or from training (sec. 516)

The House bill contained a provision (sec. 516) that would authorize the payment of disability retired or severance pay to certain reserve members who were or who become disabled while travelling either to or from reserve training.

The Senate amendment contained no similar provision.

The Senate recedes.

Service credit for concurrent enlisted active duty service performed by ROTC members while in the Selected Reserve (sec. 517)

The House bill contained a provision (sec. 517) that would authorize ROTC members who are concurrently members of the Selected Reserve to receive credit for active service for any period of enlisted service on active duty other than for training after July 31, 1990.

The Senate amendment contained no similar provision.

The Senate recedes. The conferees note that this provision would provide for the equitable treatment of individuals who were activated in their Selected Reserve positions. The situation addressed by this provision would not have occurred had these individuals not been in a dual status. The conferees question the advisability of continuing the simultaneous membership program. In this regard, the conferees direct the Secretary of Defense to evaluate the simultaneous membership program to determine if it should be continued, and to report the results of the evaluation to the Committees on Armed Services of the Senate and House of Representatives by April 1, 1993. The report shall include a summary of actions that have been taken or are planned on the basis of the evaluation. Limitation on reduction in number of medical personnel in the National Guard and reserves (sec. 518)

The Senate amendment contained a provision (sec. 502) that would prohibit the Secretary of Defense from reducing the number of medical personnel in the Army National Guard and Army Reserve below the number of such personnel in those components on September 30, 1992.

The House bill contained no similar provision.

The House recedes with an amendment that would expand the coverage of this provision to all components of the Selected Reserve.

One-year extension of certain reserve officer management programs (sec. 519)

The House bill contained a provision (sec. 513) that would extend, from September 30, 1992 to September 30, 1993, the authorities for: (1) the appointment of a person as a reserve officer in the medical corps with credit applied for education and experience in determining the grade to which the person will be appointed; (2) the promotion of certain reserve officers serving on active duty who would have been otherwise promoted but for the fact they were serving on active duty; and (3) the use of professional credit by certain officers of the reserve components in the computation of years of service for the transfer of such officers to the retired service.

The Senate amendment contained a similar provision (sec. 503).

The House recedes with a clarifying amendment.

Modification of the reenlistment eligibility of certain former reserve officers (sec. 520)

The Senate amendment contained a provision (sec. 504) that would modify current reenlistment eligibility criteria to deny reenlistment to those reserve officers who are discharged or released from active duty for misconduct, moral or professional dereliction, duty performance below standards for the grade held, or retention being inconsistent with the interests of national security. The provision would also deny reenlistment in those cases in which an officers former enlisted status and grade were based only on participation in a precommissioning program that led to the commission from which the individual was released or discharged.

The House bill contained no similar provision.

The House recedes.

Military service academies (secs. 521-524)

The Senate amendment contained six provisions (secs. 511-516) that would effect certain efficiencies in the operation of the military service academies. The rationale for these provisions is contained in the report by the Senate Armed Services Committee on the National Defense Authorization Act for Fiscal Year 1993 (S. Rept. 102-352). The Senate provisions are discussed below.

Section 511 would require that no more than one two-star general or flag officer may be assigned to each of the military service academies.

Section 512 would require the Secretary of Defense to submit a plan to the Committees on Armed Services of the Senate and House of Representatives by April 1, 1993 for implementing the recommendations of the March 1992 report by the General Accounting Office (GAO) on the academy preparatory schools.

Section 513 would require the Secretary of Defense to submit legislation by April 1, 1993 to conform faculty staffing at the United States Military Academy (USMA) and the United States Air Force Academy (USAFA) to the faculty staffing at the United States Naval Academy (USNA) (50/50 military/civilian mix), and to phase out the assignment of permanent military professors at the USMA and USAFA.

Section 514 would prescribe that no appropriated funds may be used after April 1, 1993 to pay for enlisted bands at the military service academies.

Section 515 would prescribe that no appropriated funds may be used after April 1, 1993 to pay non-instructional military staff at the military service academies in positions that are not certified by the DOD Inspector General (DODIG) as directly involved in the administration of students and faculty or maintenance of facilities at these institutions.

Section 516 would place staff supervision of the military academies under the training and education commands of the military services (Army Training and Doctrine Command, Naval Education and Training Command, and Air Training Command).

The House bill contained no similar provisions.

The House recedes with an amendment.

With regard to the Senate provision limiting the number of general and flag officers that may be assigned to the military service academies (sec. 511), the amendment would instead repeal the minimum grade requirements in statute for general and flag officer positions at the military service academies. The amendment is intended to provide the Secretary of Defense the authority and flexibility to evaluate and establish uniform standards for designating general and flag officer positions at the military service academies. The conferees note and endorse the intention of the Air Force to realign one of the three general officer positions at the USAFA.

With regard to the Senate provision on the military service academy preparatory schools (sec. 512), the conferees agree that the Secretary of Defense should consider efficiencies in the operation of these schools, such as those recommended by the General Accounting Office, and consistent with other principles of organizational and management efficiency. The conferees note that the military academies are planning actions to effect efficiencies in this area, and expect the Secretary of Defense to coordinate and follow through on these plans.

With regard to the Senate provision requiring the Secretary of Defense to submit legislation to conform the civilian-military faculty mix at the USMA and the USAFA to that at the USNA, and to phase out the assignment of permanent military professors at these institutions (sec. 513), the amendment would instead require the Secretary of Defense to submit recommended legislation for increasing the number of civilian faculty and reducing the number of military faculty at the USMA and the USAFA. The amendment would also provide the USMA and USAFA the same civilian hiring flexibility that currently is authorized for the USNA.

With regard to the Senate provision that would phase out the enlisted bands at the military service academies (sec. 514), the conference agreement would drop the Senate provision. However, the conferees direct the Secretary of Defense to submit a report to the Committees on Armed Services by April 1, 1993, on a broader evaluation of the overall structure and organization of military bands. The conferees note that there are 93 military bands, 49 of which are in the Army. These bands cost nearly $200 million annually to operate. The conferees recognize the valuable function of military bands, both in the military and civilian communities, and do not propose their complete elimination. However, the conferees believe that efficiencies in the structure and organization of bands can and should be achieved as defense resources are reduced. For example, cadets and midshipmen at the military service academies could be encouraged to form their own bands to help reduce reliance on active duty resources (there are 98 active duty band members at the USMA), and the National Guard and reserve components could be assigned more responsibility for part-time support in this area.

With regard to the Senate provision that would prohibit the use of appropriated funds for non-instructional staff at the military service academies that are not certified by the DODIG as directly involved in the administration of students and faculty or maintenance of facilities at the military service academies (sec. 515), the amendment would instead require the DODIG to conduct a management audit of the non-instructional staff at the military service academies, and the Secretary of Defense to report the results of the audit and the actions taken on the basis of the audit to the Committees on Armed Services of the Senate and House of Representatives by June 1, 1993. The conferees believe that efficiencies can and should be achieved in this area.

With regard to the Senate provision that would place the staff supervision of the military service academies under the training and education commands of the military services (sec. 516), the conference agreement would drop the Senate provision. However, the conferees expect the Secretary of Defense to review current oversight procedures and to promulgate a regulation which provides for the uniform oversight and management of the military service academies and to submit a copy of that regulation to the Committees on Armed Services of the Senate and House of Representatives by June 1, 1993.

Authority of the United States Military Academy to confer the degree of master of arts in leadership development (sec. 525)

The House bill contained a provision (sec. 532) that would authorize the Superintendent of the United States Military Academy (USMA) to confer the degree of master of arts in leadership development on a maximum of 20 graduates annually of that program who have fulfilled the requirements for the degree.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would authorize the Superintendent of the USMA to confer the degree of master of arts in leadership development only on those officers who have successfully completed the course of instruction devised by the USMA for this purpose, to include those officers who are enrolled in the course of instruction on the date of enactment of this act.

Report on prohibition on participation of reserve personnel in Air Force pilot training courses (sec. 531)

The House bill contained a provision (sec. 521) that would prohibit Air Force Reserve and Air National Guard pilot candidates from attending undergraduate pilot training (UPT) conducted by the active Air Force.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would strike the House provision, and instead require that no additional National Guard or Air Force Reserve personnel may be scheduled for UPT until a report is submitted to the Committees on Armed Services of the Senate and House of Representatives by the Secretary of Defense on the necessity for continuing the input of National Guard and Air Force Reserve personnel into UPT. The conference agreement would allow National Guard and Air Force Reserve personnel scheduled for UPT on the date of enactment of this act to complete processing for and to enter UPT if qualified.

ROTC scholarships for National Guard (sec. 532)

The House bill contained a provision (sec. 522) that would amend title 10, United States Code, to designate 100 financial assistance programs to be awarded by the Chief, National Guard Bureau, for students that will be required to serve in the Army National Guard after being appointed as commissioned officers. The House provision would require that such students attend military universities, military junior colleges, or state universities within the state of their residence. The House provision would also require that such students be prohibited from serving on active duty other than for training, unless called to active duty with their Army National Guard Selected Reserve unit, or as an individual filler in support of a contingency operation.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would require the Secretary of the Army, instead of the Chief of the National Guard Bureau, to implement this program consistent with the standards for the active duty program and with appropriate consideration for the geographic dispersion of such scholarships. The amendment would also designate 50 of the 100 scholarships for 2-year programs.

Junior reserve officers training corps program (sec. 533)

The House bill contained a provision (sec. 523) that would amend title 10, United States Code, to allow students above the eighth grade, regardless of age, and aliens lawfully admitted to the United States for permanent residence, to be counted when determining whether a Junior ROTC program has the minimum number of students required to remain active. The House provision would also remove the ceiling on instructor pay, but continue existing limits on Department of Defense obligations for instructor salaries.

The Senate amendment contained a similar provision (sec. 565) that would: (1) codify the purpose of the Junior ROTC programs of the military Services; (2) permit these programs to be expanded in number from 1,600 to 3,500; and (3) authorize the Secretary of a military department to pay a participating institution the difference between an instructors military retired pay and the instructors normal pay if on active duty in those instances determined by the Secretary concerned to be in the national and community interest.

The House recedes with an amendment. The amendment would combine the House and Senate provisions, and also specify that the authority for the Secretary of a military department to pay the participating institutions portion of instructor pay should be limited to institutions in educationally and economically disadvantaged areas.

Retention on active duty of enlisted members within two years of eligibility for retirement (sec. 541)

The Senate amendment contained a provision (sec. 561) that would provide the same tenure protection to enlisted members that is afforded under current law to officers who have completed 18 but less than 20 years of active duty for retirement eligibility purposes.

The House bill contained no similar provision.

The House recedes.

Authority for military school faculty members and students to accept honoraria for certain scholarly and academic activities (sec. 542)

The House bill contained a provision (sec. 531) that would establish more appropriate guidelines governing the acceptance of honoraria for an appearance, speech, or article by students and faculty of Department of Defense educational institutions.

The Senate amendment contained no similar provision.

The Senate recedes.

Payment for leave accrued and lost by Korean conflict prisoners of war (sec. 543)

The House bill contained a provision (sec. 533) that would ensure that the Department of Defense has the authority to pay, from appropriations available for the current fiscal year, deserving former Korean conflict prisoners of war for leave actually accrued and lost while a prisoner of war.

The Senate amendment contained no similar provision.

The Senate recedes.

Military reserve technicians (sec. 544)

The House bill contained a provision (sec. 1301) that would require the Secretary of Defense to implement a program that would provide priority consideration to certain involuntarily separated military reserve technicians for positions in the competitive service within the Department of Defense.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Air Reserve technicians (sec. 545)

The House bill contained a provision (sec. 535) that would direct the Secretary of the Air Force to carry out the high-year tenure (HYT) program of the Air Force Reserve so as not to require the removal of an Air Reserve technician from active status as a reservist before attaining age 60 in the case of any technician who has a total of not less than 33 years of active duty and reserve military service before January 1, 1992, and who is otherwise qualified for retention as an Air Reserve technician.

The Senate amendment contained no similar provision.

The Senate recedes.

Mental health evaluations of members of armed forces (sec. 546)

The House bill contained a provision (sec. 536) that would require the Secretary of Defense and the Secretary of Transportation, with respect to the Coast Guard, to prescribe regulations regarding mental health evaluations of members of the armed forces. The House provision would specify that the regulations shall cover procedures for outpatient and inpatient evaluations; member rights; procedures for emergency or involuntary inpatient evaluations; and a prohibition against the use of referrals for mental health evaluations to retaliate against whistleblowers.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

Report on the Selective Service System (sec. 547)

The Senate amendment contained a provision (sec. 1064) that would require the Secretary of Defense, in consultation with the Director of the Selective Service System, to submit a report through the President to Congress on the continued requirement for registration under the Selective Service System.

The House bill contained no similar provision.

The House recedes.

legislative provisions not adopted

Repeal of requirement concerning initial commissioning of officers

The House bill contained a provision (sec. 501) that would repeal section 501 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190), which mandates that all commissioned officers appointed after September 30, 1996 be initially appointed in a reserve component on active duty for a minimum of one year.

The Senate amendment contained no similar provision.

The House recedes.

Requirement for test assignments of female service members to certain combat positions

The Senate amendment contained a provision (sec. 523) that would modify the authority provided by section 550 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) for the Department of Defense to conduct test assignments of women to combat positions. The provision would require the Department of Defense to include in such tests at a minimum the assignment of women to combat aircraft in each of the military Services.

The House bill contained no similar provision.

The Senate recedes.

Teacher certification credit for military experience

The Senate amendment contained a provision (sec. 532) that would require the Secretary of Defense to develop uniform standards and procedures for the granting of appropriate credit for servicemembers under state teacher certification and licensing procedures. The provision would also require the Secretary to coordinate with appropriate state agencies to encourage the adoption of such standards and procedures by the states.

The House bill contained no similar provision.

The Senate recedes. However, certain of the requirements contained in the Senate provision would be incorporated into the conference agreement on teacher and teachers aide placement programs for separating servicemembers.

Limitation on enlisted aides

The Senate amendment contained a provision (sec. 562) that would reduce the current statutory ceiling on enlisted aides from 300 to 240, consistent with the 20 percent reduction in general and flag officers mandated in the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510). The provision would also limit the assignment of enlisted aides only to personnel who occupy command positions.

The House bill contained no similar provision.

The Senate recedes. The conferees expect the Secretary of defense to review the current practices and numbers with regard to the assignment of enlisted aides, and to report the results of the review to the Committees on Armed Services of the Senate and House of Representatives by April 1, 1993. The conferees expect the review to consider the existing limit on the number of enlisted aides that are authorized and the overall reduction in the number of general and flag officers. In this regard, the conferees expect the Committees on Armed Services to consider and take appropriate action on the recommendations of the Department of Defense in this area next year.

Reserve Forces Policy Board

The conferees note that the Reserve Forces Policy Board (RFPB) celebrates its 40th anniversary this year. The RFPB was created by an act of Congress in 1952 to provide policy advice to the Secretary of Defense on matters relating to the reserve components of the military Services. The RFPB role during the Cold War years was instrumental in assisting the Department of Defense in creating a credible, ready, reserve force, particularly after the advent of the Total Force Policy. The RFPB function today is no less important. The debate on the size, roles, missions, and ultimate disposition of the reserve components of the future must be conducted utilizing the experience and expertise of those who have served in and with those forces. The conferees believe that the RFPB should continue to perform the essential function with direct access to the top leadership in the Department of Defense.

TITLE VI COMPENSATION AND OTHER PERSONNEL BENEFITS

Legislative Provisions

legislative provisions adopted

Reference to compensation and other personnel benefits in title XLIV (sec. 600)

This section cross-references compensation and other benefit provisions relating to the defense drawdown that would normally appear in this title to the appropriate sections in title XLIV of this act.

Authority to waive repayment of advance pay received incident to an authorized or ordered evacuation (sec. 602)

The Senate amendment contained a provision (sec. 614) that would authorize the Secretaries of the military departments to waive the recovery of up to one months advance pay made to single or unaccompanied military personnel who drew an advance incident to an authorized or ordered evacuation. Current law allows such waivers for accompanied personnel only. This provision would recognize that single and unaccompanied members, like accompanied members, may also suffer consequences of such an evacuation that would make recovery of the advance pay received against equity and good conscience or against the public interest.

The House bill contained no similar provision.

The House recedes. The conferees expect the Department of Defense to apply this provision to military personnel affected by Hurricane Andrew as appropriate.

Clarification of authority to provide special pay for nonphysician health care providers (sec. 611)

The House bill contained a provision (sec. 611) that would expand section 302(c) of title 37, United States Code, to include chiropractors within the definition of nonphysician health care providers authorized special pay. The provision is a companion to another House provision (sec. 507), which would authorize chiropractors to be commissioned in the armed forces.

The Senate amendment contained no similar provision.

The Senate recedes.

Extension of expiring authorities for certain bonuses and special pay (sec. 612)

The House bill contained a provision (sec. 612) that would extend from September 30, 1992 to September 30, 1993, the authorities for: (1) a reenlistment bonus for active members; (2) an enlistment bonus for members in critical skills; (3) an aviator retention bonus; (4) enlistment and reenlistment bonuses for reserve members; (5) special pay for enlisted members of the Selected Reserve assigned to high priority units; (6) education loans for certain health professionals who serve in the Selected Reserve; (7) an accession bonus for registered nurses; (8) a nurse candidate accession program; and (9) special pay for nurse anesthetists.

The Senate amendment contained a similar provision (sec. 603).

The Senate recedes with a technical amendment.

Temporary increase in the number of days a member may be reimbursed for temporary lodging expenses (sec. 621)

The House bill contained a provision (sec. 621) that would authorize the Secretaries of the military Services to extend the period of time from four to ten days for which subsistence expenses may be paid or reimbursed for a change of permanent station to a geographical area determined by that Secretary to be affected by the withdrawal of U.S. forces from overseas base realignments and closures, or the restructuring or deactivation of units. This authority would extend through September 30, 1997.

The Senate amendment contained no similar provision.

The Senate recedes.

Prohibition on the asserting of liens on personal property being transported at government expense (sec. 622)

The Senate amendment contained a provision (sec. 613) that would prohibit transporters from asserting liens on the personal property of military personnel while such property is being transported at government expense. This provision would protect military personnel from liens or detainment of household goods, unaccompanied baggage, and privately owned vehicles due to carrier disputes.

The House bill contained no similar provision.

The House recedes.

Subsistence reimbursement for escorts of foreign arms control inspectors (sec. 623)

The Senate amendment contained a provision (sec. 619) that would authorize reimbursement for subsistence costs incurred by U.S. military personnel accompanying foreign arms control inspectors in the United States for monitoring on-site inspections provisions of arms control treaties and agreements.

The House bill contained no similar provision.

The House recedes.

Amendment to reflect change in name of the Military Airlift Command to the Air Mobility Command for travel and transportation (sec. 624)

The Senate amendment contained a provision (sec. 618) that would make a technical change to section 404 of title 37, United States Code, to reflect the change in the name of the Military Airlift Command to the Air Mobility Command.

The House bill contained no similar provision.

The House recedes.

Evacuation allowance in connection with Hurricane Andrew (sec. 625)

The conferees recommend a provision that would remove legal impediments to the payment of evacuation allowances to military personnel, federal civilian personnel, and certain military dependents who were evacuated as a result of Hurricane Andrew.

Concurrent receipt of military retirement pay and veterans disability pay (sec. 641)

The Senate amendment contained a provision (sec. 611) that would require the Department of Defense to: (1) submit legislation that would permit the concurrent receipt of military retired pay and veterans disability compensation pay, or another formula to accomplish this end; and (2) set aside sufficient amounts in its legislative contingency fund to pay for the enactment of such legislation in fiscal year 1994.

The House bill contained no similar provision.

The House recedes with an amendment.

The amendment would strike the Senate provision and instead require the Secretary of the Defense to submit to the Committees on Armed Services of the Senate and House of Representatives a report on alternative approaches to permit the concurrent payment to military retirees of military retired pay and veterans disability compensation. The conferees direct the Congressional Research Service (CRS) of the Library of Congress to provide a report to the Committees on Armed Services by April 1, 1993 on programs which currently have offsets similar to the offset made between military retired pay and VA disability compensation, or where the beneficiary is required to choose between benefits earned during the same chronological time period, e.g., Civil Service Retirement and Federal Employment Compensation Act. The study should include, but not be limited to the following programs:

(1) Military survivors benefits/dependency and indemnity compensation

(2) Federal civil service retirement/federal employment compensation

(3) Railroad retirement/workers compensation

(4) Social Security/workers compensation

(5) Federal civil service disability/Federal Employment Compensation Act/state and local government disability programs

The Congressional Research Service (CRS) study should further address the question of how the current policy of offsetting military retired pay and VA disability compensation, as it relates to military retirees, compares to other federal beneficiaries affected by similar policies. The study should also estimate the budgetary impact of removing such policies throughout the federal government.

