

such loan may be made unless the President determines that—

(A) the loan is for an activity that supports the production or supply of an industrial resource, critical technology item, or material that is essential to the national defense;

(B) without the loan, United States industry cannot reasonably be expected to provide the needed capacity, technological processes, or materials in a timely manner;

(C) the loan is the most cost-effective, expedient, and practical alternative method for meeting the need;

(D) the prospective earning power of the loan applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan in accordance with the terms of the loan, as determined by the President; and

(E) the loan bears interest at a rate determined by the Secretary of the Treasury to be reasonable, taking into account the then-current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(c) Limitations on loans

Loans under this section may be—

(1) made or guaranteed under the authority of this section only to the extent that an appropriations Act—

(A) provides, in advance, budget authority for the cost of such guarantees, as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a); and

(B) establishes a limitation on the total loan principal that may be guaranteed; and

(2) made without regard to the limitations of existing law, other than section 1341 of title 31, United States Code.

(d) Aggregate loan amounts

(1) In general

If the making of any loan under this section to correct a shortfall would cause the aggregate outstanding amount of all obligations of the Federal Government under this title [sections 2091 to 2094 of this Appendix] relating to such shortfall to exceed \$50,000,000, such loan may be made only—

(A) if the President has notified the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, in writing, of the proposed loan; and

(B) after the 30-day period following the date on which notice under subparagraph (A) is provided.

(2) Waivers authorized

The requirements of paragraph (1) may be waived—

(A) during a period of national emergency declared by the Congress or the President; and

(B) upon a determination by the President, on a nondelegable basis, that a specific loan is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.

(Sept. 8, 1950, ch. 932, title III, §302, as added Pub. L. 111-67, §7, Sept. 30, 2009, 123 Stat. 2012.)

PRIOR PROVISIONS

A prior section 2092, act Sept. 8, 1950, ch. 932, title III, §302, 64 Stat. 801; June 30, 1952, ch. 530, title I, §104, 66 Stat. 298; Pub. L. 93-155, title VIII, §807(b), Nov. 16, 1973, 87 Stat. 615; Pub. L. 96-294, title I, §104(c), June 30, 1980, 94 Stat. 618; Pub. L. 98-265, §§3(b), 4(b), Apr. 17, 1984, 98 Stat. 149, 151; Pub. L. 102-558, title I, §121(b), Oct. 28, 1992, 106 Stat. 4204, related to loans to private business enterprises, prior to the general amendment of title III of this Act by Pub. L. 111-67.

TERMINATION DATE

Termination of section, see section 2166(a) of this Appendix.

DELEGATION OF FUNCTIONS

Functions of President under act Sept. 8, 1950 [section 2061 et seq. of this Appendix], relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15, Commerce and Trade.

For delegation of certain authority of President under this section, see sections 302 and 305(a) of Ex. Ord. No. 13603, Mar. 16, 2012, 77 F.R. 16654, set out as a note under section 2153 of this Appendix.

EXECUTIVE ORDER NO. 10634

Ex. Ord. No. 10634, Aug. 31, 1955, 20 F.R. 6433, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971, which related to loans for facilities destroyed or damaged by major disaster, was revoked by section 5-106 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

§ 2093. Other presidential action authorized

(a) In general

(1) In general

To create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense, the President may make provision—

(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale;

(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials;

(C) for the development of production capabilities; and

(D) for the increased use of emerging technologies in security program applications and the rapid transition of emerging technologies—

(i) from Government-sponsored research and development to commercial applications; and

(ii) from commercial research and development to national defense applications.

(2) Treatment of certain agricultural commodities

A purchase for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced, except to the extent that such domestically produced supply may be purchased for resale for industrial use or stockpiling.

(3) Terms of sales

No commodity purchased under this subsection shall be sold at less than—

(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower; or

(B) if no ceiling price has been established, the higher of—

(i) the current domestic market price for such commodity; or

(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation, as provided in section 407 of the Agricultural Act of 1949 (7 U.S.C. 1427).

(4) Delivery dates

No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than 1 year after the date of termination of this section.

(5) Presidential determinations

Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President determines that—

(A) the industrial resource, material, or critical technology item is essential to the national defense; and

(B) without Presidential action under this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner.

(6) Notification to Congress of shortfall**(A) In general**

Except as provided in paragraph (7), the President shall provide written notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of a domestic industrial base shortfall prior to taking action under this subsection to remedy the shortfall. The notice shall include the determinations made by the President under paragraph (5).

