

newable forms of energy to determine what uses of such forms of energy may be reliable in supplying the energy needs of the Department of Defense. The Secretary of Defense, based upon the results of such studies, shall from time to time issue policy guidelines to be followed by the Secretaries of the military departments in carrying out subsection (a) and section 2915 of this title.

(Added Pub. L. 97-321, title VIII, § 801(a)(1), Oct. 15, 1982, 96 Stat. 1569, § 2394a; amended Pub. L. 98-525, title XIV, § 1405(36), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 101-510, div. A, title XIII, § 1322(a)(7), div. B, title XXVIII, § 2852(a), Nov. 5, 1990, 104 Stat. 1671, 1804; Pub. L. 102-25, title VII, § 701(g)(2), Apr. 6, 1991, 105 Stat. 115; renumbered § 2922b and amended Pub. L. 109-364, div. B, title XXVIII, § 2851(b)(2), (3)(D), Oct. 17, 2006, 120 Stat. 2494, 2495.)

#### AMENDMENTS

2006—Pub. L. 109-364, § 2851(b)(2), renumbered section 2394a of this title as this section.

Subsec. (a). Pub. L. 109-364, § 2851(b)(3)(D)(i), substituted “possible, suited” for “possible and will be cost effective, reliable, and otherwise suited” and “the jurisdiction of the Secretary, consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title, and supported by the special considerations specified in subsection (c) of such section” for “his jurisdiction”.

Subsec. (b). Pub. L. 109-364, § 2851(b)(3)(D)(ii), struck out “cost effective and” before “reliable” and substituted “2915” for “2857”.

Subsec. (c). Pub. L. 109-364, § 2851(b)(3)(D)(iii), struck out subsec. (c) which read as follows:

“(c)(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system using such a form of energy, and (B) the original investment cost of the energy system not using such a form of energy can be recovered over the expected life of the system.

“(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a system shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)).”

1991—Subsec. (c)(2). Pub. L. 102-25 inserted “(42 U.S.C. 8254(a))” after “Policy Act”.

1990—Subsec. (b). Pub. L. 101-510, § 1322(a)(7), struck out “(1)” after “(b)” and struck out par. (2) which read as follows: “The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives not less often than every two years a report on the studies conducted pursuant to paragraph (1). Each such report shall include any findings of the Secretary with respect to the use of solar energy and other renewable forms of energy in supplying the energy needs of the Department of Defense and any recommendations of the Secretary for changes in law that may be appropriate in light of such studies.”

Subsec. (c)(2), (3). Pub. L. 101-510, § 2852(a), added par. (2) and struck out former pars. (2) and (3) which read as follows:

“(2) A determination under paragraph (1) of whether a cost-differential can be recovered over the expected life of a system shall be made using accepted life-cycle costing procedures and shall include—

“(A) the use of all capital expenses and all operating and maintenance expenses associated with the energy system using solar energy or other renewable forms of energy, and not using such a form of energy, over the expected life of the system or during a period of 25 years, whichever is shorter;

“(B) the use of fossil fuel costs (and a rate of cost growth for fossil fuel costs) as determined by the Secretary of Defense; and

“(C) the use of a discount rate of 7 percent per year for all expenses of the energy system.

“(3) For the purpose of any life-cycle cost analysis under this subsection, the original investment cost of the energy system using solar energy or other renewable forms of energy shall be reduced by 10 percent to reflect an allowance for an investment cost credit.”

1984—Pub. L. 98-525 substituted “using” for “powered by” in section catchline.

#### SUBMISSION DATE FOR FIRST REPORT

Section 801(a)(3) of Pub. L. 97-321 required the first report under subsec. (b)(2) of this section to be submitted not later than two years after Oct. 15, 1982.

