

CODIFICATION

Section was formerly classified to section 2091 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 301 of act Sept. 8, 1950, ch. 932, title III, 64 Stat. 800; June 30, 1953, ch. 171, § 4, 67 Stat. 129; Pub. L. 91-379, title I, § 104, Aug. 15, 1970, 84 Stat. 799; Pub. L. 96-294, title I, § 104(a), (b), June 30, 1980, 94 Stat. 618; Pub. L. 98-265, §§ 3(a), 4(a), Apr. 17, 1984, 98 Stat. 149, 150; Pub. L. 102-558, title I, §§ 121(a), 141, Oct. 28, 1992, 106 Stat. 4203, 4217; Pub. L. 107-47, § 4(1)-(3), (5), Oct. 5, 2001, 115 Stat. 260, related to loan guarantees, prior to the general amendment of title III of this Act by Pub. L. 111-67.

DELEGATION OF FUNCTIONS

Functions of President under this chapter relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, eff. June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15, Commerce and Trade.

For delegation of authority of President under subsec. (a)(2) of this section, see section 305(a) of Ex. Ord. No. 13603, Mar. 16, 2012, 77 F.R. 16654, set out as a note under section 4553 of this title.

LIMITATION ON CANCELLATION OF DESIGNATION OF SECRETARY OF THE AIR FORCE AS DEPARTMENT OF DEFENSE EXECUTIVE AGENT

Pub. L. 115-232, div. A, title XVII, § 1792, Aug. 13, 2018, 132 Stat. 2238, provided that:

“(a) LIMITATION ON CANCELLATION OF DESIGNATION.—The Secretary of Defense may not implement the decision, issued on July 1, 2017, to cancel the designation, under Department of Defense Directive 4400.01E, entitled ‘Defense Production Act Programs’ and dated October 12, 2001, of the Secretary of the Air Force as the Department of Defense Executive Agent for the program carried out under title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq.) until the date specified in subsection (c).

“(b) DESIGNATION.—The Secretary of the Air Force shall continue to serve as the sole and exclusive Department of Defense Executive Agent for the program described in subsection (a) until the date specified in subsection (c).

“(c) DATE SPECIFIED.—The date specified in this subsection is the date of the enactment of a joint resolution or an Act approving the implementation of the decision described in subsection (a).”

§ 4532. Loans to private business enterprises**(a) Loan authority**

To reduce current or projected shortfalls of industrial resources, critical technology items, or materials essential for the national defense, the President may make provision for loans to private business enterprises (including nonprofit research corporations and providers of critical infrastructure) for the creation, maintenance, expansion, protection, or restoration of capacity, the development of technological processes, or the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals.

(b) Conditions of loans

Loans may be made under this section on such terms and conditions as the President deems necessary, except that—

- (1) financial assistance may be extended only to the extent that it is not otherwise

available from private sources on reasonable terms; and

- (2) during periods of national emergency declared by the Congress or the President, no 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 661a of title 2; 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.

(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 subchapter 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.)

TERMINATION OF SECTION

For termination of section, see section 4564(a) of this title.

CODIFICATION

Section was formerly classified to section 2092 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 302 of act Sept. 8, 1950, ch. 932, title III, 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.

DELEGATION OF FUNCTIONS

Functions of President under this chapter 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 4553 of this title.

§ 4533. 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 1427 of title 7.

(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, on a non-delegable basis, determines, with appropriate explanatory material and in writing, that—

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

(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; and

(C) purchases, purchase commitments, or other action pursuant to this section are the most cost effective, expedient, and practical alternative method for meeting the need.

(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.

(C) Limitation

If the taking of any action or actions under this section to correct an industrial