(B) Aggregate amounts

If the taking of any action under this subsection to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such actions for such shortfall to exceed \$50,000,000, the action or actions may be taken only after the 30-day period following the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives have been notified in writing of the proposed action.

(7) Waivers authorized

The requirements of paragraphs (1) through (6) may be waived—

(A) during a period of national emergency declared by the Congress or the President; or

(B) upon a determination by the President, on a nondelegable basis, that action is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.

(b) Exemption for certain limitations

Subject to the limitations in subsection (a), purchases and commitments to purchase and sales under subsection (a) may be made without regard to the limitations of existing law (other than section 1341 of title 31, United States Code), for such quantities, and on such terms and conditions, including advance payments, and for such periods, but not extending beyond a date that is not more than 10 years from the date on which such purchase, purchase commitment, or sale was initially made, as the President deems necessary, except that purchases or commitments to purchase involving higher than established ceiling prices (or if no such established ceiling prices exist, currently prevailing market prices) or anticipated loss on resale shall not be made, unless it is determined that supply of the materials could not be effectively increased at lower prices or on terms more favorable to the Government, or that such purchases are necessary to assure the availability to the United States of overseas supplies.

(c) Presidential findings**(1) In general**

The President may take the actions described in paragraph (2), if the President finds that—

(A) under generally fair and equitable ceiling prices, for any raw or nonprocessed material, there will result a decrease in supplies from high-cost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of this title [sections 2091 to 2094 of this Appendix]; or

(B) an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials.

(2) Subsidy payments authorized

Upon a finding under paragraph (1), the President may make provision for subsidy payments on any such domestically produced material, other than an agricultural commodity, in such amounts and in such manner (including purchases of such material and its resale at a loss), and on such terms and conditions, as the President determines to be necessary to ensure that supplies from such high-cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be.

(d) Incidental authority

The procurement power granted to the President by this section shall include the power to transport and store and have processed and refined any materials procured under this section.

(e) Installation of equipment in industrial facilities**(1) Installation authorized**

If the President determines that such action will aid the national defense, the President is authorized—

(A) to procure and install additional equipment, facilities, processes or improvements to plants, factories, and other industrial facilities owned by the Federal Government;

(B) to procure and install equipment owned by the Federal Government in plants, factories, and other industrial facilities owned by private persons;

(C) to provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes, when taking actions under section 301 [section 2091 of this Appendix], 302 [section 2092 of this Appendix], or this section; and

(D) to sell or otherwise transfer equipment owned by the Federal Government and installed under this subsection to the owners of such plants, factories, or other industrial facilities.

(2) Indemnification

The owner of any plant, factory, or other industrial facility that receives equipment owned by the Federal Government under this section shall agree—

(A) to waive any claim against the United States under section 107 or 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607 and 9613); and

(B) to indemnify the United States against any claim described in paragraph (1) made by a third party that arises out of the presence or use of equipment owned by the Federal Government.

(f) Excess metals, minerals, and materials**(1) In general**

Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to this section which, in the judgment of the President, are excess to the needs of programs under this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix], shall be transferred to the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), when the President deems such action to be in the public interest.

(2) Transfers at no charge

Transfers made pursuant to this subsection shall be made without charge against or reimbursement from funds appropriated for the purposes of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), except that costs incident to such transfer, other than acquisition costs, shall be paid or reimbursed from such funds.

(g) Substitutes

When, in the judgement of the President, it will aid the national defense, the President may make provision for the development of sub-

stitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources.

(Sept. 8, 1950, ch. 932, title III, §303, as added Pub. L. 111-67, §7, Sept. 30, 2009, 123 Stat. 2013.)

REFERENCES IN TEXT

For the date of termination of this section, referred to in subsec. (a)(4), see section 2166(a) of this Appendix.

The Strategic and Critical Materials Stock Piling Act, referred to in subsec. (f), is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96-41, §2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§98 et seq.) of chapter 5 of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 98 of Title 50 and Tables.

