

**§ 98b. National Defense Stockpile****(a) Determination of materials; quantities**

Subject to subsection (c) of this section, the President shall determine from time to time (1) which materials are strategic and critical materials for the purposes of this subchapter, and (2) the quality and quantity of each such material to be acquired for the purposes of this subchapter and the form in which each such material shall be acquired and stored. Such materials when acquired, together with the other materials described in section 98c of this title, shall constitute and be collectively known as the National Defense Stockpile (hereinafter in this subchapter referred to as the “stockpile”).

**(b) Guidelines for exercise of Presidential authority**

The President shall make the determinations required to be made under subsection (a) of this section on the basis of the principles stated in section 98a(c) of this title.

**(c) Quantity change; notification to Congress**

(1) The quantity of any material to be stockpiled under this subchapter, as in effect on September 30, 1987, may be changed only as provided in this subsection or as otherwise provided by law enacted after December 4, 1987.

(2) The President shall notify Congress in writing of any change proposed to be made in the quantity of any material to be stockpiled. The President may make the change after the end of the 45-day period beginning on the date of the notification. The President shall include a full explanation and justification for the proposed change with the notification.

(June 7, 1939, ch. 190, § 3, as added Pub. L. 96-41, § 2(a), July 30, 1979, 93 Stat. 319; amended Pub. L. 100-180, div. C, title II, § 3202(a), Dec. 4, 1987, 101 Stat. 1245; Pub. L. 100-456, div. A, title XII, § 1233(b)(2), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 102-484, div. C, title XXXIII, § 3311, Oct. 23, 1992, 106 Stat. 2653; Pub. L. 104-201, div. C, title XXXIII, § 3312(a), Sept. 23, 1996, 110 Stat. 2857.)

## PRIOR PROVISIONS

A prior section 98b, acts June 7, 1939, ch. 190, § 3, 53 Stat. 811; July 23, 1946, ch. 590, 60 Stat. 597; Aug. 2, 1946, ch. 753, title I, §§ 102, 121, 60 Stat. 815, 822; June 30, 1949, ch. 288, title I, § 102(a), 63 Stat. 380; 1953 Reorg. Plan No. 3, § 2(b), eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634; 1958 Reorg. Plan No. 1, § 2, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799; Oct. 21, 1968, Pub. L. 90-608, § 402, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175, related to purchase, storage, refinement, rotation, and disposal of materials, prior to repeal by section 2(a) of Pub. L. 96-41. See section 98e of this title.

Provisions similar to those in this section were contained in former section 98a of this title prior to repeal by Pub. L. 96-41.

## AMENDMENTS

1996—Subsec. (c)(2). Pub. L. 104-201 substituted “after the end of the 45-day period beginning on” for “effective on or after the 30th legislative day following” and struck out at end “For purposes of this paragraph, a legislative day is a day on which both Houses of Congress are in session.”

1992—Subsec. (c)(2) to (5). Pub. L. 102-484 added par. (2) and struck out former pars. (2) to (5) which read as follows:

“(2) If the President proposes to change the quantity of any material to be stockpiled under this subchapter,

the President shall include a full explanation and justification for the change in the next annual material plan submitted to Congress under section 98h-2(b) of this title.

“(3) If the proposed change in the case of any material would result in a new requirement for the quantity of such material different from the requirement for that material in effect on September 30, 1987, by less than 10 percent, the change may be made by the President effective on or after the first day of the first fiscal year beginning after the explanation and justification for the proposed change is submitted pursuant to paragraph (2).

“(4) In the case of a proposed change not covered by paragraph (3), the proposed change may be made only to the extent expressly authorized by law.

“(5) If in any year the reports required by sections 98h-2(b) and 98h-5 of this title are not submitted to Congress as required by law (including the time for such submission), then during the next fiscal year no change under paragraph (3) may be made in the quantity of any material to be stockpiled under this subchapter.”

