

Section 2031, act Feb. 26, 1949, ch. 11, §11, 63 Stat. 9, set out effective date of sections 2021 to 2032 of this Appendix.

Section 2032, acts Feb. 26, 1949, ch. 11, §12, 63 Stat. 9; May 16, 1951, ch. 83, 65 Stat. 43; June 16, 1953, ch. 116, 67 Stat. 62; June 29, 1956, ch. 473, §1, 70 Stat. 407; June 25, 1958, Pub. L. 85-466, 72 Stat. 220; May 13, 1960, Pub. L. 86-464, 74 Stat. 130; July 1, 1962, Pub. L. 87-515, §1, 76 Stat. 127; June 30, 1965, Pub. L. 89-63, §1, 79 Stat. 209; June 30, 1969, Pub. L. 91-35, 83 Stat. 42; Aug. 18, 1969, Pub. L. 91-59, 83 Stat. 101; Oct. 31, 1969, Pub. L. 91-105, §1, 83 Stat. 169, provided for termination date of sections 2021 to 2032 of this Appendix, on Dec. 31, 1969.

**ALIEN PROPERTY DAMAGE CLAIMS**

ACT MAR. 15, 1949, CH. 19, 63 STAT. 12

**§§ 2041 to 2045. Omitted**

CODIFICATION

Sections 2041 to 2045 were omitted pursuant to section 2042 of this Appendix.

Section 2041, act Mar. 15, 1949, ch. 19, §1, 63 Stat. 12, related to adjustment and settlement of claims.

Section 2042, act Mar. 15, 1949, ch. 19, §2, 63 Stat. 13, related to time limitation for presentment of claims under sections 2041 to 2045 of this Appendix and required presentment within one year of Mar. 15, 1949.

Section 2043, act Mar. 15, 1949, ch. 19, §3, 63 Stat. 13, related to finality and conclusiveness of Attorney General's decisions.

Section 2044, act Mar. 15, 1949, ch. 19, §4, 63 Stat. 13, related to claims in excess of one thousand dollars.

Section 2045, act Mar. 15, 1949, ch. 19, §5, 63 Stat. 13, related to authorization of appropriations for use under sections 2041 to 2045 of this Appendix.

**DEFENSE PRODUCTION ACT OF 1950**

ACT SEPT. 8, 1950, CH. 932, 64 STAT. 798

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## AMENDMENTS

1952—Act June 30, 1952, ch. 530, title I, §116(a), 66 Stat. 305, struck out “CONSUMER AND” in title VI heading.

1951—Act July 31, 1951, ch. 275, title I, §107, 65 Stat. 138, amended heading of title II by inserting “AND CONDEMN”.

## TERMINATION DATE

For termination of certain provisions of act Sept. 8, 1950, see section 2166 of this Appendix.

## ACT REFERRED TO IN OTHER SECTIONS

This Act is referred to in sections 2182, 2183 of this Appendix; title 30 section 1604; title 42 sections 1591a, 1593e, 5195a.

## § 2061. Short title

This Act [sections 2061 to 2171 of this Appendix], divided into titles, may be cited as “the Defense Production Act of 1950”.

(Sept. 8, 1950, ch. 932, §1, 64 Stat. 798.)

## SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104-64, §1, Dec. 18, 1995, 109 Stat. 689, provided that: “This Act [amending sections 2161 and 2166 of this Appendix and enacting provisions set out as a note under section 2062 of this Appendix] may be cited as the ‘Defense Production Act Amendments of 1995’.”

## SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-558, §1(a), Oct. 28, 1992, 106 Stat. 4198, provided that: “This Act [enacting sections 2074, 2077, 2078, 2099a, and 2171 of this Appendix, amending sections 2062, 2091 to 2094, 2097, 2099, 2151 to 2155, 2159 to 2161, 2166, and 2170 of this Appendix, sections 1815, 1817, 1818, 1820, 1834, 1834a, and 3104 of Title 12, Banks and Banking, and section 1143 of Title 30, Mineral Lands and Mining, repealing sections 2162, 2165, 2167, and 2169 of this Appendix, enacting provisions set out as notes under sections 2062, 2099, and 2159 of this Appendix and sections 1815, 1817, 1834, 1834a, and 3104 of Title 12, and repealing provisions set out as notes under sections 1817, 1834, and 1834a of Title 12] may be cited as the ‘Defense Production Act Amendments of 1992’.”

## SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102-99, §1, Aug. 17, 1991, 105 Stat. 487, provided that: “This Act [amending sections 2071, 2158, 2161, and 2166 of this Appendix, repealing section 2158a of this Appendix, and enacting provisions set out as a note under

section 2071 of this Appendix] may be cited as the ‘Defense Production Act Extension and Amendments of 1991’.”

## SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-441, §1, Oct. 3, 1986, 100 Stat. 1117, provided that: “This Act [amending sections 2099, 2161, and 2166 of this Appendix and provisions set out as a note under section 5314 of Title 5, Government Organization and Employees] may be cited as the ‘Defense Production Act Amendments of 1986’.”

## SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-265, §1, Apr. 17, 1984, 98 Stat. 149, provided that: “This Act [enacting section 2099 of this Appendix and amending sections 2091, 2092, 2093, 2161, and 2166 of this Appendix] may be cited as the ‘Defense Production Act Amendments of 1984’.”

## SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96-294, title I, part A (§§101-107), §101, June 30, 1980, 94 Stat. 617, provided that: “This part [enacting sections 2075, 2076, and 2095 to 2098 of this Appendix, amending sections 2062, 2091 to 2093, 2151, 2161, and 2166 of this Appendix, and enacting a provision set out as a note under section 2062 of this Appendix] may be cited as the ‘Defense Production Act Amendments of 1980’.”

## SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-37, §1, June 1, 1977, 91 Stat. 178, provided: “That this Act [amending section 2166 of this Appendix] may be cited as the ‘Defense Production Act Extension Amendments of 1977’.”

## SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94-152, §1, Dec. 16, 1975, 89 Stat. 810, provided: “That this Act [enacting section 2158a of this Appendix, amending sections 2158, 2160, 2162, 2166, 2168, and 2169 of this Appendix, and enacting provisions set out as notes under section 2158 of this Appendix] may be cited as the ‘Defense Production Act Amendments of 1975’.”

## SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-426, §1, Sept. 30, 1974, 88 Stat. 1166, provided: “That this Act [enacting section 2169 of this Appendix and amending sections 2094, 2161, and 2166 of this Appendix] may be cited as the ‘Defense Production Act Amendments of 1974’.”

## SHORT TITLE OF 1955 AMENDMENT

Act Aug. 9, 1955, ch. 655, §1, 69 Stat. 580, provided: “That this Act [amending sections 2062, 2093, 2151, 2158, 2160, 2162, and 2166 of this Appendix and enacting provisions set out as notes under section 2062 of this Appendix] may be cited as the ‘Defense Production Act Amendments of 1955’.”

## SHORT TITLE OF 1953 AMENDMENT

Act June 30, 1953, ch. 171, §1, 67 Stat. 129, provided: “That this Act [amending sections 2062, 2071, 2091, 2093, 2151, 2152, 2155, 2163a, and 2166 of this Appendix] may be cited as the ‘Defense Production Act Amendments of 1953’.”

## SHORT TITLE OF 1952 AMENDMENT

Act June 30, 1952, ch. 530, §1, 66 Stat. 296, provided: “That this Act [enacting sections 1894a, 2111, 2112, and 2137 of this Appendix and section 43a of Title 41, Public Contracts, and amending sections 1884, 1894, 1894a, 2071, 2074, 2092, 2102, 2103, 2107, 2108, 2123, 2155, 2157, 2158, 2162, 2163a, and 2166 of this Appendix and sections 44 and 45 of Title 41] may be cited as the ‘Defense Production Act Amendments of 1952’.”

## SHORT TITLE OF 1951 AMENDMENT

Act July 31, 1951, ch. 275, §1, 65 Stat. 131, provided: “That this Act [amending sections 1884, 1892 to 1896,

1898, 1899, 2071, 2072, 2074, 2081, 2093, 2094, 2102, 2103, 2105, 2109, 2122, 2123, 2131, 2133, 2135, 2151, 2153 to 2156, 2160, and 2163a to 2166 of this Appendix, repealing section 694f of former Title 38, Pensions, Bonuses, and Veterans' Relief, and enacting provisions set out as a note under section 1907 of this Appendix] may be cited as the 'Defense Production Act Amendments of 1951'.'