PRIOR PROVISIONS

A prior section 2093, act Sept. 8, 1950, ch. 932, title III, §303, 64 Stat. 801; July 31, 1951, ch. 275, title I, §103(a), 65 Stat. 133; June 30, 1953, ch. 171, §§5, 6, 67 Stat. 130; Aug. 9, 1955, ch. 655, §3, 69 Stat. 580; June 29, 1956, ch. 474, §2, 70 Stat. 408; Pub. L. 88-343, §2, June 30, 1964, 78 Stat. 235; Pub. L. 92-325, §1, June 30, 1972, 86 Stat. 390; Pub. L. 94-273, §2(29), Apr. 21, 1976, 90 Stat. 376; Pub. L. 96-41, §3(c), July 30, 1979, 93 Stat. 325; Pub. L. 96-294, title I, §104(d), June 30, 1980, 94 Stat. 618; Pub. L. 98-265, §§3(c), 4(c), Apr. 17, 1984, 98 Stat. 150, 151; Pub. L. 102-558, title I, §121(c), (d), Oct. 28, 1992, 106 Stat. 4204, 4206; Pub. L. 107-47, §4(3), Oct. 5, 2001, 115 Stat. 260, related to purchase of raw materials and installation of equipment, prior to the general amendment of title III of this Act by Pub. L. 111-67.

TERMINATION DATE

Termination of section, see section 2166(a) of this Appendix.

DELEGATION OF FUNCTIONS

Functions of President under act Sept. 8, 1950 [section 2061 et seq. of this Appendix], relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15, Commerce and Trade.

For delegation of certain authority of President under this section, see sections 303(a), 304, 305(b), and 306-308 of Ex. Ord. No. 13603, Mar. 16, 2012, 77 F.R. 16654, 16655, set out as a note under section 2153 of this Appendix.

AUTHORIZATION TO TAKE ACTIONS TO CORRECT THE INDUSTRIAL RESOURCE SHORTFALL FOR HIGH-PURITY BERYLLIUM METAL

Pub. L. 111-84, div. A, title VIII, §842, Oct. 28, 2009, 123 Stat. 2418, provided that: "Notwithstanding any limitation in section 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2093), an action may be taken under such section to correct an industrial resource shortfall or domestic industrial base shortfall for high-purity beryllium metal if such action does not cause the aggregate outstanding amount of all such actions for such shortfall to exceed '\$85,000,000'."

RESOURCE SHORTFALL FOR RADIATION-HARDENED ELECTRONICS

Pub. L. 108-195, §3, Dec. 19, 2003, 117 Stat. 2892, provided that:

"(a) IN GENERAL.—Notwithstanding the limitation contained in section 303(a)(6)(C) of the Defense Production Act of 1950 ([former] 50 U.S.C. App. 2093(a)(6)(C)), the President may take actions under section 303 of the Defense Production Act of 1950 to correct the industrial resource shortfall for radiation-hardened electronics, to the extent that such Presidential actions do not cause the aggregate outstanding amount of all such actions to exceed \$200,000,000.

“(b) REPORT BY THE SECRETARY.—Before the end of the 6-month period beginning on the date of the enactment of this Act [Dec. 19, 2003], the Secretary of Defense shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing—

“(1) the current state of the domestic industrial base for radiation-hardened electronics;

“(2) the projected requirements of the Department of Defense for radiation-hardened electronics;

“(3) the intentions of the Department of Defense for the industrial base for radiation-hardened electronics; and

“(4) the plans of the Department of Defense for use of providers of radiation-hardened electronics beyond the providers with which the Department had entered into contractual arrangements under the authority of the Defense Production Act of 1950 [sections 2061 to 2072 of this Appendix], as of the date of the enactment of this Act.”

Pub. L. 107-314, div. A, title VIII, § 829, Dec. 2, 2002, 116 Stat. 2618, provided that: “Notwithstanding the limitation in section 303(a)(6)(C) of the Defense Production Act of 1950 ([former] 50 U.S.C. App. 2093(a)(6)(C)), action or actions may be taken under section 303 of that Act to correct the industrial resource shortfall for radiation-hardened electronics, if such actions do not cause the aggregate outstanding amount of all such actions to exceed \$106,000,000.”

CLARIFICATION OF STOCKPILE STATUS OF CERTAIN MATERIALS

For provisions that all materials purchased under former section 2093 of this Appendix and held in the Defense Production Act inventory as of June 30, 1992, are transferred to the National Defense Stockpile, see section 3315 of Pub. L. 102-484, as amended, set out as a note under section 98c of Title 50, War and National Defense.

EXECUTIVE ORDER NO. 10219

Ex. Ord. No. 10219, Feb. 28, 1951, 16 F.R. 1983, as amended by Ex. Ord. No. 10461, June 17, 1953, 18 F.R. 3513; Ex. Ord. No. 10537, June 22, 1954, 19 F.R. 3807; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971, which related to the responsibilities of Federal agencies with respect to transportation and storage, was superseded by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, formerly set out as a note under section 2271 of this Appendix.

§ 2094. Defense Production Act Fund

(a) Establishment of Fund

There is established in the Treasury of the United States a separate fund to be known as the “Defense Production Act Fund” (in this section referred to as the “Fund”).