Amendment of computation of retired pay for certain enlisted members credited with extraordinary heroism (sec. 642)

The Senate amendment contained a provision (sec. 615) that would make a technical change to section 1402 of title 10, United States Code. The provision would permit enlisted members who are entitled to an increase in retired pay because of extraordinary heroism to retain this entitlement in the event their retired pay is later recomputed for additional active service.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Survivor Benefit Plan open enrollment (sec. 643)

The House bill contained a provision (sec. 654) that would amend section 1405 of the Military Survivor Benefits Improvement Act of 1989 (Public Law 101-189).

The Senate amendment contained no similar provision.

The Senate recedes.

Provision of temporary foster care services outside the United States for children of the armed forces (sec. 651)

The House bill contained a provision (sec. 651) that would amend chapter 53 of title 10, United States Code, to authorize the Service Secretaries involved to expend appropriated funds for expenses related to providing necessary foster care in overseas areas where public, tax-supported services are not available for children of members of the armed forces.

The Senate amendment contained no similar provision.

The Senate recedes.

Reimbursement for adoption expenses (sec. 652)

The Senate amendment contained a provision (sec. 612) that would modify the adoption reimbursement benefit authorized by section 651 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) to provide the broader benefit coverage authorized in the original test program by section 638 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100-180). The broader coverage would be retroactive to the date of the expiration of the test program.

The House bill contained no similar provision.

The House recedes with an amendment that would provide reimbursement for adoption expenses under the program adopted last year.

Protection for dependent victims of abuse by members of the armed forces (sec. 653)

The Senate amendment contained a provision (sec. 1070) that would provide annuity protection for spouses and former spouses of members losing eligibility for retired pay as a result of abuse of a dependent. The provision would also entitle such individuals to benefits on the same basis as a dependent of a retired member of the armed forces.

The House recedes with an amendment that would align the benefits and procedures authorized in this section with the benefits provided to former spouses under the Uniformed Services Former Spouses Protection Act.

legislative provisions not adopted

Modification of CHAMPUS reform initiative contract

The House bill contained a provision (sec. 633) that would direct the Secretary of Defense to issue a modification to the request for proposals (RFP) for the new CHAMPUS reform initiative (CRI) contract in California and Hawaii to more closely reflect the beneficiary cost-sharing requirements included in the current CRI contract in operation in those two states.

The Senate amendment contained no similar provision.

The House recedes. The conferees note that the Department of Defense has recognized the wisdom of the House provision, and has implemented it.

Reproductive health services

The House bill contained a provision (sec. 637) that would entitle military personnel and their dependents to reproductive health services in a medical facility of the uniformed services outside the United States on a reimbursable basis.

The Senate amendment contained a similar provision (sec. 715).

The conferees agree to exclude this provision. The Senate has passed a bill (S. 3144) which contains this provision. The House intends to pass this bill and send it to the President as soon as possible.

Educational assistance for graduate programs for members of the Selected Reserve

The House bill contained a provision (sec. 642) that would amend title 10, United States Code, to permit Selected Reserve participants in the Montgomery G.I. Bill to pursue graduate level course work, subject to available appropriations.

The Senate amendment contained no similar provision.

The House recedes.

Survivor Benefit Plan annuity

The House bill contained a provision (sec. 653) that would provide an annuity under the Survivor Benefit Plan to Charlotte S. Neal, of Lynchburg, Virginia, former wife of the late Lieutenant Commander Michael D. Christian, United States Navy (Retired).

The Senate amendment contained no similar provision.

The House recedes.

Eligibility for retired pay for non-regular service

The Senate amendment contained a provision (sec. 617) that would authorize certain personnel who were members of a reserve component or other non-regular component of the armed forces before August 16, 1945, and who completed 20 or more years of qualifying service on or after that date, to be eligible for retired pay. Such eligibility would begin on the date of enactment of this provision.

The House bill contained no similar provision.

The Senate recedes.

Services provided by the Defense Accounting and Finance Service

The conferees note that the Senate report (S. Rept. 102-352) directed the General Accounting Office to conduct an audit of the Defense Accounting and Finance Service (DFAS). The conferees expect the audit to include an assessment of the adequacy of services provided to all segments of the DFAS customer base (active, reserve, retired and other customers), and an evaluation of plans to implement the defense joint military pay system and the defense retiree annuitant pay system. The conferees are interested in whether or not these systems will result in broader, improved services to customers.

TITLE VII HEALTH CARE PROVISIONS

Legislative Provisions

legislative provisions adopted

Reference to health care services in title XLIV (sec. 700)

This section cross references health care provisions relating to the defense drawdown that would normally appear in this title to the appropriate sections in title XLIV of this act.

CHAMPUS dental health care benefits (sec. 701)

The Senate amendment contained a provision (sec. 702) that would authorize $80.0 million for the Department of Defense to design and implement an improved dental health care benefit for military dependents under the CHAMPUS program. This provision would also prescribe an increase in the monthly premium limit from $10 to $20, and authorize the Department of Defense to prescribe higher deductibles for orthodontic services, crowns, gold fillings, bridges, or complete or partial dentures.

The House bill contained no similar provision.

The House recedes with an amendment. The amendment would: (1) authorize the Secretary of Defense to reduce premiums for enlisted members in the E-1 through E-4 grades; (2) strike the statutory dollar limit on this program; (3) establish an April 1, 1993 effective date; (4) provide flexibility to the Secretary of Defense to add additional covered services; and (5) authorize $50.0 million for implementation of this program in fiscal year 1993.

Pharmaceutical drug benefit (sec. 702)

The Senate amendment contained a provision (sec. 705) that would require the creation and phase-in of a mail-service pharmaceutical drug benefit for members of the military community (active duty members and their dependents, retirees, and survivors). The benefit would initially be phased-in in at least two multi-state areas within 18 months. A report to Congress, prior to full implementation, would be made within 24 months of enactment of this act. In addition, the Senate amendment would require the implementation of a demonstration project to supply prescription pharmaceuticals to eligible persons through a managed care network of community retail pharmacies. The benefit would initially be carried out in regions that consisted of at least two multi-state areas.

The House bill contained no similar provisions.

The House recedes with an amendment.

The amendment would require that the managed care network of community retail pharmacies become a part of all managed health care programs awarded or renewed after January 1, 1993.

In establishing this program, the conferees recommend that the Secretary of Defense take advantage of the latest technologies found in civilian managed care networks utilizing community retail pharmacies and other government programs, such as a point-of-sale electronic claims management system for the purpose of performing on-line, real-time eligibility verification, claims data capture, and adjudication and payment of claims. The conferees believe such service will be important to the efficient and effective management of the new managed care network of community retail pharmacies.

Maximum annual amount for deductibles and co-payments (sec. 703)

The Senate amendment contained a provision (sec. 707) that would lower the existing CHAMPUS catastrophic cap for retirees and their dependents from $10,000 to $7,500.

The House bill contained no similar provision.

The House recedes.Comprehensive individual case management program under CHAMPUS (sec. 704)

The House bill contained a provision (sec. 639) that would permit payment of comprehensive home health services under CHAMPUS, where cost-effective and appropriate. The provision would also put in place a case management system to coordinate utilization of health services.

The Senate amendment contained a similar provision (sec. 709).

The House recedes with a technical amendment.

The conferees believe the case management program is the best approach to address the need of beneficiaries for whom regular CHAMPUS benefits are limited by the custodial care exclusion and other restrictions contained in the law and CHAMPUS regulations.

Medical and dental care for certain incapacitated dependents (sec. 706)

The Senate amendment contained a provision (sec. 714) that would provide medical and dental coverage under CHAMPUS to unmarried children who are incapable of self-support because of a mental or physical incapacity and who become the dependents of a member or former member.

The House bill contained no similar provision.

The House recedes with an amendment. The amendment would limit the coverage of this provision to dependents who are under 23 years of age, enrolled in a full-time course of higher learning, and mentally or physically incapacitated.

National claims processing center study (sec. 711)

The Senate amendment contained a provision (sec. 712) that would establish a national claims processing system for CHAMPUS, to be fully implemented within five years. This national system would facilitate the electronic transmission of claims and billing functions throughout CHAMPUS.

The House bill contained no similar provision.

The House recedes with an amendment. The amendment would specify that the system could be procured through single or multiple contracts, and permit the procurement to proceed on a unitary or incremental basis. It would extend the time period for full implementation from five to seven years.

Conditions on expansion of CHAMPUS reform initiative to other locations (sec. 712)

The House bill contained a provision (sec. 634) that would prohibit the expansion of the CHAMPUS reform initiative beyond its current boundaries of California and Hawaii, except in base closure areas, until at least 90 days after the Secretary of Defense certifies that such expansion is the most cost-effective option to providing care in the expansion areas. The House provision would require that, not later than 30 days after the Secretary submits his certification, the General Accounting Office (GAO) and the Congressional Budget Office (CBO) shall jointly submit a report evaluating the certification.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would clarify the intent of the conferees that the evaluation of any future expansion of the CRI to other locations should also include considerations of accessibility and quality of care.

Alternative health care delivery methodologies (sec. 713)

The Senate amendment contained a provision (sec. 713(a) and (b)) that would require the Department of Defense to make a number of modifications to the coordinated care program. This provision would extend the life of the current CHAMPUS reform initiative demonstration in California and Hawaii, and require the contract to be submitted to a competitive process.

Additionally, this provision would require the Department to continue to test a broad array of military health reform options for the next four years. This should include, but not be limited to, the Department of Defenses CHAMPUS reform initiative, CHAMPUS, and the catchment area management and coordinated care program.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Managed health care network for Tidewater region of Virginia (sec. 714)

The House bill contained a provision (sec. 635) that would reaffirm section 712(b) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) directing the Defense Department to undertake a managed health care program, not later than September 30, 1992, in the Tidewater region of Virginia based on the catchment area management (CAM) demonstration project underway in a number of locations, including Charleston, South Carolina.

The Senate amendment contained no similar provision.

The Senate recedes.

Positive incentives for coordinated care program (sec. 715)

The House bill contained a provision (sec. 636) that would direct the Secretary of Defense to modify the "Policy Guidelines on the Department of Defense Coordinated Care Program," issued by the Assistant Secretary of Defense for Health Affairs on January 8, 1992, to provide incentives or "carrots" to beneficiaries of the military health care system who enroll in the coordinated care program. These incentives would include a reduction in CHAMPUS deductibles and co-payments; reduced cost-sharing requirements for primary care; and the expansion of benefits currently authorized under the CHAMPUS program.

The Senate amendment contained a similar provision (sec. 713(c)).

The Senate recedes with a technical amendment.

Managed-care delivery and reimbursement model (sec. 716)

The House bill contained a provision (sec. 640) that would exempt the participation agreement negotiated between a uniformed services treatment facility and the Secretary of Defense from the Federal Acquisition Regulations required by the Office of Federal Procurement Policy Act (41 U.S.C. 4219c)).

The Senate amendment contains no similar provision.

The Senate recedes.

Correction of omission in delay of increase of CHAMPUS deductibles related to Operation Desert Storm (sec. 721)

The House bill contained a provision (sec. 632) that would correct the inadvertent exclusion of dependents of members who served and were killed in the Persian Gulf war, members who served in the Persian Gulf war and subsequently died, or members who served in the Persian Gulf war and subsequently retired, from receiving the authorized delay in the increase of the CHAMPUS outpatient deductible for CHAMPUS beneficiaries for care provided on or after April 1, 1991. Section 712 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) authorized an increase in the CHAMPUS outpatient deductible which was then delayed until October 1, 1991 by the Persian Gulf Supplemental Authorization and Personnel Benefits Act of 1991 (Public Law 102-25).

The House provision would also authorize the Secretary of Defense to provide reimbursement or credit against future deductible requirements for the affected beneficiaries.

The Senate amendment contained no similar provision.

The Senate recedes.

Military health care for persons reliant on health care facilities at bases being closed and realigned (sec. 722)

The Senate amendment contained a provision (sec. 704) that would require the Department of Defense to solicit input from the active duty dependents and retirees and their survivors who will be affected by the closure or realignment of a base that houses a military treatment facility at which they receive their health care.

The House bill contained no similar provision.

The House recedes. The conferees are concerned about reports that in some areas in which a base is being closed or realigned, the Department is closing the base health care facility prior to closure or realignment of the base, and prior to implementing a managed care delivery system or contracting with a health insurance plan to provide needed services to beneficiaries. Failure to implement a managed care alternative in a timely fashion could increase the cost of medical care to the Department in these areas. Additionally, the access of beneficiaries to entitled care is threatened. The conferees believe the Department has an obligation to implement a replacement health care delivery system or contract with a health insurance plan before closing a base health care facility.

Comprehensive study of the military medical care system (sec. 723)

The Senate amendment contained a provision (sec. 711) that would require, as part of the study mandated by section 733 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190), the federal employee health benefits program to be studied to determine whether designing a similar program for military dependents and retirees would be cost-effective and provide for the health coverage needs of dependents and retirees (including those over age 65).

The House bill contained no similar provision.

The House recedes.

Annual beneficiary survey (sec. 724)

The Senate amendment contained a provision (sec. 706) that would require the Department of Defense to conduct an annual, formal satisfaction survey of those utilizing the military medical system.

The House bill contained no similar provision.

The House recedes.

Risk-sharing contract study (sec. 725)

The Senate amendment contained a provision (sec. 710) that would require the Secretary of Defense, in consultation with the Secretary of Health and Human Services, to study the feasibility and develop an implementation plan for a demonstration project to track the current Medicare managed care risk contract.

The House bill contained no similar provision.

The House recedes.

Sense of Congress regarding health care policy for the uniformed services (sec. 726)

The Senate amendment contained a provision (sec. 703) that would express the sense of Congress regarding the current and future direction of the military health care system.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Preemption

The conferees believe the advent of contracting for managed care services within the Department of Defense health care system is a positive step toward assuring both government and military beneficiaries cost-effective, quality-controlled programs for health care delivery. The conferees have become concerned, however, about the potential cost and complexity of the layers of federal, state, and local laws and regulations on contracts that include more than one state. Next year, the conferees plan to review the question of whether some federal standards should be developed in this area that could create some continuity. Accordingly, the conferees hope that the Department of Defense would start to review this issue in preparation for next years budget hearings.

Guidelines for managed care

Section 733 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) directed the Department of Defense to study the entire DOD health care system and to report to the congressional defense committees. Section 733 called for an assessment of the qualifications of the personnel involved in CHAMPUS mental health utilization review, an evaluation of the actions taken to ensure that reviewers have no financial conflict of interest, and an evaluation of the adequacy of the existing appeals process.

The conferees note that the survey and report are expected to take a long time to produce. They hope the Department of Defense would initiate, by January 1, 1993, proposed regulations aimed at achieving actual improvement in these and related areas of consumer protection.

The conferees expect the Department of Defense to develop standards that will ensure and promote the delivery of quality health care and to foster greater coordination among health care providers that participate under this program. The standards should also protect patients by ensuring that the reviewing professionals are qualified to perform utilization review and managed care activities, and are licensed and competent in the area of care needed by the consumer.

Such standards should include a requirement that neither the providers nor any reviewing professional or agent have any financial incentive in the outcome of the prescribed treatment methodology followed.

Partial hospitalization under CHAMPUS

The conferees believe it is critical that a wide range of mental health options be available to CHAMPUS beneficiaries, so that services can be received in the most appropriate and cost-effective setting.

The conferees believe that partial hospitalization is an important benefit to bridge the transition from inpatient to outpatient care in order to ensure that there is no disruption in the continuity of care for beneficiaries. The conferees intend to continue to closely monitor the Department of Defense implementation of this program, including the determination of reasonable reimbursement rates.

TITLE VIII ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Legislative Provisions

legislative provisions adopted

Codification and amendments to section 1207 (sec. 801)

The House bill contained a provision (sec. 801) that would extend the five percent goal program for the award of DOD contracts and subcontracts to small disadvantaged businesses, historically Black colleges and universities, and minority institutions through fiscal year 2000 (section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661)). In addition, this provision of law would be codified as section 2323 of title 10, United States Code.

The Senate amendment contained a provision (sec. 814) that would extend the program through fiscal year 2000 and require the establishment of a process to review claims that the use of SDB set-asides has caused an industry category to bear a disproportionate share of the progress toward the goal.

The Senate recedes with a technical amendment.

The conferees agree to consolidate all section 1207-related provisions into a single section. The additional codified provisions are: (1) section 806 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100-180); and (2) section 832 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189).

Provisions relating to small businesses and small disadvantaged businesses (sec. 802)

The House bill contained a provision (sec. 802) that would: (1) apply the "non-manufacturer rule" to the program established by section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661); and (2) require the Secretary of Defense to issue regulations to ensure prime contractors comply with existing subcontracting requirements and make subcontracting plans a factor in the contract award process.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

The Defense Department has advised the conferees that it has developed a proposed regulation concerning the non-manufacturer rule. However, DOD has delayed issuance of this rule at the request of the Small Business Administration, which also intends to publish a rule on this subject. The conferees direct the Secretary of Defense to immediately issue a proposed regulation for comment on the non-manufacturer rule.

The conferees are concerned that subcontract awards by DOD prime contractors to small business concerns (including small disadvantaged businesses) declined 5.3 percent in fiscal year 1991 compared to the preceding year. The regulations required by this provision are intended to ensure that this decline does not become a trend and that the Department and its prime contractors enforce and comply with existing subcontracting plan requirements.

The conferees direct the Secretary to conduct a prompt review of DOD and prime contractor efforts to increase subcontract awards to small businesses and small disadvantaged businesses and to propose additional strategies to increase such awards. The results of this review should be reported to the Committees on Armed Services of the Senate and House of Representatives by April 1, 1993.

Under current law (section 806 of the National Defense Authorization Act of Fiscal Years 1988 and 1989 (Public Law 100-180)), the Secretary is required to make the administration of small business subcontracting plans a factor in the evaluation of the performance of contracting officials. The conferees direct the Secretary to take the appropriate steps to ensure that this requirement is fully enforced.

Funding for defense research by historically Black colleges and universities and minority institutions (HBCU/MI) (sec. 803)

The Senate amendment contained a provision (sec. 814) that would authorize $15.0 million for the HBCU/MI infrastructure assistance program established in section 832 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510).

The House bill contained no similar provision.

The House recedes.

Small Business Administration certificate of competency program (sec. 804)

The Senate amendment contained a provision (sec. 811) that would modify the Small Business Administration (SBA) certificate of competency program as it affects the defense acquisition process.

The House bill contained no similar provision.

The House recedes with an amendment that would require: (1) DOD contract solicitations to advise small businesses of their right to request the Small Business Administration to review a contracting officers determination that such business is "nonresponsible" to perform a contract; and (2) the contracting officer to notify such business in writing of a "nonresponsibility" determination and of the right to request the SBA review. The provision would sunset at the end of fiscal year 1995.

Extension of program for the negotiation of comprehensive small business subcontracting plans (sec. 805)

Section 834 of the National Defense Authorization Act for Fiscal Years 1990/1991 (Public Law 101-189) authorized DOD and approved prime contractors to negotiate subcontracting plans on a division- or company-wide basis. This program expires at the end of fiscal year 1993.

The Senate amendment contained a provision (sec. 812) that would extend this program through fiscal year 1994.

The House bill contained no similar provision.

The House recedes.

Extension of test program of contracting for DOD printing services (sec. 806)

Section 843 of the National Defense Authorization Act for Fiscal Year 1989 (Public Law 100-456) established a program authorizing the Public Printer to limit competitions to small disadvantaged businesses (SDBs) for defense printing services. The Defense Department may count such awards towards the five percent goal for awards to SDBs under section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661). This program expires at the end of fiscal year 1993.

The Senate amendment contained a provision (sec. 813) that would extend this program through fiscal year 2000.

The House bill contained no similar provision.

The House recedes.

Pilot mentor-protege program (sec. 807)

The Senate amendment contained a provision (sec. 815) that would authorize $55.0 million for the pilot mentor-protege program established under section 831 of the National Defense Authorization Act for Fiscal Year 1990 and 1991 (Public Law 101-189). The Senate provision would also require the Department of Defense to publish and maintain any Department policy relating to the program in the defense federal acquisition regulations. The Senate provision also would make changes to strengthen the mentor protege program as it relates to the Small Business Act on: (1) findings of affiliation or control; (2) assistance under the Small Business Administrations section 8(a) program; and (3) review of any mentor protege agreement.

The House bill contained no similar provision.

The House recedes.

Codification of recurring provision relating to subcontracting with certain nonprofit agencies (sec. 808)

The Senate amendment contained a provision (sec. 1052) that would codify section 8082 of the Department of Defense Appropriations Act for Fiscal Year 1992 (Public Law 102-172) and encourage eligible DOD prime contractors to subcontract with Javits-Wagner-ODay (JWOD) entities by allowing such contractors to credit purchases from JWOD entities towards their small business subcontract plan goals.

The House bill contained no similar provision.

The House recedes.

Expansion and extension of authority under major defense acquisition pilot program (sec. 811)

Section 809 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) authorized the Department of Defense to nominate six major acquisition programs for participation in a pilot program intended to determine the potential for "increasing the efficiency and effectiveness of the acquisition process" by waiving or limiting the application of certain specified statutory requirements. This authority expires on September 30, 1992.

The House bill contained a provision (sec. 814) that would extend the authorization for the pilot program to September 30, 1995. The House bill also would expand eligibility under the program to include non-major acquisition programs.