#### 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, 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 certain authority of President under act Sept. 8, 1950 [section 2061 et seq. of this Appendix] relating to national defense industrial resource preparedness and statement of related policy, see Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29525, set out as a note under section 2153 of this Appendix.

### § 2062. Declaration of policy

#### (a) Findings

The Congress finds that—

(1) the vitality of the industrial and technology base of the United States is a foundation of national security that provides the industrial and technological capabilities employed to meet national defense requirements, in peacetime and in time of national emergency;

(2) in peacetime, the health of the industrial and technological base contributes to the technological superiority of United States defense equipment, which is a cornerstone of the national security strategy, and the efficiency with which defense equipment is developed and produced;

(3) in times of crisis, a healthy industrial base will be able to effectively provide the graduated response needed to effectively meet the demands of the emergency;

(4) in view of continuing international problems, the Nation's demonstrated reliance on imports of materials and components, and the need for measures to reduce defense production lead times and bottlenecks, and in order to provide for the national defense and national security, the United States defense mobilization preparedness effort continues to require the development of—

(A) preparedness programs;

(B) domestic defense industrial base improvement measures;

(C) provisions for a graduated response to any threatening international or military situation;

(D) the expansion of domestic productive capacity beyond the levels needed to meet the civilian demand; and

(E) some diversion of certain materials and facilities from civilian use to military and related purposes.<sup>1</sup>

(5) to meet the requirements referred to in this subsection, this Act [sections 2061 to 2171 of this Appendix] affords to the President an array of authorities to shape defense preparedness programs and to take appropriate steps to

maintain and enhance the defense industrial and technological base;

(6) the activities referred to in this subsection are needed in order to—

(A) improve domestic defense industrial base efficiency and responsiveness;

(B) reduce the time required for industrial mobilization in the event of an attack on the United States; or

(C) to respond to actions occurring outside of the United States which could result in the termination or reduction of the availability of strategic and critical materials, including energy, and which could adversely affect the national defense preparedness of the United States;

(7) in order to ensure national defense preparedness, which is essential to national security, it is necessary and appropriate to assure the availability of domestic energy supplies for national defense needs;

(8) to further assure the adequate maintenance of the defense industrial base, to the maximum extent possible, such supplies should be augmented through reliance on renewable fuels, including solar, geothermal, and wind energy and ethanol and its derivatives, and on energy conservation measures;

(9) the domestic defense industrial base is a component part of the core industrial capacity of the Nation;

(10) much of the industrial capacity which is relied upon by the Federal Government for military production and other defense-related purposes is deeply and directly influenced by—

(A) the overall competitiveness of the United States industrial economy; and

(B) the ability of United States industry, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve that competitive edge in the future, with respect to military and civilian production;

(11) the domestic defense industrial base is developing a growing dependency on foreign sources for critical components and materials used in manufacturing and assembling major weapons systems for the national defense;

(12) such dependence is threatening the capability of many critical industries to respond rapidly to defense production needs in the event of war or other hostilities or diplomatic confrontation; and

(13) the inability of United States industry, especially smaller subcontractors and suppliers, to provide vital parts and components and other materials would impair our ability to sustain United States Armed Forces in combat for longer than a short period.

#### (b) Statement of policy

It is the policy of the United States that—

(1) in order to ensure productive capacity in the event of an attack on the United States, the United States should encourage the geographic dispersal of industrial facilities in the United States to discourage the concentration of such productive facilities within limited geographic areas which are vulnerable to attack by an enemy of the United States;

<sup>1</sup> So in original. The period probably should be a semicolon.

(2) to ensure that essential mobilization requirements are met, consideration should also be given to stockpiling strategic materials to the extent that such stockpiling is economical and feasible;

(3) in the construction of any Government-owned industrial facility, in the rendition of any Government financial assistance for the construction, expansion, or improvement of any industrial facility, and in the production of goods and services, under this or any other Act, each department and agency of the executive branch should apply, under the coordination of the Federal Emergency Management Agency, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of the geographic dispersal of such facilities in the interest of national defense, except that nothing in this paragraph shall preclude the use of existing industrial facilities;

(4) to ensure the adequacy of productive capacity and supply, executive agencies and departments responsible for defense acquisition should continuously assess the capability of the domestic defense industrial base to satisfy peacetime requirements as well as increased mobilization production requirements, specifically evaluating the availability of adequate production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;

(5) every effort should be made to foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment; and

(6) plans and programs to carry out this section shall be undertaken with due consideration for promoting efficiency and competition.