1988—Subsec. (c)(1). Pub. L. 100-456 substituted “December 4, 1987” for “the date of the enactment of the National Defense Stockpile Amendments of 1987”, which for purposes of codification had been translated as “December 4, 1987”, thus requiring no change in text.

1987—Subsec. (a). Pub. L. 100-180, § 3202(a)(1), substituted “Subject to subsection (c) of this section, the” for “The”.

Subsec. (b). Pub. L. 100-180, § 3202(a)(2), substituted “the principles stated in section 98a(c) of this title.” for “the following principles:” and struck out cls. (1) and (2) which related to purpose of National Defense Stockpile and quantities of materials stockpiled.

Subsec. (c). Pub. L. 100-180, § 3202(a)(3), added subsec. (c) and struck out former subsec. (c) which read as follows: “The quantity of any material to be stockpiled under this subchapter, as determined under subsection (a) of this section, may not be revised unless the Committees on Armed Services of the Senate and House of Representatives are notified in writing of the proposed revision and the reasons for such revision at least thirty days before the effective date of such revision.”

## DELEGATION OF FUNCTIONS

Functions of the President under this section were delegated to the Secretary of Defense by section 1 of Ex. Ord. No. 12636, Feb. 25, 1988, 53 F.R. 6114, set out under section 98 of this title.

**§ 98c. Materials constituting the National Defense Stockpile****(a) Contents**

The stockpile consists of the following materials:

(1) Materials acquired under this subchapter and contained in the national stockpile on July 29, 1979.

(2) Materials acquired under this subchapter after July 29, 1979.

(3) Materials in the supplemental stockpile established by section 1704(b) of title 7 (as in effect from September 21, 1959, through December 31, 1966) on July 29, 1979.

(4) Materials acquired by the United States under the provisions of section 2093 of the Appendix to this title and transferred to the stockpile by the President pursuant to subsection (f) of such section.

(5) Materials transferred to the United States under section 2423 of title 22 that have been determined to be strategic and critical materials for the purposes of this subchapter and that are allocated by the President under

subsection (b) of such section for stockpiling in the stockpile.

(6) Materials acquired by the Commodity Credit Corporation and transferred to the stockpile under section 714b(h) of title 15.

(7) Materials acquired by the Commodity Credit Corporation under paragraph (2) of section 1743(a) of title 7, and transferred to the stockpile under the third sentence of such section.

(8) Materials transferred to the stockpile by the President under paragraph (4) of section 1743(a) of title 7.

(9) Materials transferred to the stockpile under subsection (b) of this section.

(10) Materials transferred to the stockpile under subsection (c) of this section.

#### **(b) Transfer and reimbursement**

Notwithstanding any other provision of law, any material that (1) is under the control of any department or agency of the United States, (2) is determined by the head of such department or agency to be excess to its needs and responsibilities, and (3) is required for the stockpile shall be transferred to the stockpile. Any such transfer shall be made without reimbursement to such department or agency, but all costs required to effect such transfer shall be paid or reimbursed from funds appropriated to carry out this subchapter.

#### **(c) Transfer and disposal**

(1) The Secretary of Energy, in consultation with the Secretary of Defense, shall transfer to the stockpile for disposal in accordance with this subchapter uncontaminated materials that are in the Department of Energy inventory of materials for the production of defense-related items, are excess to the requirements of the Department for that purpose, and are suitable for transfer to the stockpile and disposal through the stockpile.

(2) The Secretary of Defense shall determine whether materials are suitable for transfer to the stockpile under this subsection, are suitable for disposal through the stockpile, and are uncontaminated.

(June 7, 1939, ch. 190, § 4, as added Pub. L. 96-41, § 2(a), July 30, 1979, 93 Stat. 320; amended Pub. L. 99-661, div. C, title II, § 3207(a)(1), Nov. 14, 1986, 100 Stat. 4069; Pub. L. 104-106, div. C, title XXXIII, § 3311, Feb. 10, 1996, 110 Stat. 630; Pub. L. 110-246, title III, § 3001(b)(1)(A), (2)(Z), June 18, 2008, 122 Stat. 1820, 1821.)