The Senate amendment contained no similar provision.

The Senate recedes.Acquisition workforce improvement (sec. 812)

The House bill contained a provision (sec. 815) that would make a number of changes in the legislation established by the Defense Acquisition Workforce Improvement Act (title XII of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190)). The provision would: (1) provide that the first statutory 5-year reviews of individual assignments to critical positions under 10 U.S.C. 1734(e)(2) are not required to be undertaken until after October 1, 1995, although the Defense Department may undertake such a review as a matter of discretion before that date; (2) waive the minimum assignment period in 10 U.S.C. 1734(b) for deputy program managers who receive a subsequent acquisition assignment; (3) authorize DOD, until October 1, 1997, to determine that an individual has fulfilled the requirements for mandatory training on the basis of demonstrated competence in the areas that would otherwise require specific training under 10 U.S.C. 1723, 1724, and 1735; (4) modify the experience requirement for deputy program managers under 10 U.S.C. 1735(b)(3) to require six years of experience for major programs and four years for non-major programs; and (5) authorize the Secretary of Defense to prescribe equivalent training requirements in lieu of the business management and training requirements established by 10 U.S.C. 1732(b)(2)(B).

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would make it clear that a scholarship recipient under 10 U.S.C. 1744 may be offered a position in the excepted service notwithstanding subchapter I of chapter 33 of title 5, United States Code.Certification of claims (sec. 813)

The House bill contained a provision (sec. 816) that would revise the law governing the certification of contract claims (10 U.S.C. 2410). The House provision also would waive the 18-month time limitation on the submission of shipbuilding claims under 10 U.S.C. 2405(b), with respect to claims originally submitted within the time period, if a claim was deemed insufficient due to the fact that the original certification was signed by the wrong individual.

The Senate amendment contained a similar provision (sec. 827) with respect to waiver of the 18-month time limit under 10 U.S.C. 2405(b) concerning shipbuilding claims deemed deficient solely due to the status of the individual who signed the original certification.

The House recedes with an amendment. Under the conference agreement, the Secretary of Defense would be required to propose regulations for inclusion in the Federal Acquisition Regulation to provide that: (1) a contract claim or related request for relief must be accompanied by the certification required under the Contract Disputes Act of 1978; and (2) the person who certifies the claim must be an individual who is authorized to bind the contractor and who has knowledge of the basis of the claim or request and knowledge of the claim or request. Upon publication of the regulations, 10 U.S.C. 2410 would be repealed. The conference agreement also would reflect the amendments proposed by the House bill and the Senate amendment concerning waiver of the 18-month time limit under the shipbuilding claims statute, 10 U.S.C. 2405(b).

The conferees note that current law has been viewed as an impediment to the adoption of a government-wide rule providing a single certification that would cover both statutes applicable solely to the Department of Defense and the Contracts Disputes Act. The conference agreement is intended to remove this impediment.Deadline for report on rights in technical data regulations (sec. 814)

Section 807 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) required the Secretary of Defense to establish a government-industry committee to recommend a final regulation on rights in technical data. The provision required issuance of a new regulation by September 15, 1992, and established restrictions on the content of any interim regulations.

The House bill contained a provision (sec. 817) that would extend these requirements in view of delays in the establishment of the committee.

The Senate amendment contained no similar provision.

The Senate recedes.

Requirement to establish single point of contact for information concerning persons convicted of defense contract-related felonies (sec. 815)

The House bill contained a provision (sec. 819) that would require the General Services Administration to maintain and publish a list of persons subject to the prohibitions in 10 U.S.C. 2408 concerning employment of persons convicted of defense contract-related felonies in certain positions by defense contractors.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the establishment of a single point of contact in the Department of Justice at which a contractor could promptly obtain information as to whether a person is subject to the prohibitions in 10 U.S.C. 2408.

Extension of program for use of master agreements for procurement of advisory assistance services (sec. 816)

The Senate amendment contained a provision (sec. 821) that would extend the test program for the use of master agreements to facilitate the competitive acquisition of advisory and assistance services through fiscal year 1994.

The House bill contained no similar provision.

The House recedes.

Major defense acquisition program reports (sec. 817)

The Senate amendment contained a provision (sec. 822) that would incorporate certain changes in the selected acquisition reports (SAR) required by section 2432 of title 10, United States Code. These changes were requested by the Defense Department and would clarify the content of the information in the SAR reports and facilitate the administration of the SAR process.

The House bill contained no similar provision.

The House recedes.

Allowable costs (sec. 818)

The Senate amendment contained a provision (sec. 830) that would amend 10 U.S.C. 2324 to: (1) clarify that a contractor will be charged a penalty only if the cost has been expressly disallowed by regulation; (2) clarify that the amount of the penalty assessed is the amount of the disallowed cost that has been allocated to defense contractors; (3) delete the authorization for DOD to assess an additional $10,000 penalty (in addition to a regular penalty of the amount mischarged plus interest or a double penalty if submitted the cost before); and (4) authorize DOD to waive the penalty if the contractor withdraws the submission prior to a DOD audit, or if the amount is insignificant.

The House bill contained no similar provision.

The House recedes with an amendment that would authorize the Secretary of Defense to issue regulations providing for the waiver of a penalty if the contractor demonstrates, to the contracting officers satisfaction, that it has established appropriate policies, personnel training, an internal control and review system that provide assurances that unallowable costs are not included in the contractors proposal, and that the unallowable costs were included by mistake. The conferees note that the purpose of the penalty provisions in 10 U.S.C. 2324 is to ensure that contractors, rather than the government, bear the burden of assuring that contractor submissions for reimbursement of costs on government contracts do not include unallowable costs.

Clarification of rules governing advisory and assistance services for operational testing (sec. 819)

The Senate amendment contained a provision (sec. 832) that would amend 10 U.S.C. 2399 to make it clear that an organization that has acted as the government representative in testing activities is not subject to the same restrictions that apply to those which have acted on behalf of a contractor.

The House bill contained no similar provision.

The House recedes.

Regulations changing military department participation in joint acquisitions (sec. 820)

The Senate amendment contained a provision (sec. 833) that would require the Secretary of Defense to prescribe regulations that would prohibit military departments participating in joint acquisition programs from unilaterally terminating or substantially reducing participation in the joint program without approval of the Under Secretary of Defense for Acquisition.

The House bill contained no similar provision.

The House recedes.

Competitive prototyping (sec. 821)

The House bill contained a provision (sec. 1055) that would require the Department of Defense to use a competitive prototyping acquisition strategy on all major system developments unless the Secretary of Defense granted a waiver and provided a report to Congress.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would allow the Under Secretary of Defense for Acquisition to grant the waiver when a written justification is submitted explaining why use of competitive prototyping is not practicable, including cost estimates comparing the total program cost of the acquisition strategy with and without competitive prototyping.Repeal of procurement limitation on typewriters (sec. 831)

The House bill contained a provision (sec. 811) that would repeal 10 U.S.C. 2507(c), which prohibits the purchase of manual typewriters or components from Warsaw Pact countries. The collapse of the Warsaw Pact makes the original provision obsolete.

The Senate amendment contained a similar provision (sec. 806(c)).

The Senate recedes.

Procurement limitation on ball bearings and roller bearings (sec. 832)

The House bill contained a provision (sec. 812) that would prohibit the Defense Department, during fiscal years 1993, 1994, and 1995, from procuring ball bearings or roller bearings that are not produced in the United States.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would clarify that the House provision is consistent with the terms of the existing prohibition in the Defense Federal Acquisition Regulation Supplement.Restriction on purchase of sonobuoys (sec. 833)

The Senate amendment contained a provision (sec. 834) that would prohibit the Defense Department from procuring sonobuoys manufactured in a foreign country unless U.S. sonobuoy manufacturers are permitted to compete on an equal basis with foreign firms for the sale of sonobuoys in that foreign country.

The House bill contained no similar provision.

The House recedes with a technical amendment.Debarment of persons convicted of fraudulent use of "Made in America" labels (sec. 834)

The House bill contained a provision (sec. 821) that would require the Secretary of Defense to debar a person from contracting with the federal government for at least 3 years but not more than 5 years if the person had been convicted of fraudulently affixing "Made in America" labels.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of Defense to determine whether a person convicted of fraudulently affixing "Made in America" labels should not be debarred from contracting with the Defense Department. If the Secretary determined that the person should be debarred, the Secretary would have to submit to Congress a report on such a determination.

Foreign investment in the United States (secs. 835-838)

The House bill contained a provision (sec. 1071) that would require the President to prohibit a merger, acquisition, or takeover subject to an investigation under section 721(a) of the Defense Production Act of 1950 unless the Secretary of Defense certified to Congress that the merger, acquisition, or takeover would not pose a significant risk of diversion of sensitive U.S. defense technology to a foreign firm or government and would not otherwise harm U.S. national security interests.

The Senate amendment contained three provisions (secs. 824, 825, and 838) that would affect foreign investment in the United States. Section 824 would prohibit the purchase of certain U.S. defense contractors by an entity controlled by a foreign government. Section 825 would prohibit the award of certain DOD and Energy Department national security contracts to companies owned by an entity controlled by a foreign government. Section 838 would make several changes to section 721 of the Defense Production Act (the so-called Exon-Florio amendment).

The House recedes to section 824 of the Senate amendment with an amendment that would delete paragraphs (1) and (2) of subsection (b). As a result, the prohibition on the purchase of certain U.S. defense contractors by an entity controlled by a foreign government would not apply if the purchase were not suspended or prohibited pursuant to section 721 of the Defense Production Act.

The House recedes to section 825 of the Senate amendment.

The Senate recedes to section 1071 of the House bill with an amendment. The purpose of the amendment is to direct the Defense and Energy Departments to develop a data base helpful to the Committee on Foreign Investment in the United States (CFIUS), the inter-agency committee that reviews foreign investment cases under section 721 of the Defense Production Act.

The amendment consists of the following requirements: (1) the Secretary of Defense and the Secretary of Energy shall collect and maintain a data base on certain contractors which are controlled by foreign persons; (2) the Secretaries of Defense, Energy, and Commerce shall submit to Congress an annual report on aspects of foreign investment in U.S. defense firms; and (3) in certain circumstances, the appropriate DOD intelligence agency or agencies shall assess the risk of diversion of defense critical technology posed by a CFIUS case.

The House recedes to section 838 of the Senate amendment with an amendment that would make the following changes to section 838 (all of the following references to subsections of section 721 of the Defense Production Act are to the subsections as they would be redesignated by the conference agreement): (1) make a technical change in the new subsection (b); (2) specify that the report the President is required to transmit to Congress by redesignated subsection (g) shall be consistent with the confidentiality requirements of redesignated section 721(c); (3) add a new subsection (j) that would amend section 721 to require that, in any Exon-Florio case in which a designee of the President performs a technology risk assessment, the assessment shall be provided to any other designee of the President responsible for reviewing Exon-Florio cases; and (4) delete the requirement for an intelligence study.

Under current law, if the President decides to take an action pursuant to redesignated subsection (d), redesignated subsection (g) requires the President to transmit immediately a written report to Congress of the action the President intends to take, including a detailed explanation of the findings made under redesignated subsection (e).

The conference agreement would amend redesignated subsection (g) to require the President to submit to Congress a written report in every case in which the President makes a determination of whether or not to take an action under redesignated subsection (d), including a detailed explanation of the findings made under redesignated subsection (e) and the factors considered under redesignated subsection (f).

Since the enactment of section 721 as part of the Omnibus Trade and Competitiveness Act of 1988, over 700 cases have been notified. Of those cases, only nine have gone to the President for a determination. In only one of those cases has the President decided to take an action. As a result, the President has been required to submit a report to Congress explaining his action in only one case. The conferees believe that any case that requires a determination by the President is of sufficient importance to require a written report by the President explaining in detail the basis for his action. Such reports are not intended to establish precedents under the Exon-Florio amendment since each case is unique. However, the reports will help Congress and the public develop an understanding of the policies underlying Presidential determinations, and hold the President accountable for actions under the Exon-Florio amendment.

The conferees intend that the President is to include in the report required by redesignated subsection (g) a description of any requirements requested from or assurances given by the parties to any merger, acquisition, or takeover. Section 721 gives the President broad powers to "take such action for such time as the President considers appropriate."

The conference agreement retains subsection (b) of section 838 that would amend redesignated section 721(f) by adding two considerations to the three considerations now in the law for deciding whether a takeover affects the national security. The first new consideration concerns the potential effects of a proposed or pending transaction on sales of military goods, equipment, or technology to any country identified by the Secretary of State under the Export Administration Act as a country that supports terrorism, as a country of concern regarding missile proliferation or the proliferation of chemical and biological weapons, or is listed under the Nuclear Non-Proliferation Act of 1978 on the nuclear non-proliferation special country list. The second new consideration added by subsection (b) of section 838 would permit the President to consider as a factor in making his decision "the potential effects of the proposed or pending transaction on United States international technological leadership in areas affecting United States national security."

Finally, the conferees note that, as used in paragraph (1) of redesignated section 721(e), the term "credible evidence" may not be construed to require that before a review or investigation may be undertaken or before the President may take action under redesignated subsection (d) there has to be an allegation that a person who would be subject to such review or investigation committed an illegal act.

Limitation on sale of assets of certain defense contractor (sec. 839)

The House bill contained a provision (sec. 818) that would require any Defense Department contract with the LTV Aerospace and Defense Company to prohibit the company from selling any of its assets to any entity unless the entity agreed to assume all the companys liabilities to its retired employees.

The Senate bill contained no similar provision.

The Senate recedes.

Advance notification of contract performance outside the United States (sec. 840)

The Senate amendment contained a provision (sec. 829) that would require firms that are bidding for or performing certain DOD contracts to notify the Defense Department in advance of any intention to perform outside the United States any part of the contract (1) that exceeds $500,000 in value, and (2) that could be performed inside the United States.

The House bill contained no similar provision.

The House recedes with an amendment that would make technical changes to the Senate provision.

Acquisition fellowship program (sec. 841)

The Senate amendment contained a provision (sec. 831) that would authorize the Department of Defense to offer up to 25 science and technology fellowships as an incentive to recruit or retain high caliber personnel to government service. These fellowships would permit an individual, after completing at least two years of government service, to engage in research and teaching in a field related to government science and technology policy for a period of up to two years.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Purchase of Angolan petroleum products (sec. 842)

The Senate amendment contained a provision (sec. 836) that would specify that section 316 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661) shall cease to be effective when the President certifies to Congress that free, fair, and democratic elections have taken place in Angola after September 1, 1992. Section 316 prohibited the Defense Department from purchasing Angolan petroleum products from companies producing petroleum products in Angola.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Authority for the Department of Defense to share equitably the costs of claims under international armaments cooperation programs (sec. 843)

The Senate amendment contained a provision (sec. 828) that would authorize the Defense Department to pay its share of an international armaments cooperation programs claims in accordance with the programs cost-sharing formula or in accordance with any other equitable formula that is negotiated by the participants.

The House bill contained no similar provision.

The House recedes with an amendment that would provide this authority for two years.

The conferees understand that this authority is necessary to allow the United States to enter into cooperative project agreements with NATO or its member countries providing for the shared liability of the cooperative agreement countries for third party liability claims that arise out of actions of the participants in the performance of their official duties. In addition, the conferees understand that the shared liability agreement will provide for sharing in accordance with the ratio of support the member country provides for the program, irrespective of the nationality of the individual against whom the claim arose, or where the cause of action arose. Thus, for example, if a U.S. employee of a multinational program office is in an automobile accident in the United States, in the course of official business, the claim will be paid by all of the multinational program participants, in the proportion in which they support the program. Because this is a change in the way the United States has traditionally treated third-party claims on multinational programs, this authority would be provided for two years only. At that point, the conferees expect to evaluate the experience utilizing this approach and determine whether to extend this authority.

legislative provisions not adopted

Clarification of calculation of contract goal

The House bill contained a provision (sec. 803) that would clarify that DOD is required to report progress toward meeting the five percent goal established in section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661) in terms of the aggregate award of prime contracts and subcontracts to specified entities.

The Senate bill contained no similar provision.

The House recedes.

Procurement limitation on fuel cells

The House bill contained a provision (sec. 813) that would prohibit the Defense Department during fiscal year 1993 from procuring fuel cells that are not produced in the United States.

The Senate amendment contained no similar provision.

The House recedes.

At the time of passage of the House bill, the General Accounting Office (GAO) was reviewing whether purchases by the Air Force of synthetic fabric fuel tanks for installation in aircraft violated the Berry Amendment provisions of Department of Defense appropriations acts and implementing regulations. The House provision was intended to provide GAO adequate time to complete its review and for the Department of Defense to implement any GAO recommendations.

On July 31, 1992, the GAO issued a decision that the Berry Amendment does apply to the Air Forces purchases of fuel cells for H-53 and H-3 helicopters. The conferees understand that the Defense Department intends to abide by the GAO decision and to restrict future purchases of such fuel cells to U.S. manufacturers. Indeed, in an award made in early August 1992, the Navy abided by the GAO decision and awarded a contract to an American firm, rather than a foreign firm. In light of the Defense Departments plan to buy only U.S.-made fuel cells, the conferees agree that the House provision may be unnecessary at this point in time.

The Berry Amendment, which has been included in Department of Defense appropriations acts since 1941, requires the Department of Defense to buy domestically produced goods in certain instances. In 1968, synthetic fabric and coated synthetic fabric were added to the list of protected items under the Berry Amendment. Despite a 1989 GAO ruling to the contrary, the Department of Defense General Counsel has stated the Berry Amendment did not apply to the purchase of fuel cells.

However, the conferees note that the Senate report (S. Rept. 102-154) accompanying the fiscal year 1992 defense appropriations bill indicated that the Berry Amendment restriction was intended to apply to synthetic fabric fuel containers for military aircraft. Based on congressional intent and the GAO ruling, the conferees direct the Department of Defense to abide by the Berry Amendment in its purchases of synthetic fabric fuel cells.

Independent cost accounting in the Department of Defense

The House bill contained a provision (sec. 820) that would require the Secretary of Defense to take such actions as necessary to strengthen independent cost accounting in the Department of Defense, including correction of deficiencies identified in report number 92-028, issued by the Inspector General of the Department of Defense on December 30, 1991.

The Senate amendment contained no similar provision.

The House recedes.

The conferees agree that the Secretary of Defense should take aggressive action to strengthen independent cost accounting in the Department of Defense. Such action should include correcting the deficiencies identified in the Inspector Generals report, enhancing the capability of the Cost Analysis Improvement Group (CAIG) in the Office of the Secretary of Defense, focusing the activities of the CAIG on the performance of independent cost estimating functions, ensuring close adherence within the Department of Defense to DOD regulations with respect to independent cost estimates that implement 10 U.S.C. 2434, and limiting the participation of any firm that has a contract with the program office of a defense acquisition program (or that is a prime contractor or subcontractor on such a program) in the preparation of an independent cost estimate with respect to that program. In addition, the Secretary should consider assigning the Army Cost and Economic Analysis Center, the Navy Center for Cost Analysis, and the Air Force Cost Center and Independent Cost Analysis Program to the Assistant Secretary for Financial Management of the military department concerned.

Although the conferees believe that legislation is not required at this time, the conferees will propose such legislation in 1993 if prompt and effective action is not taken to strengthen the independent cost accounting function in DOD in the manner described in this statement of managers.

Shipbuilding total program reporting

The Senate amendment contained a provision (sec. 835) that would require the Navy to include a better estimate of shipbuilding total program quantities in its official reports to Congress. The Navy has interpreted the existing law to require that it report only those ships included in the Future Years Defense Program (FYDP), or perhaps a year or two beyond that.

The House bill contained no similar provision.

The Senate recedes.

The conferees are interested in receiving more complete reports of the Navys intentions for major shipbuilding programs. Having a full perspective is critical to making informed judgments about future programs.

The conferees strongly believe that reports on shipbuilding programs should reflect the total program planned by the Navy and that such reports are required under current law. The conferees direct the Navy to change its reporting on shipbuilding programs to include the real total ship program, as defined in the cost and operational effectiveness analysis supporting milestone decisions, operational requirements documents, or other program planning documentation.

TITLE IX DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Legislative Provisions

legislative provisions adopted

Report of the Chairman of the Joint Chiefs of Staff on roles and missions of the armed forces (sec. 901)

The House bill contained a provision (sec. 905) that would require the Secretary of Defense to submit to Congress the triennial report of the Chairman of the Joint Chiefs of Staff on roles and missions, along with the Secretarys reassessment of the historic roles and missions assigned to the armed forces.

The Senate amendment contained a provision (sec. 901) that would require the Chairmans report on roles and missions, together with the views of the Secretary of Defense, to be submitted to Congress. The provision would also expand the Chairmans report to require comments and recommendations by the Chairman in certain areas.

The House recedes with an amendment that would ensure that effectiveness is not unduly diminished for the sake of efficiencies and require the Chairman to reassess the current assignment of roles and missions to the armed forces.

Sense of the Congress on cooperation between the United States Army and the United States Marine Corps (sec. 903)

The Senate amendment contained a provision (sec. 903) concerning cooperation between the Army and the Marine Corps in certain roles and missions.

The House bill contained no similar provision.