#### § 2922c. Procurement of gasohol as motor vehicle fuel

(a) OTHER FEDERAL FUEL PROCUREMENTS.—Consistent with the vehicle management practices prescribed by the heads of affected departments and agencies of the Federal Government and consistent with Executive Order Number 12261, whenever the Secretary of Defense enters into a contract for the procurement of unleaded gasoline that is subject to tax under section 4081 of the Internal Revenue Code of 1986 for motor vehicles of a department or agency of the Federal Government other than the Department of Defense, the Secretary shall buy alcohol-gasoline blends containing at least 10 percent domestically produced alcohol in any case in which the price of such fuel is the same as, or lower than, the price of unleaded gasoline.

(b) SOLICITATIONS.—Whenever the Secretary issues a solicitation for bids to procure unleaded gasoline under subsection (a), the Secretary shall expressly include in such solicitation a request for bids on alcohol-gasoline blends containing at least 10 percent domestically produced alcohol.

(Added Pub. L. 97-295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293, § 2398; amended Pub. L. 102-190, div. A, title VIII, § 841(a), Dec. 5, 1991, 105 Stat. 1448; Pub. L. 104-106, div. A, title X, § 1061(h), Feb. 10, 1996, 110 Stat. 443; renumbered § 2922c, Pub. L. 109-364, div. B, title XXVIII, § 2851(b)(2), Oct. 17, 2006, 120 Stat. 2494.)

#### HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large)                         |
|-----------------|--------------------|--|
| 2398 .....      | 10:2388 (note).    | Nov. 9, 1979, Pub. L. 96-107, § 815, 93 Stat. 817. |

The word “prescribed” is substituted for “determined” because it is more appropriate. The word “Secretary” is substituted for “Department of Defense” because the responsibility is in the head of the agency. The word “shall” is substituted for “is authorized and directed” for clarity.

#### REFERENCES IN TEXT

Executive Order Number 12661, referred to in subsec. (a), is set out under section 8871 of Title 42, The Public Health and Welfare.

Section 4081 of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 4081 of Title 26, Internal Revenue Code.

#### AMENDMENTS

2006—Pub. L. 109-364 renumbered section 2398 of this title as this section.

1996—Subsec. (a). Pub. L. 104-106, §1061(h)(1), (2)(A), redesignated subsec. (b) as (a) and struck out former subsec. (a) which read as follows: “DOD MOTOR VEHICLES.—To the maximum extent feasible and consistent with overall defense needs and vehicle management practices prescribed by the Secretary of Defense, the Secretary shall make contracts, by competitive bid and subject to appropriations, to purchase domestically produced alcohol or alcohol-gasoline blends containing at least 10 percent domestically produced alcohol for use in motor vehicles owned or operated by the Department of Defense.”

Subsec. (b). Pub. L. 104-106, §1061(h)(2), redesignated subsec. (c) as (b) and substituted “subsection (a)” for “subsection (b)”. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 104-106, §1061(h)(2)(A), redesignated subsec. (c) as (b).

1991—Pub. L. 102-190 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

#### EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-190, div. A, title VIII, §841(b), Dec. 5, 1991, 105 Stat. 1448, provided that: “Section 2398(b) [now 2922c(a)] of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded pursuant to solicitations issued after the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].”

#### § 2922d. Procurement of fuel derived from coal, oil shale, and tar sands

(a) USE OF FUEL TO MEET DEPARTMENT OF DEFENSE NEEDS.—The Secretary of Defense shall develop a strategy to use fuel produced, in whole or in part, from coal, oil shale, and tar sands (referred to in this section as a “covered fuel”) that are extracted by either mining or in-situ methods and refined or otherwise processed in the United States in order to assist in meeting the fuel requirements of the Department of Defense when the Secretary determines that it is in the national interest.

(b) AUTHORITY TO PROCURE.—The Secretary of Defense may enter into one or more contracts or other agreements (that meet the requirements of this section) to procure a covered fuel to meet one or more fuel requirements of the Department of Defense.