(Sept. 8, 1950, ch. 932, § 2, 64 Stat. 798; June 30, 1953, ch. 171, § 2, 67 Stat. 129; Aug. 9, 1955, ch. 655, § 2, 69 Stat. 580; June 29, 1956, ch. 474, § 4, 70 Stat. 408; Pub. L. 96-294, title I, § 102, June 30, 1980, 94 Stat. 617; Pub. L. 102-558, title I, § 101, Oct. 28, 1992, 106 Stat. 4199.)

#### REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(5) and (b)(3), means act Sept. 8, 1950, ch. 932, 64 Stat. 798, as amended, known as the Defense Production Act of 1950, which is classified to sections 2061 to 2171 of this Appendix. For complete classification of this Act to the Code, see section 2061 of this Appendix and Tables.

#### AMENDMENTS

1992—Pub. L. 102-558 amended section generally, substituting provisions relating to findings and statement of policy, for provisions stating that mobilization effort continued to require diversion of materials and facilities from civilian to military use, and to require development of preparedness programs and expansion of productive capacity and supply, in order to reduce time required for full mobilization in case of attack on the United States or to respond to actions occurring outside the United States resulting in termination or reduction of availability of strategic materials, including energy, and provisions stating policy of Congress was to encourage geographical dispersal of industrial facilities, and requiring executive branch departments and agencies to apply principle of geographical dispersal in construction of such facilities.

1980—Pub. L. 96-294 inserted provisions relating to preparedness respecting termination or reduction in availability of strategic and critical materials, including energy, and domestic energy supplies for national defense needs.

1956—Act June 29, 1956, inserted paragraph relating to encouragement of the geographical dispersal of the industrial facilities of the United States.

1955—Act Aug. 9, 1955, provided that mobilization effort requires development of preparedness programs and expansion of productive capacity and supply in order to reduce time required for full mobilization.

1953—Act June 30, 1953, amended section generally to make it conform to the more limited scope of sections 2061 et seq. of this Appendix.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 304 of Pub. L. 102-558 provided that: "This Act [enacting sections 2074, 2077, 2078, 2099a, and 2171 of this Appendix, amending sections 2062, 2091 to 2094, 2097, 2099, 2151 to 2155, 2159 to 2161, 2166, and 2170 of this Appendix, sections 1815, 1817, 1818, 1820, 1834, 1834a, and 3104 of Title 12, Banks and Banking, and section 1143 of Title 30, Mineral Lands and Mining, repealing sections 2162, 2165, 2167, and 2169 of this Appendix, enacting provisions set out as notes under sections 2062, 2099, and 2159 of this Appendix and sections 1815, 1817, 1834, 1834a, and 3104 of Title 12, and repealing provisions set out as notes under sections 1817, 1834, and 1834a of Title 12] and the amendments made by this Act shall be deemed to have become effective on March 1, 1992, except as otherwise specifically provided in this Act."

#### EFFECTIVE DATE OF 1980 AMENDMENT

Section 107 of Pub. L. 96-294 provided that: "The amendments made by this part [enacting sections 2075, 2076, and 2095 to 2098 of this Appendix, amending sections 2062, 2091 to 2093, 2151, 2161, and 2166 of this Appendix, and enacting a provision set out as a note under section 2061 of this Appendix] shall take effect on the date of the enactment of this part [June 30, 1980]."

#### EFFECTIVE DATE OF 1955 AMENDMENT

Section 11 of act Aug. 9, 1955, provided that: "The provisions of this Act [amending sections 2062, 2093, 2151, 2158, 2160, 2162, and 2166 of this Appendix and enacting provisions set out as a note under this section] shall take effect as of the close of July 31, 1955."

#### TERMINATION DATE

For termination of certain provisions of act Sept. 8, 1950, see section 2166 of this Appendix.

#### REPORTS TO CONGRESS

Pub. L. 104-64, § 4, Dec. 18, 1995, 109 Stat. 689, provided that:

"(a) IN GENERAL.—The President shall prepare and transmit to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate an interim report and a final report on proposed legislative modernization of the authorities contained in the Defense Production Act of 1950 [section 2061 et seq. of this Appendix].