The House recedes with an amendment.

National Guard/reserve component operational support airlift study (sec. 904)

The Senate amendment contained a provision (sec. 913) that would direct the Secretary of Defense to survey the operational support and administrative transport airlift aircraft operated by the reserve components in order to develop a modernization roadmap.

The House bill contained no similar provision.

The House recedes.

Vice Chairman of the Joint Chiefs of Staff (sec. 911)

The Senate amendment contained a provision (sec. 902) that would provide for the Vice Chairman to be a full member of the Joint Chiefs of Staff with the same rights as the Service Chiefs, including the right to provide advice in disagreement with or in addition to the advice of the Chairman.

The House bill contained a provision (sec. 901) that would provide for the Vice Chairman to be a member of the Joint Chiefs of Staff but would specify that the Vice chairman is subject to the direction and control of the Chairman, would not allow the Vice Chairman to provide advice in disagreement with or in addition to the advice of the Chairman, and would not allow the Vice Chairman to have a formal vote.

The House recedes.

Application of definition of principal course of instruction at the Armed Forces Staff College (sec. 921)

The House bill contained a provision (sec. 921) that would change the implementation date for all Phase II joint professional military education courses at the Armed Forces Staff College from October 31, 1993 to January 1, 1994.

The Senate amendment contained no similar provision.

The Senate recedes.

Test program for reserve officer professional military education (sec. 922)

The House bill contained a provision (sec. 922) that would direct the Secretary of the Army to design and implement a test program that would enable reserve officers to attend nonresident military education courses in a paid drill status.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would direct the Secretary of the Army to draft a plan for carrying out a test program to improve the provision of professional military education to reserve component officers of the Army who are unable to attend such courses in a full-time duty status. The Secretary would submit a report to the Congress that would outline a concept of the most effective approach for testing and evaluating the plan and would identify any legislative changes required to implement the test.

Civilian faculty members of the Defense Foreign Language Center (sec. 923)

The House bill contained a provision (sec. 924) that would provide the Secretary of the Army the same authority regarding civilian faculty members of the Defense Language Institute Foreign Language Center as is allowed for civilian faculty members in other senior professional military schools. This authority would enhance the Defense Language Institutes ability to retain high quality instructors, and to establish a faculty structure consistent with the civilian academic environment. The provision would also authorize the Secretary of Defense to use the Foreign Language Center to train linguists participating in counter-drug activities and require a report on technologies to enhance automated translation capabilities.

The Senate amendment contained a similar provision (sec. 1044).

The Senate recedes with an amendment that would delete the provision relating to the use of the Foreign Language Center for counter-drug training and the report on technologies to enhance automated translation capabilities. These matters are discussed further in the section of this statement of managers relating to title X of this act.

Certifications relating to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict and the Special Operations Command (sec. 931)

The Senate amendment contained a provision (sec. 905) that would require the Secretary of Defense to certify to the congressional defense committees that (1) all the duties and functions specified in law, the Unified Command Plan, and DoD directive 5138.3 for the U.S. Special Operations Command and the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict have been assigned to those organizations, and (2) the Command and the Office of the Assistant Secretary have been authorized the number of personnel necessary to perform their duties and functions.

The House bill contained no similar provision.

The House recedes.

Joint officer personnel policy (sec. 932)

The Senate amendment contained a provision (sec. 906) that would amend the joint officer management provisions of title 10, United States Code, in several ways. It would extend for five additional years the nuclear propulsion officer exemption and the authority to waive the joint duty assignment requirement for promotion to flag or general officer rank in the case of an officer who served at least a year in an equivalent joint duty assignment. The provision would also allow the substitution of a masters or higher degree for completion of a program at a joint professional military education school; would change the definition of a full tour of duty; and would allow credit for a full joint tour for an assignment within an officers own military department or in an assignment outside such department, but not in a joint duty assignment, upon certification by certain designated officers.

The House bill contained no similar provision.

The House recedes with an amendment that would require the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, to conduct a study to assess the appropriateness of the allocation of joint duty assignments and critical joint duty assignments, with particular emphasis on the defense agencies; to make adjustments in light of the study; and to submit a report to the Armed Services Committees of the Senate and House of Representatives containing the results of the study and any recommendations for legislative changes to provide for a waiver of the exclusion by law of consideration of an assignment within an officers own military department as a joint duty assignment.

The conferees take note of the progress that has been achieved in increasing the exposure of nuclear propulsion officers to joint duty. There are now 92 nuclear propulsion officers in joint duty assignments as compared to 25 in 1986. Additionally, the percentage of nuclear propulsion officers eligible for flag selection who have completed full tours of duty in a joint duty assignment increased to 21 percent during 1991 (as compared to the original plan of 14 percent) and is projected to increase to almost 30 percent by 1994. The present exemption will expire at the end of calendar year 1993.

The conferees believe that more aggressive action is needed and request the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, to develop and submit to the Armed Services Committees, no later than May 30, 1993, a five-year plan to increase the number of nuclear propulsion officers who will serve in joint duty assignments and to increase the percentage of such officers eligible for selection to flag rank who will have completed a full tour of duty in a joint duty assignment during the five-year period commencing on January 1, 1994. In conjunction with this plan, the Secretary is further requested to advise the Armed Services Committees of the maximum number of nuclear propulsion officers eligible for flag rank during each of the five years for whom a waiver of the requirements of section 619(e) of title 10, United States Code, might be required.

The conferees have reviewed the existing procedures, both statutory and regulatory, for the designation of a position as a joint duty assignment. The conferees believe that the time has come to reconsider the joint duty assignment list, particularly with respect to the defense agencies. The conferees took note of the General Accounting Office (GAO) report (B-232940) of February 15, 1990, and direct the Secretary to consider the GAO methodology in conducting this study. The conferees realize the decision to assign a 50 percent allocation of joint duty assignments to each defense agency was motivated by a number of factors, including the professional military education pipeline requirements relating to joint specialists, the promotion policy objectives of section 662 of title 10, United States Code, and the joint duty assignment prerequisite for promotion to general or flag officer of section 619 of title 10, United States Code. Nevertheless, the 50 percent allocation does result in some unfortunate results, and the conferees believe it is necessary to examine each joint duty assignment in the defense agencies to determine the correctness of existing designations within those agencies and if it would be appropriate to reallocate joint duty assignment percentages among those agencies. The conferees believe that the Secretary of Defense has sufficient authority under current law to correct any inequities in the allocation of joint duty assignments within and among the defense agencies, but encourage the Secretary to submit a recommendation for legislative change if he determines that it is necessary.

The conferees remain convinced that the decision to exclude assignments within an officers own military department is correct as a general rule, but maintain an open mind as to whether a limited exception might be necessary for some assignments. The conferees are aware of some anecdotal information on this point, but the lack of a broad analytical effort precludes any decision on changes at this time. Consequently, the conferees have required the Secretary of Defense to conduct a survey of such positions and to recommend to the Congress whether the Secretary should be granted limited waiver authority to award joint duty credit for assignments within an officers own Service.

Joint duty credit for equivalent duty in Operation Desert Shield/Desert Storm (sec. 933)

The Senate amendment contained a provision (sec. 907) that would authorize the Secretary of Defense to grant joint duty credit to officers recommended by the Chairman of the Joint Chiefs of Staff who are deemed to have performed service in the Persian Gulf conflict that provided significant experience in joint matters or involved frequent professional interaction with units and members of another armed force or an allied armed force.

The House bill contained no similar provision.

The House recedes with an amendment that would authorize the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, to provide credit on a case-by-case basis for a full or partial tour of duty in a joint duty assignment to officers who served in the Persian Gulf combat zone in an assignment that is deemed by the Secretary to have provided significant experience in joint matters even though that service does not fall within the definition of "joint duty assignment" under current law. The Secretary would be responsible for establishing uniform criteria for the purpose of determining credit for such service and for determining if full or partial credit for such an assignment shall be granted. In establishing the criteria, the Secretary would also be required to ensure that such criteria not rely on including entire categories of officers as a method of determining eligibility. The conferees recognize the need for the criteria to establish boundaries of eligibility, but intend for the Defense Department to base such criteria on the merit of each individual officers exposure to joint matters and not on distinctions of circumstance or position.

The conferees agreed to resolve a dilemma that has confronted them for two years by providing a limited suspension of the requirements of the Goldwater-Nichols Defense Reorganization Act to achieve the purposes intended by this provision. On the one hand, the conferees have been determined that personnel deserving joint duty credit for their service in Operation Desert Shield/Desert Storm receive it. The conferees realized, however, that it would not be possible for Congress to establish adequate criteria in law governing the award of full or partial joint credit. Therefore, the conferees determined that the Secretary of Defense is in the best position to establish fair and comprehensive criteria to guide the award process within the Department in a uniform manner.

On the other hand, the conferees have been concerned that setting aside the rigorous joint officer requirements of the Goldwater-Nichols Act risks creating a one-time opportunity for the circumvention of the Acts requirements by officers underserving of joint duty credit. The conferees categorically state that this outcome would be completely contrary to their intent. The conferees intend that the Secretary of Defense exercise the considerable discretion he is granted in this provision to establish a decision-making process within the Department that is judicious and fair, and that will result in credit for a full joint duty assignment only in those cases in which an officer truly has gained significant experience in joint matters.

The conferees also agree that, in determining the number of officers to receive Persian Gulf joint duty credit, the Secretary must work within certain valid limitations. The Secretary must safeguard the overriding needs of the Department to fill joint duty positions at each field grade and general/flag officer level from among the ranks of the most outstanding officers. The Secretary must ensure that officers with operational and support experience in the Persian Gulf war continue to move into appropriate joint positions. The Secretary must ensure that the promotion policy objectives for joint officers in section 662 of title 10, United States Code, and other applicable provisions of chapter 38 of that title can continue to be met.

After consulting with officials within the Office of the Secretary of Defense and the Joint Staff, the conferees are confident that a number of factors, including those identified above, will serve as a prudent and responsible restraint on the number of officers who receive joint duty credit under this provision. Accordingly, the conferees chose not to impose a statutory limit.

CINCs initiative fund (sec. 934)

The Senate amendment contained a provision (sec. 908) that would amend section 166a of title 10, United States Code, to enable the Chairman of the Joint Chiefs of Staff to propose activities involving countries not assigned to the responsibility of a combatant commander for funding through the CINCs initiative fund. The provision would also authorize funding for various purposes related to the expanding military to military contacts with the states of the former Soviet Union and Eastern Europe, would increase the limitation on funding for international military education and training to $5 million, and would increase the overall funding for the CINCs initiative fund.

The House bill contained no similar provision.

The House recedes with an amendment that would establish the limitation on funding for international military education and training at $2 million, of which no more than $1 million would be available for the states of the former Soviet Union and Eastern Europe, and would clarify other matters.

Organization of the Office of the Chief of Naval Operations (sec. 935)

The Senate amendment included a provision (sec. 904) that would require the Navy to establish a position of Assistant Chief of Naval Operations for Expeditionary Warfare and to fill that position with a lieutenant general from the Marine Corps.

The House bill contained no similar provision.

The House recedes with an amendment. The conferees note the reorganization of the Office of the Chief of Naval Operations (CNO) recently announced by the Secretary of the Navy. The Secretarys actions would restructure and reduce the size of the Office of the Chief of Naval Operations. The conferees are encouraged by the apparent progress that is being made in rationalizing the operations of the staff.

The conferees agree with the Secretary of the Navy that establishing a director for expeditionary warfare within the Office of the CNO would help bring a better focus to major problems confronting the Navy as it plans to conduct expeditionary operations in Third World situations. The conferees agree that the position should be filled by a major general from the Marine Corps and operate within the so-called "N8" section of the organization. The conferees recommend a provision that would accomplish these aims.

Grade of certain commanders of special operations forces (sec. 936)

The Senate amendment contained a provision (sec. 1056) that would require the commanders of the special operations commands within the U.S. Central and Southern Commands to be of general or flag officer grade.

The House bill contained no similar provision.

The House recedes with an amendment that would specify that during the two-year period beginning on February 1, 1993, the special operations commanders within the U.S. Central and Southern Commands shall be of general or flag officer grade. The amendment would also require the Secretary of Defense to submit to Congress no later than March 1, 1994, a report explaining the Secretarys recommendations for the grade structure for the special operations forces component commander for each unified command.

The conferees agree to limit the Senate provision to a two-year period because of uncertainty over the effects of the drawdown in the number of general and flag officer positions. Nonetheless, special operations forces will grow increasingly important as regional contingencies and unconventional warfare come to dominate U.S. security concerns. Therefore, the conferees urge the Secretary of Defense to retain general or flag officers in the special operations positions covered by the Senate provision after February 1, 1995.

Report on assignment of special operations forces (sec. 937)

The House bill contained a provision (sec. 904) that would require the Secretary of Defense to submit a report to Congress no later than February 1, 1993 regarding the assignment of all active and reserve special operations forces stationed in the United States to the Special Operations Command. The report would delineate the peacetime command and control responsibilities of the commander of the Special Operations Command and the chiefs of the reserve components, including establishment of training and readiness standards, military and civilian personnel management, programming and budget execution functions, and conduct of operational training.

The Senate amendment contained no similar provision.

The Senate recedes.

legislative provisions not adopted

Conduct and review of investigations in the Department of Defense

The House bill contained a provision (sec. 902) that would require the Secretary of Defense to consolidate in the Defense Criminal Investigative Service the functions of the Armys Criminal Investigation Command, the Navy Investigative Service Command, and the Air Force Office of Special Investigations. The House bill also contained a provision (sec. 903) that would repeal the statutes (10 U.S.C. 3020 and 8020) that require that the positions of deputies and assistants of the Inspectors General of the Army and Air Force be filled by military officers.

The Senate amendment contained a provision (sec. 911) that would require the Secretary of Defense to establish a Commission on the Management and Review of Department of Defense Investigations.

The House recedes with respect to its provisions and the Senate recedes with respect to its amendment.

The conferees agree that there is a serious problem in the conduct and review of investigations in the Department of Defense. The most recent example is the Navys flawed inquiries into the incidents related to the 1991 Tailhook Symposium and the ensuing investigations. According to a report issued by the DOD Inspector General on September 21, 1992: "The principals in the Navy investigations erred when they allowed their concern for the Navy as an institution to obscure the need to determine accountability for the misconduct and the failure of leadership that had occurred. In our view, the deficiencies in the investigations were the result of an attempt to limit the exposure of the Navy and senior Navy officials to criticism regarding Tailhook 91."

This is not a novel problem, and it is not confined to investigations into issues involving sexual assault and harassment. Two years ago, the Senate Armed Services Committee took note of the committees hearings and inquiries into a number of DOD investigations, including the Navys investigation of the USS Iowa explosion (S. Rept. 101-384). The committee expressed serious concern about the conduct of investigations, the review process, and standards and procedures relating to assessment of accountability. The House Armed Services Committee has expressed similar concerns with respect to investigations by each of the military departments into matters such as acquisition management and friendly fire incidents, as well as the Iowa and Tailhook matters.

The conferees note that as a general matter, the Departments investigative reports reflect the work of dedicated, skilled professionals. There have been significant matters, however, in which the conduct, management, and review of investigations have been deficient. Too often, these have pertained to allegations involving leadership and management failures.

The process of conducting and reviewing investigations within the Department of Defense involves unique challenges. The activities under investigation may be classified. The investigation may involve ongoing or recently completed operations involving highly sensitive national security concerns. The matters under investigation may pertain to the responsibility and accountability of the chain of command. Under the Uniform Code of Military Justice, offenses such as dereliction of duty, conduct unbecoming an officer, and conduct to the prejudice of good order and discipline can result in criminalizing actions, and failures to act, which in civilian society are treated as noncriminal personnel matters. Military officers in the chain of command, as well as the Service Secretaries, the Secretary of Defense, and the President, have unique powers under the Uniform Code of Military Justice to convene and review courts-martial. Because of these judicial powers, they must be particularly sensitive in the management and oversight of the Department of Defense, including its investigative functions, to avoid actions that could undermine the court-martial process through the taint of unlawful command influence.

The conferees note that both the House and Senate Armed Services Committees intent to give this matter detailed oversight consideration in the coming year, with a view toward determining the scope of legislation required to address the conduct and review of investigations within DOD.

The conferees also agree that the Secretary of Defense should conduct a prompt and vigorous review of the conduct and review of DOD investigations.

The conferees agree that the Secretary of Defense would benefit from receiving a broad range of advice on this matter, and recommend that the Secretary convene an advisory board comprised of present and past DOD officials who have had extensive experience in the conduct and review of investigations, as well as present and past officials with similar experience in other government agencies.

The Secretary should request such an advisory board to assess current state of affairs within the Department, and to provide him with advice and recommendations, with respect to the following matters: (1) the training and qualifications of investigative personnel; (2) the division of responsibilities among organizations with investigative, audit, and inspection functions within the Department of Defense; (3) the coordination of activities among such organizations; (4) the potential for savings, and for improvements in efficiency and effectiveness, through consolidation of functions or organizations; (5) procedures to ensure that such organizations are capable of, and responsive to, the needs of the unified commands, the defense agencies, and other joint organizations; (6) procedures to ensure prompt and thorough investigation of allegations concerning classified matters, operational matters, and the performance of persons in the chain of command; (7) procedures to ensure that investigative organizations are not subject to improper command influence while also ensuring that such organizations are responsive to the investigative and inspection needs of the chain of command; (8) procedures to ensure that there is timely and thorough coordination between organizations conducting investigations and officials within the chain of command who will be responsible for acting on the results of such investigations; (9) guidance as to the circumstances under which an investigative organization should withhold information about an investigation from the immediate chain of command, and present the information only to superior authorities; (10) procedures for ensuring a timely determination as to whether the investigation should be undertaken by a court of inquiry or other formal administrative board procedure; (11) procedures to ensure that the rights of individuals under the Uniform Code of Military Justice, administrative procedures, and other applicable laws and regulations are protected during the course of an investigation and subsequent review procedures; (12) guidance to ensure that military and civilian officials in the chain of command receive timely instruction and advice on the procedures for undertaking appropriate management actions during the course of an investigation without interfering with the investigation or engaging in unlawful command influence; and (13) procedures to ensure that investigative materials are organized and presented in a manner that facilitates timely action by reviewing authorities.

Among other issues that such an advisory board could address are: (1) the appropriate chain of command for the Service investigative organizations; (2) whether the head of such organizations should be a military officer or civilian official; (3) if a military officer is so assigned, the rank of such officer; (4) the best command structure for these organizations; (5) whether fraud investigation responsibilities should be transferred to the Defense Criminal Investigative Service; (6) whether criminal investigation responsibilities should be consolidated into a DOD-wide criminal investigation bureau; (7) whether criminal investigations, procurement fraud, counterintelligence, technical services, and protective services should all be performed by the Service investigative organizations or should some or all of these missions be reassigned within the Services or consolidated at the DOD-level; (8) whether a DOD-level centralized technical services organization should be created; (9) whether allegations of homosexuality that do not involve homosexual acts should be investigated by criminal investigative organizations; (10) should special agents have a separate career path or should they be soldiers, sailors, or airmen first and special agents second; (11) should special agents be civilians, officers, or enlisted; (12) the appropriate number of special agents that are necessary to conduct general criminal investigations; and (13) the basic level of administrative support needed for the investigative function.

Sense of Congress expressing support for professional military education

The House bill contained a provision (sec. 923) that would express the sense of the Congress concerning the importance of maintaining an effective professional military education system at a time of force reductions.

The Senate amendment contained no similar provision.

The House recedes.

The conferees believe that the maintenance of an effective system of professional military education is increasingly important now that U.S. military forces are being reduced to the lowest levels since World War II. The conferees agree that the pressures generated by reductions in military forces should not be allowed to negate the actions taken by the Department of Defense in response to the recommendations contained in the April 21, 1989 report prepared by the Panel on Military Education of the House Committee on Armed Services. The conferees urge, as a matter of policy, the Secretary of Defense to continue efforts to maintain the quality of the schools of the professional military education system and the joint curriculum taught at these schools. The Secretary should make every effort to improve the quality and availability of professional military education courses for reserve officers who are unable to attend such courses while in the active service in order to ensure a continued source of qualified leaders for the reserve components.

The conferees also believe that it is very important for the Department of Defense to preserve its long-term investment in military graduate education. Post-graduate education and professional military education together constitute a strategic investment in the armed forces future. They have been successful in producing the adaptable, flexible, problem-solving leadership that characterizes our armed forces today. To ensure that future military leaders are equally capable requires continued support of military graduate education.

Assistant to the Chairman of the Joint Chiefs of Staff for National Guard and Reserve matters

The Senate amendment contained a provision (sec. 903) that would require the Chairman of the Joint Chiefs of Staff to establish the position and office of Assistant to the Chairman of the Joint Chiefs of Staff for National Guard and Reserve Matters.

The House bill contained no similar provision.

The Senate recedes. The conferees do not wish to establish the office and position of Assistant to the Chairman of the Joint Chiefs of Staff for National Guard and Reserve Matters in statute. However, the conferees agree with the intent of the Senate provision. Therefore, the conferees direct the Chairman of the Joint Chiefs of Staff to establish and staff an office of Assistant to the Chairman of the Joint Chiefs of Staff for National Guard and Reserve Matters. The conferees expect the position and supporting staff to be drawn from existing National Guard and reserve assets.

