

fense for Acquisition and Sustainment (Under Secretary) is designated to have authority to release strategic and critical materials from the National Defense Stockpile.

SEC. 3. *Execution and Consultation.* In executing the authority conferred by this order, the Under Secretary may release strategic and critical materials from the National Defense Stockpile for use, sale, or other disposition only when required for use, manufacture, or production for purposes of national defense. No release is authorized for economic or budgetary purposes. Prior to ordering the release of strategic and critical materials from the National Defense Stockpile, the Under Secretary shall consult with the heads of relevant executive departments and agencies.

SEC. 4. *Authority.* (a) All previously issued orders, regulations, rulings, certificates, directives, and other actions relating to any function affected by this order shall remain in effect except to the extent that they are inconsistent with this order or are subsequently amended or revoked under proper authority. Nothing in this order shall affect the validity or force of anything done under previous delegations or another assignment of authority under the Strategic and Critical Materials Stock Piling Act.

(b) Nothing in this order shall affect the authorities assigned under Executive Order 13603 of March 16, 2012 (National Defense Resources Preparedness) [50 U.S.C. 4553 note].

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or  
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

#### § 98a. Congressional findings and declaration of purpose

(a) The Congress finds that the natural resources of the United States in certain strategic and critical materials are deficient or insufficiently developed to supply the military, industrial, and essential civilian needs of the United States for national defense.

(b) It is the purpose of this subchapter to provide for the acquisition and retention of stocks of certain strategic and critical materials and to encourage the conservation and development of sources of such materials within the United States and thereby to decrease and to preclude, when possible, a dangerous and costly dependence by the United States upon foreign sources or a single point of failure for supplies of such materials in times of national emergency.

(c) The purpose of the National Defense Stockpile is to serve the interest of national defense only. The National Defense Stockpile is not to be used for economic or budgetary purposes.

(June 7, 1939, ch. 190, § 2, as added Pub. L. 96-41, § 2(a), July 30, 1979, 93 Stat. 319; amended Pub. L. 100-180, div. C, title II, § 3202(b), Dec. 4, 1987, 101 Stat. 1245; Pub. L. 103-160, div. C, title XXXIII, § 3311, Nov. 30, 1993, 107 Stat. 1961; Pub. L. 104-201, div. C, title XXXIII, § 3311(b), Sept. 23, 1996, 110 Stat. 2857; Pub. L. 112-239, div. A, title XIV, § 1412, Jan. 2, 2013, 126 Stat. 2048.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 98a, acts June 7, 1939, ch. 190, § 2, 53 Stat. 811; July 23, 1946, ch. 590, 60 Stat. 596; 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 determination of strategic and critical materials, the quantity and quality to be purchased, formation and functions of industry advisory committees, and the subsistence and traveling expenses of members of those committees, prior to repeal by section 2(a) of Pub. L. 96-41.

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

##### AMENDMENTS

2013—Subsec. (b). Pub. L. 112-239 inserted “or a single point of failure” after “foreign sources”.

1996—Subsec. (c). Pub. L. 104-201 added subsec. (c) and struck out former subsec. (c) which read as follows: “In providing for the National Defense Stockpile under this subchapter, Congress establishes the following principles:

“(1) The purpose of the National Defense Stockpile is to serve the interest of national defense only. The National Defense Stockpile is not to be used for economic or budgetary purposes.

“(2) Before October 1, 1994, the quantities of materials stockpiled under this subchapter should be sufficient to sustain the United States for a period of not less than three years during a national emergency situation that would necessitate total mobilization of the economy of the United States for a sustained conventional global war of indefinite duration.

“(3) On and after October 1, 1994, the quantities of materials stockpiled under this subchapter should be sufficient to meet the needs of the United States during a period of a national emergency that would necessitate an expansion of the Armed Forces together with a significant mobilization of the economy of the United States under planning guidance issued by the Secretary of Defense.”

1993—Subsec. (c)(2). Pub. L. 103-160, § 3311(1), substituted “Before October 1, 1994, the quantities” for “The quantities”.

Subsec. (c)(3). Pub. L. 103-160, § 3311(2), added par. (3). 1987—Subsec. (c). Pub. L. 100-180 added subsec. (c).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-201, div. C, title XXXIII, § 3311(c), Sept. 23, 1996, 110 Stat. 2857, provided that: “The amendments made by this section [amending this section and section 98h-5 of this title] shall take effect on October 1, 1996.”

#### § 98b. National Defense Stockpile

##### (a) Determination of materials; quantities

Subject to subsection (c), 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) 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.)

**Editorial Notes**

**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 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), 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), 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.”

**Executive Documents**

**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 4533 of 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.