"(b) TIMING.—The President shall so transmit—

"(1) the interim report required by subsection (a), not later than January 31, 1997; and

"(2) the final report required by subsection (a), not later than September 30, 1997."

#### EVALUATION OF DOMESTIC DEFENSE INDUSTRIAL BASE POLICY

Section 203 of Pub. L. 102-558, established Congressional Commission on the Evaluation of the Defense Industrial Base Policy which was to submit, not later than Mar. 1, 1995, a final report to Congress outlining criteria for maintaining strength of domestic industrial base for purposes of supporting national security

strategy of United States, taking into consideration, with respect to each Federal agency and department with any responsibility for maintaining strength of domestic defense industrial base, adequacy of statutory framework, budgets, policies, and programs of such agency or department in maintaining domestic defense industrial base, and whether such elements were being effectively implemented and coordinated within such agency or department, as well as degree to which similar activities in commercial sector were being integrated and implemented by such agency or department, and further provided for membership of Commission, as well as staff, powers, interim reports, appropriations, and termination of Commission 60 days after submission of final report.

#### TITLE I—PRIORITIES AND ALLOCATIONS

##### TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in sections 2157, 2166 of this Appendix.

#### § 2071. Priority in contracts and orders

##### (a) Allocation of materials, services, and facilities

The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

##### (b) Critical and strategic materials

The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

##### (c) Domestic energy; materials, equipment, and services

(1) Notwithstanding any other provision of this Act [sections 2061 to 2171 of this Appendix], the President may, by rule or order, require the allocation of, or the priority performance under contracts or orders (other than contracts of employment) relating to, materials, equipment, and services in order to maximize domestic energy supplies if he makes the findings required by paragraph (3) of this subsection.

(2) The authority granted by this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, services, and facilities in the marketplace, unless the President finds that—

(A) such materials, services, and facilities are scarce, critical, and essential—

(i) to maintain or expand exploration, production, refining, transportation;

(ii) to conserve energy supplies; or  
(iii) to construct or maintain energy facilities; and

(B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.

(3) During any period when the authority conferred by this subsection is being exercised, the President shall take such action as may be appropriate to assure that such authority is being exercised in a manner which assures the coordinated administration of such authority with any priorities or allocations established under subsection (a) of this section and in effect during the same period.

(Sept. 8, 1950, ch. 932, title I, §101, 64 Stat. 799; July 31, 1951, ch. 275, title I, §101(a), 65 Stat. 132; June 30, 1952, ch. 530, title I, §§101, 102, 66 Stat. 296; June 30, 1953, ch. 171, §3, 67 Stat. 129; Pub. L. 94-163, title I, §104(a), Dec. 22, 1975, 89 Stat. 878; Pub. L. 102-99, §6, Aug. 17, 1991, 105 Stat. 490.)

##### AMENDMENTS

1991—Subsec. (a)(2). Pub. L. 102-99, §6(1), substituted “materials, services, and facilities” for “materials and facilities”.

Subsec. (c)(1). Pub. L. 102-99, §6(2), substituted “materials, equipment, and services” for “supplies of materials and equipment”.

Subsec. (c)(2) to (4). Pub. L. 102-99, §6(3), (4), added par. (2), redesignated par. (4) as (3), and struck out former pars. (2) and (3) which read as follows:

“(2) The President shall report to the Congress within sixty days after the date of enactment of this subsection on the manner in which the authority contained in paragraph (1) will be administered. This report shall include the manner in which allocations will be made, the procedure for requests and appeals, the criteria for determining priorities as between competing requests, and the office or agency which will administer such authorities.

“(3) The authority granted in this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials and equipment in the marketplace, unless the President finds that—

“(A) such supplies are scarce, critical, and essential to maintain or further (i) exploration, production, refining, transportation, or (ii) the conservation of energy supplies, or (iii) for the construction and maintenance of energy facilities; and

“(B) maintenance or furtherance of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.”

1975—Subsec. (c). Pub. L. 94-163 added subsec. (c).

1953—Subsec. (a). Act June 30, 1953, struck out provisions which related to slaughtering of livestock and allocation of meat and meat products.

Subsec. (b). Act June 30, 1953, retained priorities and allocation authority for defense production but generally to discontinue such authority with respect to the civilian market except in the special cases where, because of shortages and demands of the defense effort, there otherwise would be a significant dislocation in the civilian market resulting in appreciable hardship.