Deputy Assistant Secretary of Defense for Equal Opportunity

The Senate amendment contained a provision (sec. 909) that would require the Department of Defense to reestablish, from within existing resources, the office and position of Deputy Assistant Secretary of Defense for Equal Opportunity.

The House bill contained no similar provision.

The Senate recedes. The conferees do not wish to establish the position and office of Deputy Assistant Secretary of Defense for Equal Opportunity in statute. However, the conferees agree that such a position and office are necessary. Therefore, the conferees direct the Secretary of Defense to establish such a position and office within 60 days of the enactment of this act.

Delivery of legal services within the Department of Defense

On March 3, 1992, the Deputy Secretary of Defense issued a memorandum entitled "Ensuring Execution of the Laws and Effective Delivery of Legal Services." The memorandum addressed a number of issues, including the relationships among various legal organizations within the Department of Defense. As noted in the Senate report (S. Rept. 102-352), the March 3 memorandum was susceptible to interpretations that could disrupt important working relationships within the Department of Defense. On June 19, 1992, David S. Addington, during proceedings before the Senate Armed Services Committee on his confirmation to be General Counsel of the Department of Defense, provided important clarifying information in response to questions posed by the Committee. The Senate report observed that it was imperative that the Deputy Secretarys March 3 memorandum be either rescinded or revised to ensure consistency with the material in the June 19 response.

The Senate amendment contained a provision (sec. 910) that would direct the Secretary of Defense to either rescind or revise the March 3 memorandum.

The House bill contained no similar provision.

On August 14, 1992, the Deputy Secretary of Defense issued a new memorandum entitled "Ensuring Effective Execution of the Laws and Effective Delivery of Legal Services," which superseded the March 3 memorandum. The Deputy Secretary directed that the new memorandum be implemented in a manner consistent with Mr. Addingtons June 19 response to the Senate Armed Services Committee.

The conferees agree that the information contained in Mr. Addingtons June 19 response contained important clarifying information that necessitated revision of the Deputy Secretarys March 3 memorandum. In view of the Deputy Secretarys August 14 memorandum, and the direction to implement that memorandum in a manner consistent with Mr. Addingtons June 19 response, the conferees agree that legislation is not necessary at this time. The Armed Services Committees of the Senate and House of Representatives will continue to monitor this situation closely to ensure that the Department maintains appropriate procedures for ensuring the effective execution of the laws and delivery of legal services, including procedures for airing and resolving differing views among legal organizations within DOD.

Continuing requirement for reporting on operational activities

The Senate amendment contained a provision (sec. 914) that would amend title 10, United States Code, to require the Department of Defense to keep the Committees on Armed Services of the Senate and House of Representatives fully and currently informed on all operational activities and require all federal departments, agencies, or independent establishments to furnish any information requested by these committees relating to such operational activities.

The House bill contained no similar provision.

The Senate recedes. The conferees have received assurances from the Secretary of Defense that the Committees on Armed Services will be kept advised of operational activities as a matter of comity and in a spirit of cooperation between the executive and legislative branches of the government. The conferees intend to revisit this issue next year in the light of the cooperation that the committees actually experience in the interim.

TITLE X GENERAL PROVISIONS

Legislative Provisions

legislative provisions adopted

Restatement of requirement for mission budget (sec. 1002)

The Senate amendment contained a provision (sec. 1002) that would extend the requirement for an alternative defense budget that reflects roles and missions to the entire period covered by the Future Year Defense Program.

The House bill contained no similar provision.

The House recedes with a technical amendment.

The conferees agree that the extant national military strategy should serve as a basis for the mission categories in the required future years mission budget.

The conferees reaffirm the statements in the Senate report (S. Rept. 102-352) regarding double-counting of forces for different missions, the meaning of contingency forces, and the integration of Guard and reserve forces and modernization costs into a mission structure. The conferees further reaffirm previous congressional guidance (H. Rept. 101-923) that appropriate mission categories include offensive and defensive strategic forces, heavy land forces, ground-based tactical air forces, mobility forces, power projection forces, sea control forces, special operations forces, and intelligence activities, and that a mission budget should allocate research and development funding to these categories to the maximum extent possible. The Defense Department should consider a separate category for elements of the Department of Defense that are not directly tied to primary missions, such as basic research or reserve forces in lower states of readiness that are not designated to support any particular mission.

Finally, the conferees agree that the allocation of each type of force to each unified and specified command should be included in the mission budget as well.

Treatment of certain "M" account obligations (sec. 1003)

The House bill contained a provision (sec. 1003) that would require the Secretary of Defense, prior to reobligating any sum in an "M" or merged account, to identify and cancel with the Treasury of the United States an equal sum from such account. The provision would also require the Secretary to provide notice of any such reobligation proposal in a sum greater than $10 million and to wait 30 days prior to effecting the reobligation.

The Senate amendment contained no similar provision.

The Senate recedes.

Additional transition authority regarding closing appropriation accounts (sec. 1004)

The Senate amendment contained a provision (sec. 1003) that would amend existing law to provide for the charge to current appropriations under certain specified conditions in the case of appropriations that expired at the end of fiscal years 1985 to 1992 in order to satisfy legitimate charges to contracts. The provision would limit the total amount of such charges to the lesser of one percent of the total appropriations of the current account or of the expired account and would require notice to the congressional defense committees and a wait of 30 days.

The House bill contained no similar provision.

The House recedes with an amendment that would condition such charges on the Secretary of Defense certifying that limits on expending and obligating funds are being complied with and that violations are being reported to the President and Congress. If the Secretary is unable to make such certifications, he would have to submit a report to Congress setting forth the actions that will be taken to enable such certifications to be made.FBI counterintelligence funding (sec. 1005)

The Senate amendment contained a provision (sec. 1063) that would provide that no funds are authorized to be appropriated under this act for the Federal Bureau of Investigation (FBI).

The House bill contained no similar provision.

The House recedes.

The conferees view the inclusion of funding for the FBI foreign counterintelligence program in the defense budget request as an inappropriate attempt to circumvent the budget summit agreement.

Classified annex (sec. 1006)

There is a classified annex of legislative provisions to this conference report. The classified annex is incorporated by reference into this act and has the force and effect of law. The classified annex is available to the Senate and House of Representatives during consideration of this conference report, and will be made available to the President at the time of presentment of this legislation.

East Coast homeports for nuclear-powered aircraft carriers (sec. 1011)

The House bill contained a provision (sec. 1011) that would require the Department of the Navy to establish a second homeport on the East Coast of the United States for nuclear-powered aircraft carriers.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would find that Naval Station Mayport ought to be the second East Coast homeport for nuclear-powered aircraft carriers, when such an additional homeport becomes necessary.

The amendment would also require the Secretary of the Navy to report to the congressional defense committees on the Navys plan for developing such a homeport. That report shall address timing and cost, and be consistent with the Navys plans for retiring conventionally-fueled aircraft carriers and deploying nuclear-powered aircraft carriers.

Limitation on overseas ship repairs (sec. 1012)

The House bill contained a provision (sec. 1020) that would codify current Navy practices in determining whether a ship operating overseas will have maintenance performed overseas before returning to the United States.

The Senate amendment contained no similar provision.

The Senate recedes.

Navy mine countermeasure program (sec. 1013)

The House bill contained a provision (sec. 1014) that would require a report by the Secretary of the Navy regarding the proposed consolidation of mine countermeasures forces at one homeport on the Gulf of Mexico.

The Senate amendment contained a similar provision (sec. 2862) that would also direct the Comptroller General to evaluate the Navy report, and prohibit any actions to effect such a consolidation until 90 days after receipt of the Navy report by the congressional defense committees.

The House recedes with an amendment.

The conferees note the Navys recent commissioning at Ingleside, Texas, of Naval Station Ingleside, which has been designated the homeport of a significant portion of the Navys mine warfare fleet. For the sole purpose of ensuring that the Secretary of the Navy acts judiciously in regard to consolidating the mine warfare mission, the conferees recommend a provision that would direct the Secretary of the Navy to conduct a study of the operational and economic implications, as well as siting alternatives, of consolidation of mine countermeasures missions.

This report shall be submitted to the congressional defense committees no later than December 15, 1992, and will be followed within 30 days by an evaluation by the Comptroller General. The provision would prohibit any actions by the Department of the Navy to effect consolidation until 60 days after the release of the study by the Department of the Navy, or February 15, 1993, whichever is later. The conferees want to make it perfectly clear that this action does not have any effect on the transfer of ships or mine warfare personnel that the Navy has already officially announced, as of September 23, 1992, will be stationed at Naval Station Ingleside, Texas.

Transfer of certain vessels (sec. 1014)

The House bill included a provision (sec. 1013) that would direct the Secretary of the Navy to transfer two Navy auxiliary vessels to the Department of Transportation to be assigned as training ships to Texas A&M University and the Maine Maritime Academy when the vessels are no longer required for use by the Navy.

The Senate amendment included a similar provision (sec. 1053), but would link the transfer to the date of decommissioning of the vessels.

The House bill also contained a provision (sec. 1019) that would allow the Secretary of the Navy to transfer the obsolete tank landing ship ex-USS Wahkiakum County to the not-for-profit organization Ships for Youth and the Environment without the 60 day notification required by section 7308 of title 10, United States Code.

The Senate amendment contained no similar provision.

The Senate recedes.

Report on compliance with domestic ship repair law (sec. 1015)

The House bill contained a provision (sec. 1061) that would require the Secretary of the Navy to submit a report on the Navys compliance with section 7309 of title 10, United States Code, relating to restrictions on construction or repair of vessels in foreign shipyards.

The Senate amendment contained no similar provision.

The Senate recedes.Repeal of requirement for construction of combatant and escort vessels in Navy yards (sec. 1016)

The Senate amendment contained a provision (sec. 1054) that would repeal subsection (a) of section 7299a of title 10, United States Code. This subsection required that the first ship and every other ship of a class of combatants or escort vessels be built in Navy yards. This requirement is subject to a waiver by the President if the President determines that meeting the requirement is inconsistent with the public interest.

The House bill contained no similar provision.

The House recedes.

Procurement of ships for the sealift program (sec. 1021)

The House bill included a provision (sec. 1017) that would authorize the Secretary of the Navy to purchase up to five ships built in foreign yards for the fast sealift program. The provision would require that whatever conversion work is done on the ships to make them suitable for the Navys purpose would have to be performed in U.S. shipyards.

The Senate bill contained no similar provision.

The Senate recedes.Modification of fast sealift program (sec. 1022)

The House bill contained a provision (sec. 1021) that would modify previous legislation relating to domestic content of sealift ship propulsion systems, bridge and machinery control systems, and interior communications equipment. The modification would expand the coverage of the domestic content provision for propulsion systems. The new limitations would apply to each major propulsion subsystem (engines, reduction gears, and propellers), rather than to propulsion systems as a whole.

For bridge and machinery control systems and interior communications equipment, the provision would allow the Secretary of Defense to waive the domestic content requirements if the system or equipment were not available or the cost of compliance would be unreasonable.

The Senate amendment contained no similar provision.

The Senate recedes.

Strategic sealift report (sec. 1023)

The Senate amendment contained a provision (sec. 126) that would require a detailed report on the intended purposes for strategic sealift funding before any funding could be obligated.

The House bill contained no similar provision.

The House recedes.

National defense sealift fund (sec. 1024)

The Senate amendment contained a provision (sec. 1077) that would establish a fund called the national defense sealift fund. This fund would be the mechanism for channeling resources to meet strategic sealift requirements, including those deficiencies identified in the Mobility Requirements Study report.

The House bill contained no similar provision.

The conferees recommend a provision that would establish the national defense sealift fund, under the control of the Secretary of Defense, with the following features:

the fund will gain resources from appropriations, contributions, receipts from disposal of DOD sealift vessels, and receipts from any build and charter program conducted under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510);

budget requests for expenditures from the sealift fund must be made by program, project, and activity in four distinct categories:

construction, purchase, alteration, and conversion;

operations, maintenance, lease, and charter;

installation and maintenance of national defense features on privately owned and operated vessels; and

research and development.

appropriations made to the fund will be made available for obligation no longer than five years, unless otherwise specifically provided by law;

not more than $10.0 million from the fund may be obligated during fiscal year 1993 until 30 days after the Secretary of Defense submits a detailed report on the intended uses of the fund during fiscal year 1993; and

not more than five foreign-built vessels may be purchased by the fund.

Under the provision recommended by the conferees, resources in the fund would be available for construction and conversion, operations, defense features, and research and development. In general, obligation of funds for programs, projects, and activities will require both an authorization and an appropriation. In certain unusual circumstances, however, subsection (j) of the provision would permit funds to be obligated under other authority.

Funds could be shifted between these categories only after consultation with the congressional defense committees. The conferees direct the Secretary of Defense not to shift funds between categories unless the Secretary follows the existing prior approval reprogramming process.

In addition, for funds transferred into the fund from prior year appropriations for shipbuilding and conversion, Navy, and for funds appropriated directly to the fund for expenditure in fiscal year 1993, the conferees recommend a provision that would restrict obligation of these funds until a detailed obligation plan is submitted. The provision would make $10.0 million available for obligation for necessary efforts until the plan is available. The conferees direct that the funding plan not be executed until the congressional defense committees have approved the plan under existing procedures for prior approval reprogrammings.

Finally, regarding amounts that may be deposited into the fund in the future, the conferees agree that such amounts shall be authorized for specific purposes, typically based on the annual budget request. However, to the extent that the Secretary should desire a deviation from the plan as authorized, the conferees direct that such changes shall be made only after notification to the congressional defense committees through a prior approval reprogramming process.

The House report (H. Rept. 102-527) directed the Secretary of the Navy to conduct a study of the operational and economic benefits of controllable pitch propellers (CPP) on vessels to be constructed under the sealift program. The report urged that CPP be designated class standard equipment if the study showed the CPP are operationally advantageous and cost-effective.

The conferees understand that the Navy has not completed a study of this matter, but, in the interest of moving quickly, has proceeded with class standard equipment that does not include CPP and left the decision about CPP to be determined through the selection process that evaluates compeitive proposals. The conferees are concerned that the circular of requirements (COR), and the evaluation criteria by which the Navy will evaluate shipyard offers for new construction sealift ships, may be incomplete, inadequately reflecting the operational and economic advantages that may be available from CPP. In particular, the evaluation criteria may not adequately weigh ship maneuverability and the ability to operate at a sustained 15 knot cruising speed. Accordingly, the conferees request the Secretary of the Navy to review this matter as it pertains to the COR.

The conferees believe that the recommended limit of five foreign-built vessels represents a reasonable balance between the concerns for moving forward more quickly to add sealift capability, and supporting the domestic shipbuilding industry. Although the conferees will not be inclined to recommend a change in this limit in the future, they recognize that circumstances could change.

The provision that would establish the sealift fund recognizes that build and charter and including defense features on commercial ships could provide useful ways of enhancing aggregate sealift capability. The conferees regret that the Navy has not provided the analysis of costs and benefits of proposals to construct vessels with defense features requested in the statement of the managers (H. Rept. 102-311) accompanying the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190). The Defense Department has clearly favored government ownership of vessels, rather than showing any intent to follow the national sealift policy which emphasizes reliance on the private sector. The Defense Department has provided no basis for this dichotomy between averred policy and its actions.

Revitalization of U.S. shipbuilding industry (sec. 1031)

The House bill contained a provision (sec. 1016) that would require the Secretary of Defense to direct that all strategic sealift ships be designed and built to commercial specifications and to establish an interagency working group to formulate a comprehensive program to preserve the shipyard industrial base. Unless the Secretary submits a comprehensive plan developed by that working group with the defense budget request for fiscal years 1994/1995, a penalty would be triggered. It would prohibit the Department of Defense from contracting for goods and services with any company physically located in or headquartered in any country that continues to provide a subsidy to a foreign shipyard for the construction or repair of vessels or that engages in ship dumping practices.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

The conferees agree that the President is the appropriate official to convene the interagency working group and provide the report not later than October 1, 1993.

The conferees agree to modify the penalty provision to include only foreign firms. The conferees also agree to amend the provision to waive the penalty if:

the President notifies Congress that he is unable to submit the plan by October 1, 1993; and

he includes an explanation of the reasons for delay and a statement that the plan will be submitted by April 15, 1994.

Additional support for counter-drug activities (sec. 1041)

The Senate amendment contained a provision (sec. 921) that would amend section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) to extend its provisions through fiscal year 1994; clarify and broaden the authority to enable to systematic and continuing reporting on the movement of persons, vehicles, or other potential modes of transporting drugs; preclude limiting support only to critical, energent, or unanticipated requirements; and authorize the provision of linguist and intelligence analysis services.

The House bill contained a provision (sec. 1031) that would amend section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) to extend its provisions through fiscal year 1994 and authorize $40.0 million for additional support to other agencies for counter-drug activities. The House bill also contained a provision (sec. 924) that would, in part, authorize the Secretary of Defense to use the Foreign Language Center of the Defense Language Institute to train linguists and require the Secretary to submit a report evaluating the feasibility of using enhanced linguist automated translation capabilities and training.

The House recedes with an amendment that would limit the detection, monitoring, and communication of movement in the case of air and sea traffic to within 25 miles of and outside the boundaries of the United States and in the case of surface traffic, to outside the boundaries and within the United States to not exceed 25 miles of the boundaries provided the initial detection occurred outside the boundary. The amendment would also specifically authorize $40.0 million for additional support to other agencies for counter-drug activities. The conferees emphasize that nothing in this section changes the applicability of section 375 of title 10, United States Code, which prohibits direct participation by Department of Defense personnel in a search, seizure, arrest, or any other similar activity.

The conferees are concerned with the late obligation of section 1004 funds and with the criteria applied by the Defense Department in determining the use of such funds. Accordingly, the conferees have amended section 1004 to provide that support may not be limited only to critical, emergent, or unanticipated requirements. The conferees do not intend that other agencies rely upon section 1004 funding in formulating their budget requests to the Congress. Nevertheless, the conferees believe that the most important criteria for provision of section 1004 support should be the consistency of the supported activity with the priorrities of the National Drug Control Strategy and the contribution that such activity makes to the national counter-drug effort. For example, section 1004 funds should be used for, but not limited to, such activities as providing counter-narcotics training for local law enforcement officials by military police instructors. The conferees further urge the Secretary to ensure that section 1004 funds and support are provided throughout the fiscal year and not husbanded for expenditure in the final quarter.

The conferees are pleased with the Department of Defenses prior notification to the Armed Services and Foreign Relations Committees of the Senate and the Armed Services and Foreign Affairs Committees of the House of Representatives concerning support to foreign law enforcement agencies and expect the Department to foster communications with those committees on such support.

The conferees are aware of linguist support the Department has provided to the Drug Enforcement Agency (DEA) for several years. At the Departments request, DEA developed an alternative electronic delivery means to supplant temporary duty (TDY) linguists. The conferees understand that a centralized remote digitized translation system has demonstrated a cost-effective means of meeting this translation support requirement. The conferees direct the Department to establish such a system as soon as possible in order to reduce the TDY linguist support. Funds provided pursuant to section 1004 are authorized to be used for establishment and operation of the electronic system to the extent that it is utilized for counter-drug purposes.

Finally, the conferees urge the Secretary of Defense to make maximum use of the resources of the Foreign Language Center of the Defense Language Institute in the provision of linguist services and associated training.

Maintenance and operation of equipment (sec. 1042)

The Senate amendment contained a provision (sec. 922) that would amend section 374 of title 10, United States Code, to authorize Department of Defense personnel to operate equipment for the purpose of detecting, monitoring, and communicating the movement of land traffic to assist law enforcement officials.

The House bill contained no similar provisions.

The House recedes with an amendment that would limit the communication of movement of traffic to surface traffic outside the United States and within the United States up to 25 miles, provided the initial detection was outside the boundary. The conferees are agreed in the need to clarify congressional intent with respect to support to law enforcement authorities in connection with the movement of surface traffic across the border of the United States. Accordingly, the conferees have agreed to a provision that would clarify congressional intent to authorize the systematic and continuing reporting on the movement of persons, vehicles, or other potential modes of transporting drugs on the surface to provide law enforcement with the necessary cued intelligence required to plan effective interdiction efforts. The conferees emphasize, however, that nothing in this section changes the applicability of section 375 of title 10, United States Code, which prohibits direct participation by Defense Department personnel in search, seizure, arrest, or any other similar activity.

Counter-drug detection and monitoring systems plan (sec. 1043)

The House bill contained a provision (sec. 1032) that would require the Secretary of Defense to establish requirements for land, air, and sea-based systems to be used by the Department in its mission as the lead agency for detection and monitoring of the transit of illegal drugs into the United States; to identify and evaluate existing and proposed counter-drug detection and monitoring systems; and to prepare a plan for the development, acquisition, and use of improved systems. The provision would also require the Secretary to submit a report to Congress covering these areas and would prohibit the obligation of funds for the procurement, upgrading, and research and development of a counter-drug detection and monitoring system, or the lease of such a system for a new capability, until the Secretarys report is submitted.

