

## DELEGATION OF FUNCTIONS

Functions of President under this section delegated to 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.

**§ 98h-3. Definitions**

For the purposes of this subchapter:

(1) The term “strategic and critical materials” means materials that (A) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national emergency, and (B) are not found or produced in the United States in sufficient quantities to meet such need.

(2) The term “national emergency” means a general declaration of emergency with respect to the national defense made by the President or by the Congress.

(June 7, 1939, ch. 190, §12, as added Pub. L. 96-41, §2(a), July 30, 1979, 93 Stat. 324.)

**§ 98h-4. Importation of strategic and critical materials**

The President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this subchapter, if such material is the product of any foreign country or area not listed in general note 3(b) of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of a country or area listed in such general note is not prohibited by any provision of law.

(June 7, 1939, ch. 190, §13, formerly §10, as added Pub. L. 92-156, title V, §503(2), Nov. 17, 1971, 85 Stat. 427; renumbered §13, Pub. L. 96-41, §2(b)(1), July 30, 1979, 93 Stat. 324; amended Pub. L. 100-180, div. C, title II, §3206(b), (c), Dec. 4, 1987, 101 Stat. 1247; Pub. L. 100-418, title I, §1214(o), Aug. 23, 1988, 102 Stat. 1159; Pub. L. 104-201, div. C, title XXXIII, §3313, Sept. 23, 1996, 110 Stat. 2857.)

## REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in text, is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

## CODIFICATION

Section was formerly classified to section 98h-1 of this title.

## AMENDMENTS

1996—Pub. L. 104-201 substituted “not listed in general note” for “not listed as a Communist-dominated country or area in general note” and “product of a country or area listed in such general note” for “product of such Communist-dominated countries or areas”.

1988—Pub. L. 100-418 substituted “general note 3(b) of the Harmonized Tariff Schedule of the United States” for “general headnote 3(d) of the Tariff Schedules of the United States”.

1987—Pub. L. 100-180 inserted section catchline and, in text, substituted “The President” for “Notwithstanding any other provision of law, on and after January 1, 1972, the President”.

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or

after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

**§ 98h-5. Biennial report on stockpile requirements****(a) In general**

Not later than January 15 of every other year, the Secretary of Defense shall submit to Congress a report on stockpile requirements. Each such report shall include—

- (1) the Secretary’s recommendations with respect to stockpile requirements; and
- (2) the matters required under subsection (b).

**(b) National emergency planning assumptions**

Each report under this section shall set forth the national emergency planning assumptions used by the Secretary in making the Secretary’s recommendations under subsection (a)(1) with respect to stockpile requirements. The Secretary shall base the national emergency planning assumptions on a military conflict scenario consistent with the scenario used by the Secretary in budgeting and defense planning purposes. The assumptions to be set forth include assumptions relating to each of the following:

- (1) The length and intensity of the assumed military conflict.
- (2) The military force structure to be mobilized.
- (3) The losses anticipated from enemy action.
- (4) The military, industrial, and essential civilian requirements to support the national emergency.
- (5) The availability of supplies of strategic and critical materials from foreign sources during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.
- (6) The domestic production of strategic and critical materials during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.
- (7) Civilian austerity measures required during the mobilization period and military conflict.

**(c) Period within which to replace or replenish materials**

The stockpile requirements shall be based on those strategic and critical materials necessary for the United States to replenish or replace, within three years of the end of the military conflict scenario required under subsection (b), all munitions, combat support items, and weapons systems that would be required after such a military conflict.

**(d) Effect of alternative mobilization periods**

The Secretary shall also include in each report under this section an examination of the effect that alternative mobilization periods under the military conflict scenario required under subsection (b), as well as a range of other military conflict scenarios addressing potentially more serious threats to national security, would have on the Secretary’s recommendations under sub-

section (a)(1) with respect to stockpile requirements.

**(e) Plans of President**

The President shall submit with each report under this section a statement of the plans of the President for meeting the recommendations of the Secretary set forth in the report.

(June 7, 1939, ch. 190, §14, as added Pub. L. 100-180, div. C, title II, §3202(c), Dec. 4, 1987, 101 Stat. 1246; amended Pub. L. 102-190, div. C, title XXXIII, §3313(b)(1), (2), Dec. 5, 1991, 105 Stat. 1585; Pub. L. 103-160, div. C, title XXXIII, §3314, Nov. 30, 1993, 107 Stat. 1962; Pub. L. 104-201, div. C, title XXXIII, §3311(a), Sept. 23, 1996, 110 Stat. 2856.)