1952—Act June 30, 1952, redesignated existing provisions as subsec. (a), inserted provisions relating to meat and meat products, and added subsec. (b).

1951—Act July 31, 1951, inserted provision relating to slaughtering of livestock.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Section 7 of Pub. L. 102-99 provided that: "This Act [amending this section and sections 2158, 2161, and 2166 of this Appendix, repealing section 2158a of this Appendix, and enacting provisions set out as a note under section 2061 of this Appendix] shall take effect on October 20, 1990."

#### 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. 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 201 to 203 of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29526, 29527, set out as a note under section 2153 of this Appendix.

#### EXPIRATION ON SEPTEMBER 30, 1994, OF PRESIDENTIAL AUTHORITY TO ISSUE ORDERS RELATING TO DOMESTIC ENERGY SUPPLIES

Pub. L. 94-163, title I, §104(b)(1), Dec. 22, 1975, 89 Stat. 879, as amended by Pub. L. 99-58, title I, §101(b), July 2, 1985, 99 Stat. 102; Pub. L. 101-46, §1(2), June 30, 1989, 103 Stat. 132; Pub. L. 101-262, §2(a), Mar. 31, 1990, 104 Stat. 124; Pub. L. 101-360, §2(a), Aug. 10, 1990, 104 Stat. 421; Pub. L. 101-383, §2(1), Sept. 15, 1990, 104 Stat. 727, which provided that the authority to issue any rules or orders under subsec. (c) of this section was to expire at midnight Sept. 30, 1994, but such expiration was not to affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to such date, was repealed by Pub. L. 105-388, §6, Nov. 13, 1998, 112 Stat. 3479.

#### EXPRESS CONGRESSIONAL ENACTMENT REQUIRED TO AFFECT PRESIDENTIAL AUTHORITY RELATING TO DOMESTIC ENERGY SUPPLIES

Pub. L. 94-163, title I, §104(b), formerly §104(b)(2), Dec. 22, 1975, 89 Stat. 879, as renumbered by Pub. L. 105-388, §6, Nov. 13, 1998, 112 Stat. 3479, provided that: "The expiration of the Defense Production Act of 1950 [section 2061 et seq. of this Appendix] or any amendment of such Act after the date of enactment of this Act [Dec. 22, 1975] shall not affect the authority of the President under section 101(c) of such Act [subsec. (c) of this section], as amended by subsection (a) of this section and in effect on the date of enactment of this Act, unless Congress by law expressly provides to the contrary."

#### EXECUTIVE ORDER NO. 10161

Ex. Ord. No. 10161, Sept. 9, 1950, 15 F.R. 6105, as amended by Ex. Ord. No. 10200, Jan. 3, 1951, 16 F.R. 61; Ex. Ord. No. 10233, Apr. 23, 1951, 16 F.R. 3503; Ex. Ord. No. 10281, Aug. 28, 1951, 16 F.R. 8789; Ex. Ord. No. 10301, Nov. 5, 1951, 16 F.R. 11257; Ex. Ord. No. 10324, Feb. 6, 1952, 17 F.R. 1171; Ex. Ord. No. 10359, June 9, 1952, 17 F.R. 5269; Ex. Ord. No. 10373, July 15, 1952, 17 F.R. 6425; Ex. Ord. No. 10377, July 28, 1952, 17 F.R. 6891; Ex. Ord. No. 10390, Sept. 2, 1952, 17 F.R. 7995; and Ex. Ord. No. 10433, Feb. 4, 1953, 18 F.R. 761, which related to delegation of President's functions, was revoked by Ex. Ord. No. 10480, Aug. 18, 1953, 18 F.R. 4939, formerly set out under section 2153 of this Appendix.

#### ABOLITION OF WAGE STABILIZATION BOARD AND CREATION OF NEW BOARD

Wage Stabilization Board created by Ex. Ord. No. 10161, eff. Sept. 9, 1950, 15 F.R. 6105, as amended, abol-

ished by section 2103(b)(6) of this Appendix. A new Wage Stabilization Board was created by section 2103(b)(1), which terminated according to section 2166 of this Appendix Apr. 30, 1953.