The Senate amendment contained a provision (sec. 924) that would require the Secretary of Defense to conduct a study of the land, sea, and air-based systems used by the Department in carrying out activities relating to the reconnaissance, detection, and monitoring of drug traffic and to submit a report to Congress on the results of the study, including the evaluation of existing and potential systems. The provision would also prohibit the obligation of funds for the procurement, upgrading, research and development, or lease of a counter-drug reconnaissance, detection, and monitoring system, prior to the submission of the report, but specifically would authorize the obligation of funds for such actions if necessary to carry out the study.

The Senate recedes with an amendment that would insert the requirement for the Secretary to determine systems that should be terminated, and provide the authority to obligate funds for actions necessary to carry out the study.

The conferees further direct the Secretary to ensure that the evaluation of systems includes existing systems and technologies, such as the sea-based aerostats (SBAs), small aerostat surveillance system (SASS), and the relocatable over the horizon radar (ROTHR). Further, the Department will ensure that new concepts, such as airships, P-3 aircraft equipped with airborne early warning radar, T-1A aircraft, and modified T-47 aircraft; non-developmental items, such as multi-sensor surveillance aircraft; and developmental items, such as low-observable, modular/reconfigurable, high-speed maritime patrol craft, as described in the House and Senate reports (H. Rept. 102-527 and S. Rept. 102-352) are fully evaluated. The conferees authorize the Department to use funds from drug interdiction accounts to acquire (lease or purchase) and modify these systems for the purpose of evaluation. The conferees also authorize $5.0 million for the conduct of the administrative activities necessary for this evaluation, and to prepare the resulting plan and report to Congress. The conferees expect the Department to work out arrangements with other agencies when such agencies already possess an item which needs to be assessed.

The conferees further direct the Department not to take any irrevocable action with regard to selection of systems in the counter-drug area pending the completion of the systems plan.

Demand reduction activities (sec. 1045)

The Senate amendment contained a provision (sec. 925) that would require the Secretary of Defense to expand the drug demand reduction outreach program of the Department to include regions beyond the vicinity of military installations and to focus on youths, in general, and inner-city youths, in particular.

The House bill contained a provision (sec. 1034) that would require the Secretary of Defense to prepare a report assessing the feasibility and desirability of conducting such a program.

The House recedes with an amendment that would authorize the Secretary of Defense to conduct an expanded drug demand reduction outreach program on a three-year pilot basis and would require the Secretary to submit a report to Congress no later than two years after the date of the enactment of this act.

The conferees are aware of the numerous and varied outreach programs currently carried out by the armed forces. The conferees believe that those programs, which are currently carried out on a volunteer basis, if expanded both geographically and in scope and adequately funded, can make a substantial contribution to the reduction in demand for illegal drugs. The conferees direct that the program be conducted in a manner that complements, rather than duplicates, similar efforts undertaken by other federal, state, and local agencies.

Joint Task Force Five

The House bill would deny authorization for the U.S. Pacific Commands Joint Task Force 5 (JTF-5), which is located in Alameda, California, and that provides intelligence and operations support to multiple law enforcement agencies. The House conferees fully support the functions performed by JTF-5 but believe the intelligence functions, constituting over 50 percent of the total JTF-5 personnel billets, should be fully or partially consolidated within the Joint Intelligence Center-Pacific in Hawaii.

The Senate amendment did not deny authorization for JTF-5.

The House recedes.

The conferees note that the joint intelligence centers are intended to be consolidated centers of intelligence support to the unified and specified commanders. Further, the statement of the managers (H. Rept. 102-311) accompanying the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) directed the Secretary of Defense to examine and report on the possibility of consolidating the counter-drug task forces. The conferees have received this report and note the Departments decision to retain the existing task force structure. However, the conferees believe that further refinements in the present counter-drug organizational structure are possible to minimize cost, reduce duplication, and enhance counter-drug operations and support of law enforcement agencies. Accordingly, the conferees urge the Department to consider further consolidation of the intelligence functions presently dispersed in the counter-drug joint task forces to the joint intelligence centers of the responsible unified and specified commands.Technical and clerical amendments (secs. 1051-1055)

The House bill contained two provisions (secs. 1041 and 1042) and the Senate amendment contained three provisions (secs. 1031, 1033, and 1034) that would codify and clarify certain provisions of law and provide certain technical amendments.

The Senate recedes with an amendment.United States Court of Military Appeals amendments (secs. 1061-1062)

The Senate amendment contained a provision (sec. 1058) that would make two improvements in the laws governing the Court of Military Appeals. The first would equalize retirement provisions applicable within the Court by authorizing all of the judges to be placed under the same retirement system. The second would enhance the Courts stature and independence by establishing tenure for the chief judge in place of the current provision which permits the chief judge to be removed from that position at any time.

The House bill contained no similar provision.

The House recedes with respect to providing tenure for the chief judge. With respect to the change in the Courts retirement system, the House recedes with an amendment that would give prospective effect to the change.

Other amendments to the Uniform Code of Military Justice (secs. 1063-1067)

The Senate amendment contained a provision (sec. 1059) that would make a number of amendments to the Uniform Code of Military Justice proposed by the Department of Defense to bring the military justice system more closely in line with civilian criminal law procedures. The provision would: (1) amend article 3 to ensure that a court-martial has jurisdiction over a servicemember for offenses committed during a prior enlistment; (2) amend article 57 to permit a military sentence to be served consecutively, rather than concurrently, with a civilian or foreign sentence; (3) amend article 63, which governs rehearings, to provide court members with accurate information about the maximum sentence that may be imposed at a rehearing; (4) amend article 111 to provide a statutory standard for breath and blood measurements of alcohol; (5) amend article 118 to clarify that unpremeditated murder requires that only one individual need be put at risk by an inherently dangerous act evincing a wanton disregard of human life resulting in the unlawful killing of an individual; and (6) amend article 120 to eliminate the spousal rape exception and make the offense of rape gender neutral.

The House bill contained no similar provision.

The House recedes with a technical amendment.Use of aircraft safety and accident investigation reports (sec. 1071)

The House bill contained a provision (sec. 1051) that would require the Secretary of a military department to make the records and reports of a safety investigation available to the Committee on Armed Services of the Senate or House of Representatives upon the request of the chairman and ranking member of that committee. Individuals to whom access is provided to such records or reports would be required to preserve the confidentiality of their contents. The provision would also require a military aircraft accident investigation to contain a clear conclusory statement or determination of the cause of the accident or, if such is not possible, to describe those factors that substantially contributed to or caused the accident.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would first require that the Service Secretaries shall release recordings or other factual material before the completion of the accident investigation only if two conditions are met: first, that there be a specific request for the information, a standard imposed so that the Services are not forced to prepare every factual item uncovered in an accident investigation for early public release even when there is no public interest in the material; and, second, that any material prepared for such release must be material that would normally be releaseable at the conclusion of the accident investigation.

Second, the amendment would require an accident investigation board to state an opinion or opinions of the cause or causes of the accident when there is evidence sufficient for the board to make such determinations. The conferees intend to permit the Service Secretaries lattitude in establishing evidentiary standards if they so choose. The conferees also emphasize that nothing in the amendment is intended to force a board to reach a conclusion. If the board feels the evidence is so conflicting or inadequate that it cannot reasonably reach a conclusion, this provision would allow it to state that the cause is indeterminable.

The conferees also note their continuing expectation that the Committee on Armed Services of the Senate and the House of Representatives will receive, on a non-releasable basis, copies of safety reports for review when, in the opinion of committee or committees concerned, circumstances so require. The conferees believe that review of these reports by the committees should not be a matter of dispute and expect the military Services to forthrightly and promptly comply with official requests of this nature.Survivor notification and access to reports relating to service members who die during operations or training (sec. 1072)

The House bill contained a provision (sec. 1052) that would require the Secretary of Defense to provide the family of a member of the armed forces with timely notification and copies of reports about the death of the member to the extent that the reports would be subject to release under the Freedom of Information Act and the Privacy Act. The provision would also require the Secretary of Defense to review fatality notification procedures.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment. The conferees intend that the term "fatality report" include the documentary exhibits to such a report, including an autopsy report and accompanying photographs. The conferees note that this provision has prospective application with respect to fatalities occurring on or after the date of enactment. The conferees encourage the Department of Defense, however, to apply the procedures required by this provision, insofar as practicable, in the Departments communications with survivors of service members who died prior to enactment of this act.

Authority for civilian students to attend the United States Naval Postgraduate School (sec. 1073)

The House bill contained a provision (sec. 1053) that would amend section 7041 of title 10, United States Code, to authorize civilian students to attend the United States Naval Postgraduate School on a reciprocal-tuition waiver basis. Civilians would be admitted to the school without having to pay tuition, as long as they were enrolled and paying tuition at a civilian institution of higher learning that has a reciprocity agreement with the Naval Postgraduate School, and meet citizenship, residency, and aptitude requirements.

The Senate amendment contained no similar provision.

The Senate recedes.

Elimination of reports required by law (sec. 1074)

The Senate amendment contained a provision (sec. 1049) that would repeal 16 statutory requirements for reports from the

Department of Defense.

The House bill contained no similar provision.

The House recedes with an amendment that would repeal one of the 16 requirements that would be repealed by the Senate provision.

Restriction on obligation of funds for new museums (sec. 1075)

The Senate amendment contained a provision (sec. 1051) that would prohibit obligation of funds for construction or capitalization of four museums for which funds were appropriated in fiscal year 1992 unless the Secretary of Defense makes a special determination that the museum is a high priority item that would make a unique contribution to the missions of the military departments.

The House bill contained no similar provision.

The House recedes. The conferees note that during consideration of the Military Construction Authorization Act for Fiscal Year 1985 (Public Law 98-407), the Armed Services Committees of the Senate and the House of Representatives carefully reviewed the question of whether federal funds should be used for the construction of military museums. At that time, the committees concluded that each military Service should be limited to one museum that would be constructed with public funds.

The conferees support local initiatives to establish museums on military installations using private funds, with modest support using appropriated operating funds from their associated military bases. The conferees endorse the policy adopted in the 1985 legislation limiting the actual construction of museums with appropriated funds to one per Service.

Army military history fellowship program (sec. 1076)

The Senate amendment contained a provision (sec. 1052) that would direct the Secretary of the Army to award fellowships in military history of the Army to eligible individuals.

The House bill contained no similar provision.

The House recedes.

Amendment to authorize an optional refund of lump-sum annual leave payments to certain civilian personnel (sec. 1077)

The Senate amendment contained a provision (sec. 1045) that would make a technical change to section 5551 of title 5, United States Code, as amended by the Portability of Benefits for Nonappropriated Fund Employees Act of 1990 (Public Law 101-508). The 1990 amendment was retroactive to January 1, 1987, and provided that leave would be transferred. Certain personnel who had transferred before the amendment was enacted had received lump-sum payments for accrued leave. These personnel are required to refund the payments they received in exchange for leave credit. This provision would allow such employees the option of keeping such payments or refunding such payments and having their leave recredited.

The House bill contained no similar provision.

The House recedes.

Equity in benefits for temporary federal employees (sec. 1078)

The House bill contained provisions (secs. 1201-1206) that would provide health and life insurance and retirement benefits to temporary employees within the Department of Defense who complete one year of current continuous employment or four years of service within a six-year period.

The Senate amendment contained no similar provisions.

The Senate recedes with an amendment. The conferees agree that the Office of Personnel Management should report to Congress by April 1, 1993 on the feasibility of providing health and life insurance and retirement benefits to temporary employees.

Designation of United States military physicians as civil surgeons under the Immigration and Nationality Act of 1991 (sec. 1079)

The House bill contained a provision (sec. 1068) that would deem United States military physicians with not less than four years of professional experience to be civil surgeons for the purpose of performance of physical examinations under the Immigration and Nationality Act of 1991.

The Senate amendment contained no similar provision.

The Senate recedes.

Use of armed forces insignia on state license plates (sec. 1080)

The House bill contained a provision (sec. 537) that would amend chapter 53 of title 10, United States Code, to authorize the Secretaries of the military departments to approve an application by a State to use or imitate the seal or other insignia of the department, or of armed forces under the jurisdiction of that Secretary, on motor vehicle license plates issued by the State to an individual who is a member or former member of the armed forces.

The Senate amendment contained no similar provision.

The Senate recedes.

Civil-military cooperative action program (sec. 1081)

The Senate amendment contained a provision (sec. 1060) that would authorize the Secretary of Defense to establish a civil-military cooperative action program to use the skills, capabilities, and resources of the armed forces to assist civilian efforts to meet critical domestic needs of the United States.

The program would have the following objectives: (1) enhancing individual and unit training and morale through meaningful community involvement; (2) encouraging cooperation between civilian and military sectors of society in addressing areas of domestic need; (3) advancing equal opportunity and improving relations among racial and ethnic groups; (4) enriching the civilian economy through education, training, and transfer of technological advances; (5) improving the environment and economic and social conditions; and (6) providing opportunities for disadvantaged citizens.

The program would be governed by three essential principles: (1) any project under the program must be undertaken in a manner that is consistent with the military mission of the unit in question; (2) the project must fill a need that is not otherwise being met, and should not compete with the private sector or with services provided by other government agencies; and (3) the program cannot become a basis for justifying additional overall defense expenditures or for retaining excess military personnel. Projects should be undertaken only with personnel, resources, and facilities that exist for legitimate military purposes.

The House amendment contained no similar provision.

The important role that the military can play in meeting domestic needs has been underscored by the critical role of the armed forces in the aftermath of Hurricane Andrew. Although the relief effort required the cooperative efforts of many federal, state, and local entities, only the Department of Defense had the equipment and personnel to provide the logistics and infrastructure necessary for the timely provision of essential food, shelter, medical, sanitation, and communications services for a disaster of this magnitude.

The conferees agree that a vibrant civil-military cooperative action program can assist civilian officials in addressing a variety of domestic needs, consistent with the military mission and the primary role of other government agencies and the private sector in dealing with domestic matters.

The House recedes.

Limitation on support for United States contractors selling arms overseas (sec. 1082)

The House bill contained a provision (sec. 1062) that would require the Defense Department to be fully reimbursed for any support it provides to U.S. firms at overseas military trade shows.

The Senate amendment contained a provision (sec. 2802) that would, in part, prohibit the exhibition of any Defense Department equipment at an international trade show unless the equipment was leased by its manufacturer at a fair market rate.

The Senate recedes with an amendment.

The conferees believe that U.S. firms should pay the costs of marketing their defense equipment at international trade shows. Therefore, the amendment would require that, if a U.S. firm or industrial association asked the Defense Department to provide equipment for an international trade show outside the United States, such equipment could not be supplied unless the firm reimbursed the Defense Department for the incremental costs that it incurred in providing the equipment. These incremental costs would be (1) the incremental costs incurred by any military personnel who accompany the equipment, including their food, lodging, and local transportation; (2) the incremental transportation costs incurred in moving the equipment from its normally assigned location to the trade show and back again; and (3) any other miscellaneous incremental costs.

The amendment would also prohibit the Defense Department from participating directly in international trade shows outside the United States unless the Secretary of Defense determined that it was in U.S. national security interests to do so. The Secretary could not delegate authority to make this determination below the level of the Under Secretary of Defense for Policy. The amendment would require the Secretary of Defense to submit a report to Congress 45 days before the opening of a trade show in which the Defense Department intended to participate directly. The conferees do not intend this prohibition to cover airshows and similar military exhibits held on overseas U.S. military bases for the purpose of promoting better community relations among U.S. military personnel, their dependents, and host citizens.

Sense of Congress regarding the time limitations for consideration of military decorations and awards (sec. 1083)

The House bill contained a provision (sec. 1066) that would express the sense of the Congress that the Secretaries of the military departments should consider recommendations for decorations or awards for World War II service regardless of the time limitations on the consideration of such awards. Recommendations under this provision would have to be submitted by December 31, 1995 in order to merit consideration.

The Senate amendment contained no similar provision.

The Senate recedes.

Award of the Navy Expeditionary Medal to the "Doolittle Raiders" (sec. 1084)

The Senate amendment contained a provision (sec. 1068) that would express the sense of Congress that the President should award the Navy Expeditionary Medal to members of the Navy who served in Navy Task Force 16, culminating in the air raid commonly known as the "Doolittle Raid on Tokyo," during 1942, regardless of the time limitation on the consideration of such awards.

The House bill contained a similar, more general provision (sec. 1066) that is incorporated elsewhere in this act.

The House recedes.

Sense of Congress regarding the award of Purple Heart to members killed or wounded in action by friendly fire (sec. 1085)

The House bill contained a provision (sec. 538) that would require the Secretaries of the military departments, for purposes of awarding the Purple Heart, to treat a member of the armed forces killed or wounded in action by friendly fire in the same manner as a member who is killed or wounded in action as the result of an act of an enemy of the United States. The House provision would apply to members of the armed forces killed or wounded on or after December 7, 1941.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

The amendment would express the sense of Congress that the Secretaries of the military departments should ensure that in the future the Purple Heart should be awarded without hesitation to members of the armed forces killed or wounded by friendly fire while actively engaged with the enemy. In this regard, the conferees note that in a letter to the Chairman of the Subcommittee on Military Personnel and Compensation of the House Armed Services Committee dated October 25, 1992, the Deputy Assistant Secretary of Defense (Military Manpower and Personnel Policy) stated with regard to this matter:

In short, the critical factors we use to determine eligibility for the Purple Heart in "friendly fire" situations is whether or not the Service member was actively engaged with the enemy. For your information, Service members involved in Operation Desert Storm who sustained injuries in these types of circumstances (i.e., killed or wounded in action by friendly fire) were awarded the Purple Heart.

Study of effects of Persian Gulf conflict mobilization on members of the reserve components who were self-employed or owners of small businesses (sec. 1086)

The Senate amendment contained a provision (sec. 505) that would require the Secretary of Defense to conduct a study and report on the economic and other effects on the reserves and members of the National Guard who were self-employed or owners of small businesses and who were activated in connection with Operation Desert Shield/Desert Storm.

The House bill contained no similar provision.

The House recedes.

Civil-military youth service programs (secs. 1091-1095)

The Senate amendment contained four provisions (secs. 1081-1085) concerning the civil-military youth service programs.

Section 1081 of the Senate amendment would authorize the Chief of the National Guard Bureau to enter into agreements with the governors of up to 10 states to conduct a National Guard civilian youth opportunities pilot program to evaluate the feasibility and effectiveness of military-based training to improve the life skills and employability of high school dropouts. This section would also authorize $50.0 million in fiscal year 1993 for this program.

Section 1082 of the Senate amendment would create a Civilian Community Corps demonstration program to test the feasibility of a federally administered residential national youth service program as an alternative to traditional forms of national service. The program would be administered through the Commission on National and Community Service and coordinated with the National Guard civilian youth opportunities program. This section would also authorize $50.0 million in fiscal year 1993 for this program.

Section 1083 of the Senate amendment would require coordination, to the maximum extent practicable, among the Chief of the National Guard Bureau, the Board of Directors and Executive Director of the Commission on National and Community Service, and the Director of the Civilian Community Corps, with respect to the National Guard and youth opportunities program and the Civilian Community Corps demonstration program.

legislative provisions not adopted

Section 1084 of the Senate amendment would authorize $50.0 million in fiscal year 1993 to increase the ability of the Commission on National and Community Service to promote nonresidential national youth service programs in areas affected by the military downsizing.

Section 1085 of the Senate amendment would require that funds could be made available under sections 1082 and 1084 only if determined by the Office of Management and Budget (OMB) to be counted against the defense category of discretionary spending limits for fiscal year 1993.

The House bill contained no similar provisions.

The House recedes with an amendment. The amendment would make technical changes, and also reduce the amounts authorized for the Civilian Community Corps demonstration program and for the national and community service program to $30.0 million for each program.

legislative provisions not adopted

Closing of appropriation accounts available for indefinite periods

The House bill contained a provision (sec. 1002) that would amend section 1555 of title 31, United States Code, to remove the requirement that an agency head or the President determine that the purposes of an account, from which no disbursement has been made for two years, have been carried out prior to the closing of the account. Thus, these accounts would be closed in the event that no disbursements from them were made for two consecutive fiscal years.

The Senate amendment contained no similar provision.

The House recedes.

Prohibition on expansion of San Diego homeport area

The House bill contained a provision (sec. 1012) that would prohibit the Secretary of the Navy from expanding the area administratively designated as the San Diego homeport area to include Long Beach or San Pedro, California.

The Senate amendment contained no similar provision.

The House recedes. The conferees believe that the Navy should continue to have the discretion to administratively designate homeport areas. The conferees also believe that quality of life considerations for Navy personnel and their families should continue to be a priority factor in the Navys planning for ship repair and overhaul work.

Requirement to expedite construction of sealift ships

The House bill contained a provision (sec. 1018) that would prevent the Department of Defense from obligating funds for the C-17 program at any faster rate than funds are obligated for the strategic sealift program. This was intended as an inducement to the Department to move more expeditiously on the sealift program.

The Senate amendment contained no similar provision.

The House recedes.

The conferees believe that the Department is beginning to make better progress on the strategic sealift program. However, if progress does not continue apace, the conferees will recommend that further legislative action be taken.