#### REFERENCES IN TEXT

Section 1704(b) of title 7, referred to in subsec. (a)(3), was amended generally by Pub. L. 101-624, title XV, § 1512, Nov. 28, 1990, 104 Stat. 3635, and, as so amended, no longer contains provisions relating to a supplemental stockpile.

#### PRIOR PROVISIONS

A prior section 98c, acts June 7, 1939, ch. 190, § 4, 53 Stat. 811; July 23, 1946, ch. 590, 60 Stat. 598; 1953 Reorg. Plan No. 3, § 2(b), eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634; 1958 Reorg. Plan No. 1, § 2, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799; Oct. 21, 1968, Pub. L. 90-608, § 402, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175; Apr. 21, 1976, Pub. L. 94-273, § 37, 90 Stat. 380, required reports to Congress, prior to repeal by section 2(a) of Pub. L. 96-41. See section 98h-2 of this title.

#### AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110-246 made technical amendment to reference in original act which appears in text as reference to section 1704(b) of title 7.

1996—Subsec. (a)(10). Pub. L. 104-106, § 3311(b), added par. (10).

Subsec. (c). Pub. L. 104-106, § 3311(a), added subsec. (c).

1986—Pub. L. 99-661 substituted “on July 29, 1979” for “on the day before the date of the date of enactment of the Strategic and Critical Materials Stock Piling Revision Act of 1979” in pars. (1) and (3), and “after July 29, 1979” for “on or after the date of the enactment of the Strategic and Critical Materials Stock Piling Revision Act of 1979” in par. (2).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-246 effective May 22, 2008, see section 4(b) of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

#### CLARIFICATION OF STOCKPILE STATUS OF CERTAIN MATERIALS

Pub. L. 102-484, div. C, title XXXIII, § 3315, Oct. 23, 1992, 106 Stat. 2654, as amended by Pub. L. 103-337, div. A, title X, § 1070(c)(4), Oct. 5, 1994, 108 Stat. 2858, provided that: “All materials purchased under section 303 of the Defense Production Act of 1950 ([former] 50 U.S.C. App. 2093) and held in the Defense Production Act inventory as of June 30, 1992, are hereby transferred to the National Defense Stockpile and shall be managed, controlled, and subject to disposal by the National Defense Stockpile Manager as provided in the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98a et seq.) [50 U.S.C. 98 et seq.]”

#### **§ 98d. Authority for stockpile operations**

##### **(a) Funds appropriated for acquisitions; proposed stockpile transactions; significant changes therein**

(1) Except for acquisitions made under the authority of paragraph (3) or (4) of section 98e(a) of this title, no funds may be obligated or appropriated for acquisition of any material under this subchapter unless funds for such acquisition have been authorized by law. Funds appropriated for such acquisition (and for transportation and other incidental expenses related to such acquisition) shall remain available until expended, unless otherwise provided in appropriation Acts.

(2) If for any fiscal year the President proposes certain stockpile transactions in the annual materials plan submitted to Congress for that year under section 98h-2(b) of this title and after that plan is submitted the President proposes (or Congress requires) a significant change in any such transaction, or a significant transaction not included in such plan, no amount may be obligated or expended for such transaction during such year until the President has submitted a full statement of the proposed transaction to the appropriate committees of Congress and a period of 45 days has passed from the date of the receipt of such statement by such committees.

##### **(b) Disposal**

Except for disposals made under the authority of paragraph (3), (4), or (5)<sup>1</sup> of section 98e(a) of this title or under section 98f(a) of this title, no disposal may be made from the stockpile unless such disposal, including the quantity of the ma-

<sup>1</sup> See References in Text note below.