#### POWERS OF SECRETARY OF COMMERCE UNDER EX. ORD. NO. 10161

The Secretary of Commerce by F.R. Doc. 50-8068, filed Sept. 13, 1950, 15 F.R. 6182, established the National Production Authority in the Department of Commerce to perform the functions and exercise the powers vested in the Secretary of Commerce by Ex. Ord. No. 10161, and established the Advisory Committee on Priorities Administration which was to serve in an advisory capacity with respect to policy matters. The National Production Authority was abolished and its functions merged into the Business and Defense Services Administration by Secretary of Commerce order, dated Oct. 1, 1953, which in turn was abolished by Department Organization Order 40-1A of Sept. 15, 1970 and its functions transferred to the Bureau of Domestic Commerce. All functions of the Bureau of Domestic Commerce were transferred by the Secretary of Commerce to the Domestic and International Business Administration, within the Department of Commerce, eff. Nov. 17, 1972.

#### CROSS REFERENCES

Discrimination against orders or contracts affected by priorities or allocations prohibited, see section 2157 of this Appendix.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2072, 2095, 2096, 2151, 2157 of this Appendix; title 10 sections 9511, 9512.

#### § 2072. Hoarding of designated scarce materials

In order to prevent hoarding, no person shall accumulate (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices, materials which have been designated by the President as scarce materials or materials the supply of which would be threatened by such accumulation. The President shall order published in the Federal Register, and in such other manner as he may deem appropriate, every designation of materials the accumulation of which is unlawful and any withdrawal of such designation.

In making such designations the President may prescribe such conditions with respect to the accumulation of materials in excess of the reasonable demands of business, personal, or home consumption as he deems necessary to carry out the objectives of this Act [sections 2061 to 2171 of this Appendix]. This section shall not be construed to limit the authority contained in sections 101 and 704 of this Act [sections 2071 and 2154 of this Appendix].

(Sept. 8, 1950, ch. 932, title I, §102, 64 Stat. 799; July 31, 1951, ch. 275, title I, §101(b), 65 Stat. 132.)

#### AMENDMENTS

1951—Act July 31, 1951, authorized President to prescribe conditions and exceptions allowing maintenance of substantial inventories of critical materials in certain cases.

#### 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2157, 2166 of this Appendix.

**§ 2073. Penalties**

Any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this title [sections 2071 to 2078 of this Appendix] or any rule, regulation, or order thereunder, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(Sept. 8, 1950, ch. 932, title I, §103, 64 Stat. 799.)

TERMINATION DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2157 of this Appendix.

**§ 2074. Limitation on actions without Congressional authorization**

**(a) Wage or price controls**

No provision of this Act [sections 2061 to 2171 of this Appendix] shall be interpreted as providing for the imposition of wage or price controls without the prior authorization of such action by a joint resolution of Congress.

**(b) Chemical or biological weapons**

No provision of title I of this Act [sections 2071 to 2078 of this Appendix] shall be exercised or interpreted to require action or compliance by any private person to assist in any way in the production of or other involvement in chemical or biological warfare capabilities, unless authorized by the President (or the President's designee who is serving in a position at level I of the Executive Schedule in accordance with section 5312 of title 5, United States Code) without further redelegation.

(Sept. 8, 1950, ch. 932, title I, §104, as added Pub. L. 102-558, title I, §112, Oct. 28, 1992, 106 Stat. 4202.)

PRIOR PROVISIONS

A prior section 2074, act Sept. 8, 1950, ch. 932, title I, §104, as added July 31, 1951, ch. 275, title I, §101(c), 65 Stat. 132; amended June 30, 1952, ch. 530, §103, 66 Stat. 297, which related to limitations on imports of fats and oils, terminated at close of June 30, 1953, by terms of section 2166(a) of this Appendix.

EFFECTIVE DATE

Section deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

DELEGATION OF AUTHORITY

Authority of President under subsec. (b) of this section delegated to Secretary of Defense by section 204 of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29527, set out as a note under section 2153 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2166 of this Appendix.

**§ 2075. Presidential power to ration gasoline among classes of end-users unaffected**

Nothing in this Act [sections 2061 to 2171 of this Appendix] shall be construed to authorize the President to institute, without the approval of the Congress, a program for the rationing of gasoline among classes of end-users.

(Sept. 8, 1950, ch. 932, title I, §105, as added Pub. L. 96-294, title I, §103, June 30, 1980, 94 Stat. 617.)