Sense of Congress regarding an international effort to limit the supply of illegal narcotics

The House bill contained a provision (sec. 1033) that would express the sense of Congress concerning international contributions to the counter-drug effort.

The Senate amendment contained no similar provision.

The House recedes. The conferees believe that all nations should contribute commensurate with their resources to efforts to curb the production of illegal narcotics at their source and that the allies of the United States should be encouraged to make greater contributions to this effort.

Provision of certain facilities and services of the Department of Defense to certain educational entities

The House bill contained a provision (sec. 1063) that would authorize the Secretary of Defense to provide certain services to, and make available facilities for use by, certain educational entities.

The Senate amendment contained no similar provision.

The House recedes. The conferees encourage the military Services to provide appropriate support to educational entities under existing statutes and regulations authorizing such support.

Defense maritime logistical readiness

The Senate amendment contained several provisions (secs. 1021-1023) designed to improve the level of support for the United States merchant marine, including:

(1) directing that more U.S. cargo travel only on U.S. flag vessels;

(2) shifting priority for carrying U.S. military cargo to liner operators;

(3) directing the Secretary of Defense to ensure that DOD studies give full consideration to capabilities of the U.S. flag merchant marine; and

(4) encouraging the Department of Defense to enter into logistics readiness agreements with U.S. flag merchant marine operators to assure that sealift capacity will be available in an emergency.

The House bill contained no similar provisions.

The Senate recedes.

POW/MIA stamp

The Senate amendment contained a provision (sec. 1074) that would require the Postmaster General to issue a commemorative postage stamp in honor of American prisoners of war and Americans missing in action.

The House bill contained no similar provision.

The Senate recedes. The conferees consider it inappropriate for Congress to set a precedent for dictating the subjects of postage stamps after 150 years of carefully avoiding that role. The conferees, however, strongly urge the Postal Service to consider the issuance of a commemorative postage stamp honoring American prisoners of war and Americans missing in action from all wars.

Nuclear proliferation control

The Senate amendment contained provisions (secs. 1091-1094F) that would prohibit firms that promote nuclear proliferation from doing business with the U.S. government, create additional economic sanctions against firms and banks that promote economic proliferation, ensure that U.S. funds provided to multilateral lending agencies do not promote nuclear proliferation, create new sanctions against countries that traffic in critical bomb parts and designs or transfer or detonate nuclear devices, and expand reporting to Congress on relevant developments.

The House bill contained no similar provisions.

The Senate recedes.

National education goals panel

The Senate amendment contained provisions (secs. 1301-1307) that would authorize establishment within the Department of Education a National Education Goals Panel.

The House bill contained no similar provisions.

The conferees note that the authorization for this panel is included in the conference report on S.2, The Neighborhood Schools Improvement Act.

The Senate recedes.

TITLE XI ARMY GUARD COMBAT REFORM INITIATIVE

Legislative Provisions

legislative provisions adopted

Short title (sec. 1101)

Section 1101 would cite this title as the "National Guard Combat Readiness Reform Act of 1992".

Minimum percentage of prior active-duty personnel (sec. 1111)

The House bill contained a provision (sec. 701) that would require the Secretary of the Army to establish regulations no later than March 15, 1993, with the objective of increasing the percentage of prior active duty personnel in the Army National Guard to 65 percent, in the case of officers, and to 50 percent, in the case of enlisted members, by the end of fiscal year 1997. The House provision would require that officer and enlisted accession percentages be prescribed for fiscal years 1993 through 1997 in order to achieve the 1997 prior-service levels.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would require the Secretary of the Army to provide to the Committees on Armed Services of the Senate and House of Representatives a copy of the regulations required by this section. The Secretary shall also provide any recommendations for improvements in this section. Service in the Selected Reserve in lieu of active-duty service (sec. 1112)

The House bill contained a provision (sec. 702) that would require that military service academy graduates and distinguished Reserve Officer Training Corps (ROTC) graduates leaving active duty before satisfying their active duty service obligation must serve the remainder of that obligation in the Selected Reserve, unless the service Secretary waives the requirement because of the non-availability of unit positions. The House provision would also direct the Secretary of the Army to develop a program in which certain ROTC graduates would serve on active duty for two years and complete the remainder of their service obligation with the Army National Guard.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

Review of officer promotions by commander of associated active duty unit (sec. 1113)

The House bill contained a provision (sec. 704) that would require any promotion of an officer in the Army National Guard above the grade of first lieutenant to first be reviewed by the commander of the active duty unit associated with the National Guard unit of that officer, or another active component officer as designated by the Secretary of the Army. The provision would also require that a written statement of that commanders concurrence or nonconcurrence be provided to the promotion authority.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would limit the applicability of the provision to unit vacancy promotions, and would establish an implementation schedule that calls for the provision to apply to Army National Guard round- out/round-up units effective April 1, 1993; to Army Selected Reserve units designated as early deployers effective October 1, 1993; and all remaining Army National Guard combat units effective April 1, 1994. The amendment would also require the Secretary of the Army to report to the Committees on Armed Services of the Senate and House of Representatives an implementation plan and legislative proposals to clarify, improve, or modify the provision to better carry out the purpose of the provision.

Noncommissioned officer education requirements (sec. 1114)

The House bill contained a provision (sec. 705) that would require that the military education requirements prescribed by the Secretary of the Army for noncommissioned officers must be met prior to promotion to a higher grade. The active Army would have to assume responsibility for making sufficient training positions available to meet those requirements. The House provision would also allow the Secretary of the Army to waive the prescribed requirements only in cases in which it would be necessary to preserve continuity of leadership under combat conditions.

The Senate amendment contained no similar provision.

The Senate recedes.

Initial entry training and non-deployable personnel account (sec. 1115)

The House bill contained a provision (sec. 706) that would require the Secretary of the Army to establish a personnel accounting category for members of the Army National Guard who have not completed the minimum training requirement for deployment or who are otherwise not available for deployment. The provision would also direct that individuals in this account could not fill positions in National Guard units.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

Minimum physical deployability standards (sec. 1116)

The House bill contained a provision (sec. 707) that would require members of the Army National Guard who are unable to meet minimum physical deployability standards within a period of 90 days, whether due to physical disability or inability to complete successfully a physical fitness evaluation, be transferred to the personnel accounting category that would be established in another House provision (sec. 706). The House provision would also require that if a member so transferred is unable to complete successfully a physical fitness evaluation within six months after such transfer, the member would be separated or retired from the National Guard.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would remove all reference to physical fitness evaluations.

Medical assessments (sec. 1117)

The House bill contained a provision (sec. 708) that would require each member of the Army National Guard to undergo dental and medical screening on an annual basis, and a physical fitness evaluation on a semiannual basis. Each member of the Army National Guard over the age of 40 would be required to undergo a full physical examination at least every two years.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would remove all reference to physical fitness evaluations.

Dental readiness of members of early deploying units (sec. 1118)

The House bill contained a provision (sec. 709) that would require the Secretary of the Army to develop a plan to ensure that members of the Army National Guard whose units are scheduled for early deployment in the event of mobilization, are dentally ready for deployment. This provision would require the Secretary to submit a report on this plan to the Committees on Armed Services of the Senate and House of Representatives no later than February 15, 1993. This report would have to include any legislative proposals the Secretary considered necessary to implement this plan.

The Senate amendment contained no similar provision.

The Senate recedes.

Combat unit training (sec. 1119)

The House bill contained a provision (sec. 710) that would require the Secretary of the Army to establish a program to minimize post-mobilization training required for combat units of the Army National Guard.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Use of combat simulators (sec. 1120)

The House bill contained a provision (sec. 711) that would direct the Secretary of the Army to expand the use of training simulators in order to increase training opportunities for members of the Army National Guard. The House provision noted that Guard units frequently have difficulty gaining access to training facilities.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

The conferees strongly concur that simulations, simulators, and advanced computer-based training devices offer significant potential for improving the readiness of reserve component forces.

Deployability rating system (sec. 1121)

The House bill contained a provision (sec. 721) that would require modification of the current unit readiness rating system for the Army Reserve and Army National Guard to ensure the rating system accurately assesses the readiness of a unit to deploy and identifies unit shortfalls that require additional resources. This provision would also require that this rating system reflect the units percentage of required personnel assigned and the number of personnel who are qualified in their primary occupational specialty, the fill and deployability rate for critical occupational specialties, and the status of equipment directly held by the unit and necessary to carry out its basic mission requirements.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Inspections (sec. 1122)

The House bill contained a provision (sec. 722) that would amend section 105 of title 32, United States Code, to require the Secretary of the Army to determine whether units of the Army National Guard can meet the requirements of their unit designator.

The Senate amendment contained no similar provision.

The Senate recedes.

Active duty associate unit responsibility (sec. 1131)

The House bill contained a provision (sec. 731) that would require the Secretary of the Army to develop a program no later than September 30, 1993, that requires each National Guard combat unit to be associated with an active duty combat unit. This program would be required to be fully implemented by September 30, 1995.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The amendment would require that the responsibilities prescribed in subsection (b) of the House provision be assigned to the headquarters of active Army combat units at the brigade or higher level. The conferees intend that the Secretary of the Army adhere to the same implementation schedule as specified for the implementation of section 704 of the House bill, as modified by this act.

The conferees expect the Secretary to implement this provision using the same schedule as that specified in section 1113 in this title relating to the review of officer promotions by the commander of the associated active duty unit.

Training compatibility (sec. 1132)

The House bill contained a provision (sec. 732) that would amend section 414 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190), to require the Secretary of the Army to assign 3,000 non-commissioned officers and warrant officers to the pilot program for active component support of the reserves, beginning in fiscal year 1995.

The Senate amendment contained no similar provision.

The Senate recedes.

Systems compatibility (sec. 1133)

The House bill contained a provision (sec. 733) that would require the Secretary of the Army to develop and implement a program that would ensure Army personnel, maintenance management, supply, and finance systems are compatible and able to interface across all Army components. This provision would require the Secretary of the Army to submit a report to the Committees on Armed Services of the Senate and House of Representatives no later than September 30, 1993, describing the systems compatibility program and detailing the plan for implementation of the program by the end of fiscal year 1997.

The Senate amendment contained no similar provision.

The Senate recedes.

Equipment compatibility (sec. 1134)

The House bill contained a provision (sec. 734) that would amend section 115 of title 10, United States Code, to include a statement on the current status of the incompatibility of equipment between the Army reserve components and the active forces of the Army, the effect of that level of incompatibility on combat readiness, and a plan to achieve full compatibility in the annual report on National Guard and reserve component equipment.

The Senate amendment contained no similar provision.

The Senate recedes.

Deployment planning reform (sec. 1135)

The House bill contained a provision (sec. 735) that would require the Secretary of the Army to develop a system for identifying the mobilization priority of Army reserve component units, based on contingency planning requirements and doctrine. The provision would direct the Secretary of the Army to develop a system to link the unit deployment designators to the resourcing system, and to include a higher priority for units with fewer post-mobilization days allocated before deployment. Units designated with shorter post-mobilization periods would receive greater funding for training, full-time support, equipment, and assignment of manpower in excess of 100 percent of their authorized levels.

The House provision would also require the Secretary of the Army to establish procedures to identify the command level at which combat units would be integrated into the active component forces and to ensure this level of integration is consistent with the post-mobilization training days allocated to units by their unit deployment designators.

The Senate amendment contained no similar provision.

The Senate recedes.

Qualification for prior-service enlistment bonus (sec. 1136)

The House bill contained a provision (sec. 736) that would amend title 37, United States Code, to restrict the payment of prior service enlistment bonuses to individuals who are military occupational specialty (MOS)-qualified for the unit position they are projected to occupy.

The Senate amendment contained no similar provision.

The Senate recedes.

Study of implementation for all reserve components (sec. 1137)

The conferees recommend a provision that would require the Secretary of Defense to assess the feasibility of implementing the provisions of this title for all reserve components, and to submit a report to the Committees on Armed Services of the Senate and House of Representatives containing a plan for such implementation.

legislative provision not adopted

Preference for filling vacancies for persons separated from active forces

The House bill contained a provision (sec. 703) that would amend section 1150 of title 10, United States Code, to provide priority during the force drawdown for vacant positions within the reserve components to persons voluntarily or involuntarily separating from the armed forces under honorable conditions, and who apply within one year of separation.

The Senate amendment contained no similar provision.

The House recedes. The House provision is incorporated elsewhere in this act.

TITLE XII SUPPLEMENTAL AUTHORIZATION OF APPROPRIATIONS

Legislative Provisions

legislative provisions adopted

Supplemental authorization for Operation Desert Storm (secs. 1201-1204)

The Senate amendment contained provisions (secs. 1011-1014) that would extend to fiscal year 1993 the authority to use the Defense Cooperation Account and the Persian Gulf Regional Defense Fund and would authorize additional appropriations from these accounts for incremental military personnel costs of Operation Desert Storm.

The House bill contained no similar provisions.

The House recedes.

Supplemental authorization of appropriations for fiscal year 1992 (sec. 1211)

The Senate amendment contained a provision (sec. 1069) that would provide supplemental authorizations for fiscal year 1992 for costs arising from the consequences of Hurricane Andrew and Typhoon Omar.

The House bill contained no similar provision.

The House recedes.

TITLE XIII MATTERS RELATING TO ALLIES AND OTHER NATIONS

Legislative Provisions

legislative provisions adopted

Overseas basing activities (sec. 1301)

The House bill contained a provision (sec. 1056) that would reduce the total amount authorized by this act for fiscal year 1993 by $3.5 billion. The provision would require that the $3.5 billion reduction may only be made from funds for programs, projects, and activities that support U.S. forces assigned in Europe, Japan, or Korea.

The House bill contained another provision (sec. 368) that would require the President to consult with other NATO members and South Korea to achieve agreements under which each country shall, by September 30, 1994, assume an increased share of U.S. costs of maintaining U.S. installations in each country. The provision would require certain reductions in the amounts that may be obligated to conduct overseas basing activities in fiscal years 1993 and 1994.

The Senate amendment contained no similar provisions.

The Senate recedes with an amendment that would modify and combine the two House provisions into a single provision.

The single provision recommended by the conferees consists of the following major elements:

(1) The total amount that is obligated to conduct overseas basing activities during fiscal year 1993 may not exceed the amount equal to the baseline for fiscal year 1993 reduced by $500 million.

(2) The baseline for fiscal year 1993 is the sum of the amounts specified for operation and maintenance; family housing, operations; family housing, construction; and military construction (including NATO Infrastructure) in the January 1992 DOD report, Amended FY 1992/FY 1993 Biennial Budget Estimates for Defense Overseas Funding and Dependent Overseas Funding.

(3) The provision expresses the sense of Congress that the amounts obligated to conduct overseas basing activities should decline significantly in fiscal years 1994, 1995, and 1996 as the number of U.S. military personnel stationed overseas declines and as U.S. allies assume an increased share of the costs of overseas U.S. military installations.

(4) The reductions set forth in the provision for fiscal year 1993 and future fiscal years may be offset by increases in host-nation support, the accelerated withdrawal of overseas U.S. forces, or other measures. For fiscal year 1993, the conferees recommend reductions in the amounts requested for overseas operation and maintenance and military construction to meet the overall reduction in overseas defense spending required by this provision. The following reductions for fiscal year 1993 are displayed in the operation and maintenance and military construction tables elsewhere in this statement of the managers: (1) $250.0 million in overseas operation and maintenance; (2) $112.0 million in overseas military construction projects; and (3) $161.0 million in the NATO Infrastructure account.

(5) The savings realized as a result of the reduction required by this provision for fiscal year 1993 will be allocated for operation and maintenance and military construction at military facilities in the United States.

(6) In order to achieve additional savings in fiscal year 1994 and in future fiscal years, the President should enter into revised host-nation agreements with certain U.S. allies in which they agree to assume an increased share of the costs of overseas U.S. military installations.

The annual Report on Allied Contributions to the Common Defense, required by section 1003 of the National Defense Authorization Act for Fiscal Year 1985 (Public Law 98-525), was due to the Congress on April 1, 1992. However, the report was transmitted to Congress on September 11, 1992, far too late to be of use during this authorization cycle. The Congress needs information contained in this report to make reasoned judgments on the status of burdensharing. The conferees expect that this report for 1993 will be transmitted by the date required by law.

Overseas military end strength (sec. 1302)

The House bill contained a provision (sec. 1058) that would prohibit on and after September 30, 1995 the use of appropriated funds to support an end strength level of U.S. military personnel permanently stationed ashore outside the United States in excess of 60 percent of the end strength level of such personnel on September 30, 1992.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would change the date in the House provision from September 30, 1995 to September 30, 1996.

Reduction in the authorized end strength for military personnel in Europe (sec. 1303)

The House bill contained a provision (sec. 1057) that would lower the statutory ceiling on U.S. military personnel permanently stationed ashore in Europe to 100,000, effective the end of fiscal year 1995.

The Senate amendment contained a provision (sec. 1063) that would lower the statutory ceiling on U.S. military personnel permanently stationed ashore in Europe to 100,000, effective the end of fiscal year 1996.

The House recedes.

The conferees intend that each Service take a proportional share of the reduction of end strength, to the extent practical, consistent with the overall restructuring that will be required to reduce to the 100,000 level. Based on estimates of the U.S. European Command of the mix at the 150,000 level, such a reduction would result in an approximate mix of 60 percent for the Army, 30 percent for the Air Force, and 10 percent for the Navy.

Reports on overseas basing (sec. 1304)

The House bill contained a provision (sec. 367) that would require the Secretary of Defense to submit an annual report on the overseas basing plan of U.S. forces, the status of overseas base closures and the associated negotiations schedule, the potential savings and residual value of such closures, and the efforts to obtain increased host nation support. The House provision also would require a report on the budgetary implications of overseas basing agreements in advance of signing such agreements.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would provide for the expiration of these requirements at the end of five years.

Burdensharing contributions by Kuwait (sec. 1305)

The House bill contained a provision (sec. 1070) that would add Kuwait to those countries (Japan and South Korea) from which the Defense Department may accept cash burdensharing contributions. The provision would also delete the requirement in section 1045 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 that the Defense Department use these burdensharing contributions to offset U.S. costs only in the country making the contribution.

The Senate amendment contained no similar provision.

The Senate recedes. Although the House provision would allow the Defense Department to spend contributions outside the country that made them, the conferees emphasize that such "out-of-country" expenditures are to be made only with the agreement of the contributing country, and are to be spent only on costs specified in section 1045(c) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 that are directly related to U.S. military activities in the contributing country. The conferees expect the quarterly report required by section 1045(f) to fully explain the relationship between any "out-of-country" costs and the "in-country" U.S. military activities they support.

Cooperative military airlift aqreements (sec. 1311)

The Senate amendment contained a provision (sec. 1055) that would lengthen from 3 months to 12 months the period of time over which the credits and liabilities of cooperative military airlift agreements must be liquidated.

The House bill contained no similar provision.

The House recedes.

Cooperative agreements with allies (sec. 1312)

The Senate amendment contained a provision (sec. 362) that would relax the geographic restrictions that limit the authority of U.S. military forces to acquire logistics support, supplies, and services from NATO allies and certain non-NATO countries.

The House bill contained no similar provision.

The House recedes.

The conferees are concerned over the imbalance in the cross-servicing agreements that has evolved since the enactment of the North Atlantic Treaty Organization Mutual Support Act of 1979 (Public Law 96-323). The Defense Department reported in its 1992 annual report that the United States purchased $103 million worth of services from NATO allies compared to only $7 million purchased from the United States.

The purchases made by the United States included war readiness material, contractor storage and repair support, wartime host nation support, and support for exercises. The conferees believe these costs should be shared by U.S. allies. NATO has now agreed that such costs are eligible for funding from the NATO infrastructure account. Therefore, the conferees direct the Secretary of Defense to conduct negotiations for actual funding of these costs either directly or through the NATO infrastructure account and to include in the Secretarys annual report on these agreements and transactions, efforts to achieve allied offsets to these costs.

Authority for government of Oman to receive excess defense articles (sec. 1313)

The House bill contained a provision (sec. 1067) that would amend section 516(a) of the Foreign Assistance Act of 1961 to make Oman eligible to receive excess defense articles.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would achieve the same purpose as the House provision but by a different change in section 516(a) of the Foreign Assistance Act of 1961.

Future of the North Atlantic Treaty Organization (sec. 1314)

The Senate amendment contained a provision (sec. 1073) that would require the Secretary of Defense, in consultation with the Secretary of State, to provide a report to Congress which would analyze the foreseeable threats to the security of the North Atlantic Treaty Organization (NATO) member nations, determine whether there is a requirement to revise the North Atlantic Treaty to meet future challenges, and assess the extent to which the Treaty permits the use of NATO forces for peacekeeping purposes and the range of peacekeeping missions that should be considered. The Senate amendment also contained a related provision (sec. 1066) that would express the sense of the Senate that the United States should open discussions with NATO member nations with a view toward broadening NATOs mission to include common transatlantic security concerns, including those beyond NATOs geographic boundaries.

The House bill contained no similar provisions.