(b) Moneys in Fund

There shall be credited to the Fund—

(1) all moneys appropriated for the Fund, as authorized by section 711 [section 2161 of this Appendix]; and

(2) all moneys received by the Fund on transactions entered into pursuant to section 303 [section 2093 of this Appendix].

(c) Use of Fund

The Fund shall be available to carry out the provisions and purposes of this title [sections 2091 to 2094 of this Appendix], subject to the limitations set forth in this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] and in appropriations Acts.

(d) Duration of Fund

Moneys in the Fund shall remain available until expended.

(e) Fund balance

The Fund balance at the close of each fiscal year shall not exceed \$750,000,000, excluding any moneys appropriated to the Fund during that fiscal year or obligated funds. If, at the close of any fiscal year, the Fund balance exceeds \$750,000,000, the amount in excess of \$750,000,000 shall be paid into the general fund of the Treasury.

(f) Fund manager

The President shall designate a Fund manager. The duties of the Fund manager shall include—

(1) determining the liability of the Fund in accordance with subsection (g);

(2) ensuring the visibility and accountability of transactions engaged in through the Fund; and

(3) reporting to the Congress each year regarding activities of the Fund during the previous fiscal year.

(g) Liabilities against Fund

When any agreement entered into pursuant to this title [sections 2091 to 2094 of this Appendix] after December 31, 1991, imposes any contingent liability upon the United States, such liability shall be considered an obligation against the Fund.

(Sept. 8, 1950, ch. 932, title III, § 304, as added Pub. L. 111-67, § 7, Sept. 30, 2009, 123 Stat. 2017.)

PRIOR PROVISIONS

Prior sections 2094 to 2096 were omitted in the general amendment of title III of this Act by Pub. L. 111-67.

Section 2094, Sept. 8, 1950, ch. 932, title III, § 304, 64 Stat. 802; June 2, 1951, ch. 121, Ch. XI, 65 Stat. 61; July 31, 1951, ch. 275, title I, § 103(b), (c), 65 Stat. 134; Pub. L. 86-560, § 2, June 30, 1960, 74 Stat. 282; Pub. L. 88-343, § 3, June 30, 1964, 78 Stat. 235; Pub. L. 93-426, § 2, Sept. 30, 1974, 88 Stat. 1166; Pub. L. 102-558, title I, § 122, Oct. 28, 1992, 106 Stat. 4206; Pub. L. 107-47, § 4(4), Oct. 5, 2001, 115 Stat. 260, related to Defense Production Act Fund.

Section 2095, Sept. 8, 1950, ch. 932, title III, § 305, as added Pub. L. 96-294, title I, § 104(e), June 30, 1980, 94 Stat. 619; amended Pub. L. 107-314, div. A, title X, § 1062(o)(3), Dec. 2, 2002, 116 Stat. 2653, related to synthetic fuel production.

Section 2096, Sept. 8, 1950, ch. 932, title III, § 306, as added Pub. L. 96-294, title I, § 104(e), June 30, 1980, 94 Stat. 623; amended Pub. L. 107-314, div. A, title X, § 1062(o)(3), Dec. 2, 2002, 116 Stat. 2653, related to synthetic fuel production subsequent to determinations respecting a national energy supply shortage of defense fuels.

Prior section 2096a, Pub. L. 96-294, title I, § 106, June 30, 1980, 94 Stat. 633, which required annual reports on synthetic fuel production under former sections 2095 and 2096 of this Appendix was omitted as obsolete in view of the omission of those sections in the general amendment of title III of this Act by Pub. L. 111-67.

Prior sections 2097 to 2099a were omitted in the general amendment of title III of this Act by Pub. L. 111-67.

Section 2097, Sept. 8, 1950, ch. 932, title III, § 307, as added Pub. L. 96-294, title I, § 104(e), June 30, 1980, 94 Stat. 628; amended Pub. L. 102-558, title I, § 151, Oct. 28, 1992, 106 Stat. 4218, related to synthetic fuel action.

Section 2098, Sept. 8, 1950, ch. 932, title III, § 308, as added Pub. L. 96-294, title I, § 104(e), June 30, 1980, 94 Stat. 631, related to definitions of “Government synthetic fuel project”, “synthetic fuel”, “synthetic fuel project”, and “United States”.

Section 2099, Sept. 8, 1950, ch. 932, title III, § 309, as added Pub. L. 98-265, § 6, Apr. 17, 1984, 98 Stat. 152;