AMENDMENTS

1996—Subsecs. (b) to (e). Pub. L. 104-201 added subsecs. (b) to (d), redesignated former subsec. (c) as (e), and struck out former subsec. (b) which related to national emergency planning assumptions set forth in reports required under this section.

1993—Subsec. (b). Pub. L. 103-160 struck out before period at end of first sentence “, based upon total mobilization of the economy of the United States for a sustained conventional global war for a period of not less than three years” and inserted after first sentence “Before October 1, 1994, such assumptions shall be based upon the total mobilization of the economy of the United States for a sustained conventional global war for a period of not less than three years. On and after October 1, 1994, such assumptions shall be based on an assumed national emergency involving military conflict that necessitates an expansion of the Armed Forces together with a significant mobilization of the economy of the United States.”

1991—Pub. L. 102-190, §3313(b)(2), substituted “Biennial” for “Annual” in section catchline.

Subsec. (a). Pub. L. 102-190, §3313(b)(1), in introductory provisions, substituted “Not later than January 15 of every other year, the Secretary” for “The Secretary” and “a report” for “an annual report” and struck out “shall be submitted with the annual report submitted under section 98h-2(b) of this title and” before “shall include”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 3311(c) of Pub. L. 104-201, set out as a note under section 98a of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of biennial report to Congress, see section 1061 of Pub. L. 114-328, set out as a note under section 111 of Title 10, Armed Forces.

INITIAL REPORT DUE DATE

Pub. L. 102-190, div. C, title XXXIII, §3313(b)(3), Dec. 5, 1991, 105 Stat. 1585, provided that: “The first report required by section 14(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h-5(a)), as amended by paragraph (1) shall be submitted not later than January 15, 1993.”

**§ 98h-6. Development of domestic sources**

**(a) Purchase of materials of domestic origin; processing of materials in domestic facilities**

Subject to subsection (c) and to the extent the President determines such action is required for the national defense, the President shall encourage the development and appropriate conservation of domestic sources for materials determined pursuant to section 98b(a) of this title to be strategic and critical materials—

(1) by purchasing, or making a commitment to purchase, strategic and critical materials of domestic origin when such materials are needed for the stockpile;

(2) by contracting with domestic facilities, or making a commitment to contract with domestic facilities, for the processing or refining of strategic and critical materials in the stockpile when processing or refining is necessary to convert such materials into a form more suitable for storage and subsequent disposition;

(3) by qualifying existing domestic facilities and domestically produced strategic and critical materials to meet the requirements of defense and essential civilian industries in times of national emergency when existing domestic sources of supply are either insufficient or vulnerable to single points of failure; and

(4) by contracting with domestic facilities to recycle strategic and critical materials, thereby increasing domestic supplies when such materials would otherwise be insufficient to support defense and essential civilian industries in times of national emergency.

**(b) Terms and conditions of contracts and commitments**

A contract or commitment made under subsection (a) may not exceed five years from the date of the contract or commitment. Such purchases and commitments to purchase may be made for such quantities and on such terms and conditions, including advance payments, as the President considers to be necessary.

**(c) Proposed transactions included in annual materials plan; availability of funds**

(1) Descriptions of proposed transactions under subsection (a) shall be included in the appropriate annual materials plan submitted to Congress under section 98h-2(b) of this title. Changes to any such transaction, or the addition of a transaction not included in such plan, shall be made in the manner provided by section 98d(a)(2) of this title.

(2) The authority of the President to enter into obligations under this section is effective for any fiscal year only to the extent that funds in the National Defense Stockpile Transaction Fund are adequate to meet such obligations. Payments required to be as a result of obligations incurred under this section shall be made from amounts in the fund.

**(d) Transportation and incidental expenses**

The authority of the President under subsection (a) includes the authority to pay—

(1) the expenses of transporting materials; and

(2) other incidental expenses related to carrying out such subsection.

**(e) Reports**

The President shall include in the reports required under section 98h-2(a) of this title information with respect to activities conducted under this section.

(June 7, 1939, ch. 190, §15, as added Pub. L. 101-189, div. C, title XXXIII, §3312(a), Nov. 29, 1989, 103 Stat. 1687; amended Pub. L. 113-66, div. A, title XIV, §1411(c), Dec. 26, 2013, 127 Stat. 934;