(c) CLEAN FUEL REQUIREMENTS.—A covered fuel may be procured under subsection (b) only if the covered fuel meets such standards for clean fuel produced from domestic sources as the Secretary of Defense shall establish for purposes of this section in consultation with the Department of Energy.

(d) MULTIYEAR CONTRACT AUTHORITY.—Subject to applicable provisions of law, any contract or other agreement for the procurement of covered fuel under subsection (b) may be for one or more years at the election of the Secretary of Defense.

(e) FUEL SOURCE ANALYSIS.—In order to facilitate the procurement by the Department of Defense of covered fuel under subsection (b), the Secretary of Defense may carry out a comprehensive assessment of current and potential locations in the United States for the supply of covered fuel to the Department.

(Added Pub. L. 109-58, title III, §369(q)(1), Aug. 8, 2005, 119 Stat. 733, §2398a; renumbered §2922d, Pub. L. 109-364, div. B, title XXVIII, §2851(b)(2), Oct. 17, 2006, 120 Stat. 2494; Pub. L. 111-383, div.

A, title X, §1075(b)(48), Jan. 7, 2011, 124 Stat. 4371.)

#### AMENDMENTS

2011—Subsecs. (b), (d). Pub. L. 111-383 substituted “one or more” for “1 or more” wherever appearing.

2006—Pub. L. 109-364 renumbered section 2398a of this title as this section.

#### § 2922e. Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority

(a) WAIVER AUTHORITY.—The Secretary of Defense may, for any purchase of a defined fuel source, waive the application of any provision of law prescribing procedures to be followed in the formation of contracts, prescribing terms and conditions to be included in contracts, or regulating the performance of contracts if the Secretary determines—

(1) that market conditions for the defined fuel source have adversely affected (or will in the near future adversely affect) the acquisition of that defined fuel source by the Department of Defense; and

(2) the waiver will expedite or facilitate the acquisition of that defined fuel source for Government needs.

(b) SCOPE OF WAIVER.—A waiver under subsection (a) may be made with respect to a particular contract or with respect to classes of contracts. Such a waiver that is applicable to a contract for the purchase of a defined fuel source may also be made applicable to a sub-contract under that contract.

(c) EXCHANGE AUTHORITY.—The Secretary of Defense may acquire a defined fuel source or services related to a defined fuel source by exchange of a defined fuel source or services related to a defined fuel source.

(d) AUTHORITY TO SELL.—The Secretary of Defense may sell a defined fuel source of the Department of Defense if the Secretary determines that the sale would be in the public interest. The proceeds of such a sale shall be credited to appropriations of the Department of Defense for the acquisition of a defined fuel source or services related to a defined fuel source. Amounts so credited shall be available for obligation for the same period as the appropriations to which the amounts are credited.

(Added Pub. L. 98-525, title XII, §1234(a), Oct. 19, 1984, 98 Stat. 2604, §2404; amended Pub. L. 100-26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101-510, div. A, title XIII, §1322(a)(8), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 103-160, div. A, title VIII, §826, Nov. 30, 1993, 107 Stat. 1711; Pub. L. 106-65, div. A, title VIII, §803(a), (b)(1), Oct. 5, 1999, 113 Stat. 703; renumbered §2922e, Pub. L. 109-364, div. B, title XXVIII, §2851(b)(2), Oct. 17, 2006, 120 Stat. 2494; Pub. L. 112-81, div. B, title XXVIII, §2821(b)(2), Dec. 31, 2011, 125 Stat. 1691.)

#### AMENDMENTS

2011—Subsecs. (e), (f). Pub. L. 112-81 struck out subsecs. (e) and (f), which, respectively, defined “petroleum” and “defined fuel source”.

2006—Pub. L. 109-364 renumbered section 2404 of this title as this section.

1999—Pub. L. 106-65, §803(b)(1), substituted “Acquisition of certain fuel sources” for “Acquisition of petroleum and natural gas” in section catchline.