The House recedes with an amendment. The conferees recommend a provision that would combine the two provisions contained in the Senate amendment, direct that the report be delivered to the Senate and House Committees on Armed Services, the Senate Foreign Relations Committee, and the House Foreign Affairs Committee, and provide that the report be provided by the President rather than the Secretary of Defense in consultation with the Secretary of State.

Nuclear weapons reductions (sec. 1321)

The House bill contained a provision (sec. 1059) that would declare that it shall be the goal of the United States to pursue a number of policy objectives related to securing, reducing, and eventually eliminating the nuclear weapons possessed by the United States, Russia, France, Britain, China, and other nuclear-weapons states. The provision would also direct the President to submit an annual report on the actions taken by the United States and other nations during the previous year to achieve these policy objectives and the actions the United States planned to take during the next year.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would revise several of the policy objectives to reflect recent developments in the area of arms control.

Volunteers investing in peace and security (sec. 1322)

The House bill contained a provision (sec. 1060) that would require the Secretary of Defense to establish the volunteers investing in peace and security (VIPS) program. This voluntary corps of veterans would use the commitment and skills (logistics, health care, engineering, nuclear plant safety, environmental cleanup, communications, and other skills) of retiring and separating servicemembers to assist the independent states of the former Soviet Union as they build a more secure future.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would provide the Secretary of Defense with discretionary authority to establish this program.

The conferees note that the VIPS program offers the unique advantage of providing quality, cost-effective assistance to the independent states of the former Soviet Union while opening job opportunities for servicemembers leaving active duty as the nation continues a 25 percent reduction of the armed forces.

Report on U.S. strategic posture in the Middle East and Persian Gulf region (sec. 1331)

The Senate amendment contained a provision (sec. 1041) that would direct the Secretary of Defense to provide a report on the U.S. strategic posture in the Middle East/Persian Gulf region.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Prohibition on contracting with supporters of the secondary Arab boycott of Israel (sec. 1332)

The Senate amendment contained a provision (sec. 1043) that would codify in permanent law a prohibition against Department of Defense contracting with foreign firms that participate in the secondary Arab boycott of Israel.

The House bill contained no similar provision.

The House recedes with a technical amendment.

United Nations peacekeeping and enforcement report (sec. 1341)

The Senate amendment contained a provision (sec. 1062) that would require the President to submit a report to Congress on the proposals of the Secretary General of the United Nations in his report to the Security Council entitled Preventive Diplomacy, Peacemaking and Peacekeeping.

The House bill contained no similar provision.

The House recedes. The conferees expect both the Secretary of State and the Secretary of Defense to be major contributors to the Presidents report and expect the report to discuss the policy implications of Department of Defense funding of peacekeeping activities and the assignment of responsibility for international peacekeeping and enforcement activities between those two cabinet officials. The report should be delivered to the Senate and House Armed Services Committees, the Senate Foreign Relations Committee, and the House Foreign Affairs Committee.

Support for peacekeeping activities (sec. 1342)

The House bill contained a provision (sec. 1069) that would authorize the Secretary of a military department to contribute or lend supplies and equipment to the United Nations to support international peacekeeping activities.

The Senate amendment contained a provision (sec. 1064) that would authorize the Secretary of Defense, to the extent provided in annual authorization and appropriation acts, to furnish assistance, including funds, supplies, and equipment, by loan or contribution in support of international peacekeeping activities of the United Nations or a regional organization. Funds would be provided under certain limited circumstances and conditions and would be subject to a 30 days advance notice to Congress. For fiscal year 1993, such assistance would be limited to $300.0 million and would be subject to a determination by the Director of the Office of Management and Budget that the expenditure can be counted against the defense category.

The House recedes with an amendment that would include services as a form of assistance that could be provided; delete the authority to make loans; use the costs rather than assessments for peacekeeping as the baseline for determining the circumstances and conditions of fund availability; explicitly provide that this authority is restricted to meet unexpected and urgent peacekeeping requirements; and terminate the Secretarys authority on September 30, 1993.

The conferees emphasize that this authority is subject to annual defense authorization and appropriation acts and will be carefully examined next year, together with the review of the Presidents report on United Nations peacekeeping and enforcement provided for elsewhere in this act.

Prohibition on payment of severance pay to certain foreign nationals in the Philippines (sec. 1351)

The House bill contained a provision (sec. 365) that would prohibit the Defense Department from paying severance pay to DOD foreign nationals in the Philippines if the foreign nationals employment is discontinued because of the termination of U.S. basing rights.

The Senate amendment contained no similar provision.

The Senate recedes.

Revision of rules concerning severance pay for foreign nationals (sec. 1352)

The House bill contained a provision (sec. 366) that would repeal section 311(b)(3)(B) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189) concerning the effective date of the prohibition of paying severance costs to foreign nationals working at overseas U.S. bases that are closed at the request of the government of that country.

The Senate amendment contained a provision (sec. 823) that would authorize the Secretary of Defense to waive the prohibition on the payment of severance costs to U.S. contractors where such payments are generally required by host nation laws.

The Senate recedes with an amendment that would combine the House and Senate provisions into one provision. The conferees agree that the President should enter into active negotiations to have severance pay costs assumed by host nations by October 1, 1994.

Extension of overseas workload program (sec. 1353)

The House bill contained a provision (sec. 1054) that would renew for fiscal year 1993 authority for the maintenance and overhaul of U.S. military equipment outside the theater in which it is normally located unless a service secretary determined that performing the maintenance and overhaul outside the theater would adversely affect military preparedness or would violate an international agreement.

The Senate amendment contained no similar provision.

The Senate recedes.

Study of providing forward presence of naval forces during peacetime (sec. 1361)

The Senate amendment included a provision (sec. 1042) that would require the Secretary of Defense to submit a report on alternative methods for providing forward presence. The provision would prevent obligating shipbuilding and conversion, Navy funds for the carrier replacement program for fiscal year 1994 until the Secretary has submitted this report.

The House bill contained no similar provision.

The House recedes with an amendment that would delete the carrier replacement program obligation limitation.

Permanent authority to pay certain expenses of personnel of developing countries for attendance at bilateral or regional cooperation conferences (sec. 1362)

The Senate amendment contained a provision (sec. 1057) that would make permanent the authority of the Secretary of Defense to pay the travel, subsistence, and similar expenses of defense personnel of developing countries in connection with their attendance at defense meetings.

The House bill contained no similar provision.

The House recedes.

Report on proliferation of military-based satellites (sec. 1363)

The House bill contained a provision (sec. 1065) that would require the Secretary of Defense to submit a report to Congress on the proliferation of satellites with military applications; current and planned U.S. efforts to develop an antisatellite capability to counter this proliferation; and U.S. military requirements for antisatellite capabilities.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would add two sections to the report requirement. One would require a review of other measures that the United States might use to counter satellites, and the other would require an assessment of the likelihood of any Third World country with access to militarily useful satellites being able to obtain or develop an effective antisatellite capability.

In addition, the conferees direct the Secretary to submit his report to the Committees on Armed Services and Appropriations of the Senate and House of Representatives, the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives.

Report on international mine clearing (sec. 1364)

The Senate amendment contained a provision (sec. 1067) that would require the Secretary of Defense, in consultation with the Secretary of State, to provide a report on international mine clearing efforts in situations involving the repatriation and resettlement of refugees and displaced persons.

The House bill contained no similar provision.

The House recedes with a technical amendment that would specify that the report shall be submitted to Congress. The report should be delivered to the Senate and House Armed Services Committees, the Senate Foreign Relations Committee, and the House Foreign Affairs Committee.

Landmine export moratorium (sec. 1365)

The Senate amendment contained a provision (sec. 1072) that would prohibit for one year the export of anti-personnel landmines.

The House bill contained no similar provision.

The House recedes with a technical amendment.

legislative provision not adopted

Sale to Korea of obsolete ammunition from war reserve stocks

The Senate amendment contained a provision (sec. 361) that would authorize a one-time sale of obsolete ammunition to South Korea at a price negotiated by the Secretary of Defense, but not less than the ammunitions salvage value.

The House bill contained no similar provision.

The Senate recedes. The conferees understand that the Defense Department is interested in transferring to South Korea a variety of obsolete or surplus equipment, in addition to the obsolete ammunition that is the subject of the Senate provision. Rather than consider this possible transfer on a piecemeal basis, the conferees agree to defer the Senate provision so that the Congress may consider in 1993 the entire package of equipment that the Defense Department may propose to transfer to South Korea.

TITLE XIV DEMILITARIZATION OF THE FORMER SOVIET UNION

Legislative Provisions

legislative provisions adopted

Demilitarization of the former Soviet Union (secs. 1401-1441)

The House bill contained several provisions (title XI) dealing with nuclear weapons nonproliferation, including section 1106 and sections 241-243, which concerned weapons destruction and demilitarization in the former Soviet Union. Section 1106 would extend through fiscal year 1993 the authority to expend the remainder of the $400 million authorized in the Soviet Nuclear Threat Reduction Act of 1991 (title II of Public Law 102-228) for destroying the weapons of the former Soviet Union and preventing their proliferation. It would also authorize an additional $250 million for the same purposes. Sections 241-243 would encourage the Secretary of Defense to participate actively in joint research and development programs with the states of the former Soviet Union and would authorize the Secretary to spend not more than $25 million in fiscal year 1993 for technical cooperation and participation, in-kind assistance, and other activities in such programs. The purposes of these programs would include demilitarizing the industries of the former Soviet Union and preventing the proliferation of its weapons.

The Senate amendment contained provisions (title XI) that, in addition to the measures in section 1106 of the House bill, would authorize another $150 million for such programs and extend their scope to include the industrial demilitarization of the former Soviet Union as well as the expansion of military-to-military contacts between the United States and the independent states of the former Soviet Union. The Senate amendment would also stipulate that the presidential certifications regarding recipient countries required under the Soviet Nuclear Threat Reduction Act of 1991 be made annually. The Senate amendment contained no provision similar to sections 241-243 of the House bill.

The conferees agree to combine the provisions of the House bill and the Senate amendment. The conferees agree that the primary focus of the activities authorized under this title should be on the transportation, storage, safeguarding, and destruction of nuclear and other weapons of mass destruction, as well as on the nonproliferation of such weapons and their components. The conferees also believe that prudent and measured U.S. assistance in demilitarizing the defense industries of the former Soviet Union can help reduce the potential threat posed by the former Soviet Unions still robust defense establishment.

The conferees believe that U.S. government funding to assist demilitarizing the defense industries of the former Soviet Union should, to the extent possible, be directed to facilitating the involvement of the U.S. private sector in that process. Such funding should be used, pursuant to an interagency strategy coordinated throughout the relevant components of the U.S. government, to improve the environment for investment by U.S. firms in redirecting the human and material resources of the former Soviet Unions defense sector to meet pressing civilian needs and creating mutually beneficial commercial opportunities. The conferees believe that the provisions in sections 241-243 of the House bill can contribute significantly to such undertakings.

The conferees have in mind industrial demilitarization projects that would directly contribute to the elimination of military production capability, especially in the area of weapons of mass destruction. The conferees believe that a modest use of U.S. government funds can assist in eliminating defense production capability in the former Soviet Union and foster a significant investment of U.S. private sector funds, while bringing profits to U.S. firms and the American economy. The conferees foresee, as discussions with administration officials indicate, that no more than about $40 million for such industrial demilitarization projects would be proposed to the Congress for obligation during fiscal year 1993.

The conferees find that the experience to date of the former Soviet Union in industrial demilitarization indicates that this undertaking can waste ill-considered investments. To help insure that funds available under this title are used effectively to advance U.S. interests, the conferees have established specific requirements for advance notifications of any proposal to obligate funds for industrial demilitarization in the former Soviet Union.

The conferees also agree that, at a time when the countries of the former Soviet Union are forming their respective defense establishments and military doctrines, intensified contacts between them and U.S. defense officials are timely. Such contacts, if carefully conceived and selectively executed, can help shape the militaries of these countries along non-threatening, democratic lines and thus advance U.S. national security interests.

Therefore, the conferees urge the Secretary of Defense to establish programs to accelerate and intensify contacts and cooperation between the Department of Defense and selected elements of the ministries of defense and armed forces of the states of the former Soviet Union. The conferees believe that such programs should include those to promote (1) civil-military relations appropriate to democratic societies; (2) openness and transparency in defense establishments, policy, doctrine, forces, budgets, and programs; and (3) cooperation, education, advice, and training in areas of shared security interests.

The conferees agree to limit funding under this title for military-to-military contacts to not more than $15 million.

The conferees further agree to limit expenditures for other specifically authorized activities as follows: (1) not more than $25 million for joint research and development conducted by the nongovernmental foundation established in the Freedom Support Act; (2) not more than $10 million for the study, assessment, and identification of nuclear waste disposal activities by the former Soviet Union in the Arctic region; (3) not more than $25 million for the activities of Project Peace as outlined in Senate Report 102-408 accompanying the Fiscal Year 1993 Department of Defense Appropriations bill; and (4) not more than $10 million for the volunteers investing in peace and security (VIPS) program, as outlined in section 1322 of this act.

TITLE XV NON-PROLIFERATION

Legislative Provisions

legislative provisions adopted

International nuclear nonproliferation (secs. 1501-1505)

The amended budget request contained no funding for international nonproliferation activities.

The House bill contained provisions (title XI) aimed at reducing the threat of nuclear proliferation. Section 1103 would require DOD and DOE to submit a joint report on their nonproliferation activities and the mechanisms for integrating them with those of other U.S. Government agencies. Section 1104 of the House bill would support the development of technologies to improve the capabilities to detect and monitor proliferation activities. That section would authorize $20.0 million for DOD nonproliferation technology programs, such as improved sensors for radiation detection, effluent analysis, and seismic stations. It would also authorize $40.0 million for DOE nonproliferation activities in areas such as verification technology, nuclear safety, and nuclear security. Section 1105 of the House bill would encourage the Secretary of Defense and the Secretary of Energy to participate actively in U.S. efforts to stem the proliferation of nuclear weapons. It would authorize up to $40.0 million that the Secretary of Defense and Secretary of Energy, under the guidance of the President and in coordination with the Secretary of State, could spend in support of and for technical cooperation with international organizations to establish more effective safeguards against proliferation and combat the threat of nuclear terrorism and nuclear accidents.

The Senate amendment contained a provision (sec. 1075) that would authorize the Secretary of Defense to furnish assistance in support of international nuclear nonproliferation activities. DOD assistance in support of international activities would include provision of supplies and equipment from existing stocks and financial support from amounts appropriated for DOD for fiscal year 1993 or from balances in the working capital accounts. The provision of DOD support would require a determination by the Secretary of Defense that provision of this support was in the national security interests of the United States and that the provision of support would not adversely affect military preparedness. Support for international organizations would be limited to $20.0 million and could only be furnished if Department of State funds for contributions to international organizations were found insufficient or not available to meet U.S. fair share assessments for international nuclear nonproliferation activities. In addition, $20.0 million could be used for the On-Site Inspection Agency (OSIA) in support of the United Nations Special Commission on Iraq.

The Senate amendment would also provide an additional $86 million for verification and control technology in support of President Bushs nonproliferation initiative.

The Senate recedes with an amendment.

The conferees recommend a provision (sec. 1502) that would incorporate the concerns of Congress about the growing threat to U.S. national security of the proliferation of weapons of mass destruction and missile delivery systems. The provision would emphasize Congress support for increased funding for nonproliferation technologies, and encourage more active support by DOD and DOE for nonproliferation activities. Another provision (sec. 1504) would highlight programs funded in appropriate accounts elsewhere in the act, including $20.0 million for seismic research and nuclear proliferation detection technology programs at the Defense Advanced Research Projects Agency (DARPA) as part of its strategic technology program. In addition, section 1505 would encourage DOD to provide increased support for international nonproliferation activities, such as the activities of the International Atomic Energy Agency (IAEA) and the U.N. Special Commission on Iraq, that are designed to ensure more effective safeguards against the proliferation of nuclear weapons and other weapons of mass destruction. To that end, the provision would authorize DOD to spend up to $40.0 million for these activities, in the form of funds as well as in-kind contributions of supplies, equipment, personnel, training, and other forms of assistance.

The conferees are concerned that in this era of declining defense budgets, DOD and DOE should seek to eliminate duplication of effort in research and development programs by improving the coordination and integration of all nonproliferation detection and monitoring research and development programs currently being conducted in DOD and its agencies as well as DOE and the national laboratories. This includes R&D programs that may have application to arms control compliance research and development activities. Section 1503 would require DOD and DOE to submit a joint report on their nonproliferation activities and the mechanisms for integrating these activities with those of other departments and agencies. Additionally, the conferees encourage DOD and DOE to combine their efforts in joint projects, like the LIDAR (laser imaging detection and ranging) program, an emerging laser technology for remote sensing, detection, and monitoring of the clandestine production of chemical, biological, and nuclear weapons. The conferees note that DOD tasked DARPA to conduct a survey of all existing federal R&D technologies which might have application to nuclear proliferation monitoring. The conferees direct that this report be provided promptly to the congressional defense committees in advance of the final report required under this provision.

The conferees agree that the funding in this act represents a significant step toward the funding levels supported by the President and a substantial initiative in combatting proliferation of mass destruction. In addition, given the expanded demands for training in the area of international safeguards and the handling of nuclear materials, the conferees encourage the President to include in the budget submission for fiscal years 1994/1995 the resources necessary to meet this rapidly growing demand.

TITLE XVI IRAN-IRAQ ARMS NON-PROLIFERATION ACT OF 1992

Legislative Provisions

legislative provisions adopted

Iran-Iraq Arms Nonproliferation Act of 1992 (secs. 1601-1608)

The Senate amendment contained provisions (title XIV) that would establish new sanctions on countries and individuals who supply nuclear, chemical, biological, or advanced conventional weapons and related technology to Iran or Iraq. The provision would extend certain sanctions to Iran, which were imposed on Iraq following the invasion of Kuwait. Specifically, the sanctions would prohibit: (1) arms sales under the Arms Export Control Act; (2) export licenses for controlled items on the U.S. Munitions List; (3) export licenses under the Export Administration Act for arms-related products; and (4) Nuclear Regulatory Commission licenses or distributions of nuclear material under the Atomic Energy Act.

The provision would establish extensive new sanctions against suppliers to Iraq or Iran of nuclear, chemical, or biological weapons and related technology, as well as certain destabilizing advanced conventional weapons (a category of weapons and technology to be determined by the President). The limited-time sanctions (which would be mandatory and discretionary) include: (1) debarment from U.S. government contracting; (2) prohibition on export licenses for suppliers; and (3) suspension of U.S. government assistance to supplier countries. The provision would require the President, in a report to Congress, to identify publicly suppliers of arms to Iraq and Iran. The provision would allow the President to waive sanctions for reasons of national interest.

The House bill contained no similar provision.

The House recedes with an amendment.

The conference agreement would generally mandate sanctions on companies and individuals determined to have knowingly and materially contributed to the efforts of Iran or Iraq to acquire destabilizing numbers and types of advanced conventional weapons or to acquire other weapons of mass destruction.

The conferees would like to clarify one point concerning the timing of determinations that a company or individual has transferred goods or technology to Iran or Iraq contrary to this conference agreement. In rare circumstances, a premature determination that sanctions should be imposed could inhibit the full flow of information about weapons proliferation that might otherwise be acquired. The conferees understand that this legislation does not dictate the timing of sanctions. Accordingly, the President, in rare circumstances, may delay a determination that a company or individual has materially and knowingly made a transfer that is subject to a sanction under this conference agreement if such delay is necessary to protect intelligence sources or methods essential to the acquisition of further intelligence about proliferation. Such a delay would be appropriate, for example, when the United States is using sensitive sources or methods to gather information on other proliferation, or where additional time is needed to develop nonsensitive information that could be used to explain publicly the imposition of sanctions. However, such a delay should not be indefinite, because the ultimate purpose of these provisions is to sanction those persons that are known to be materially and knowingly involved in weapons proliferation. Moreover, the delay should be only for the purpose of furthering the policy of sanctioning proliferators. A delayed determination would not be justified to further any other policy.

TITLE XVII CUBAN DEMOCRACY ACT OF 1992

Legislative Provisions

legislative provisions adopted

Cuban Democracy Act of 1992 (secs. 1701-1712)

The Senate amendment contained provisions (secs. 1201-1212) that would establish certain policies toward Cuba.

The House amendment contained no similar provisions.

The House recedes with an amendment that would make the following changes to the Senate provisions: (1) delete the statement in section 1203 that it should be U.S. policy to prevent Cuba from evading the U.S. embargo of Cuba through a North American Free Trade Agreement; (2) delete the requirement in section 1208 that the President enter into negotiations for a trade framework agreement with a democratic Cuban government; and (3) make a technical change in section 1206.

TITLE XVIII FEDERAL CHARTERS FOR PATRIOTIC ORGANIZATIONS

Legislative Provisions

legislative provisions adopted

Federal charters for patriotic organizations (secs. 1801-1838)

The Senate amendment contained provisions (secs. 1046 and 1047) that would grant federal charters to two nonprofit service organizations, The Military Order of the World Wars and the Retired Enlisted Association.

The House bill contained no similar provisions.

The House recedes with a technical amendment.