EFFECTIVE DATE

Section effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as an Effective Date of 1980 Amendment note under section 2062 of this Appendix.

TERMINATION DATE

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

**§ 2076. Designation of energy as a strategic and critical material**

For purposes of this Act [sections 2061 to 2171 of this Appendix], "energy" shall be designated as a "strategic and critical material" after the date of the enactment of this section [June 30, 1980]: *Provided*, That no provision of this Act [sections 2061 to 2171 of this Appendix] shall, by virtue of such designation—

(1) grant any new direct or indirect authority to the President for the mandatory allocation or pricing of any fuel or feedstock (including, but not limited to, crude oil, residual fuel oil, any refined petroleum product, natural gas, or coal) or electricity or any other form of energy; or

(2) grant any new direct or indirect authority to the President to engage in the production of energy in any manner whatsoever (such as oil and gas exploration and development, or any energy facility construction), except as expressly provided in sections 305 and 306 [sections 2095 and 2096 of this Appendix] for synthetic fuel production.

(Sept. 8, 1950, ch. 932, title I, §106, as added Pub. L. 96-294, title I, §103, June 30, 1980, 94 Stat. 617.)

EFFECTIVE DATE

Section effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as an Effective Date of 1980 Amendment note under section 2062 of this Appendix.

TERMINATION DATE

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

**§ 2077. Strengthening domestic capability**

**(a) In general**

Utilizing the authority of title III of this Act [sections 2091 to 2099a of this Appendix] or any other provision of law, the President may provide appropriate incentives to develop, maintain, modernize, and expand the productive capacities of domestic sources for critical components, critical technology items, and industrial resources essential for the execution of the national security strategy of the United States.



**(b) Critical components and critical technology items**

**(1) Identification**

**(A) In general**

The President, acting through the Secretary of Defense, shall identify critical components and critical technology items for each item on the Critical Items List of the Commanders-in-Chief of the Unified and Specified Commands and other items within the inventory of weapon systems and defense equipment.

**(B) Definition**

Any component identified as critical by a National Security Assessment conducted pursuant to section 113(i) of title 10, United States Code, or by a Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862] shall be designated as a critical component for purposes of this Act [sections 2061 to 2171 of this Appendix], unless the President determines that the designation is unwarranted.

**(2) Maintenance of reliable sources of supply**

The President shall take appropriate actions to assure that critical components or critical technology items are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency.

**(3) Appropriate action**

For purposes of this subsection, appropriate action may include—

- (A) restricting contract solicitations to reliable sources;
- (B) restricting contract solicitations to domestic sources pursuant to—
  - (i) section 2304(b)(1)(B) or section 2304(c)(3) of title 10, United States Code;
  - (ii) section 303(b)(1)(B) or section 303(c)(3) of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 253(b)(1)(B), (c)(3)]; or
  - (iii) other statutory authority;
- (C) stockpiling critical components; and
- (D) developing substitutes for a critical component or a critical technology item.

(Sept. 8, 1950, ch. 932, title I, §107, as added Pub. L. 102-558, title I, §111, Oct. 28, 1992, 106 Stat. 4201.)

**EFFECTIVE DATE**

Section deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

**TERMINATION DATE**

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

**DELEGATION OF FUNCTIONS**

Functions of the President under act Sept. 8, 1950 [section 2061 et seq. of this Appendix], relating to the production, conservation, use, control, distribution, and allocation of energy, delegated to the 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.

**§ 2078. Modernization of small business suppliers**

**(a) In general**

In providing any assistance under this Act [sections 2061 to 2171 of this Appendix], the President shall accord a strong preference for small business concerns which are subcontractors or suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor.

**(b) Modernization of equipment**

**(1) In general**

Funds authorized under title III [sections 2091 to 2099a of this Appendix] may be used to guarantee the purchase or lease of advance manufacturing equipment, and any related services with respect to any such equipment for purposes of this Act [sections 2061 to 2171 of this Appendix].

**(2) Small business suppliers**

In considering proposals for title III [sections 2091 to 2099a of this Appendix] projects under paragraph (1), the President shall provide a strong preference for proposals submitted by a small business supplier or subcontractor whose proposal—

- (A) has the support of the department or agency which will provide the guarantee;
- (B) reflects that the small business concern has made arrangements to obtain qualified outside assistance to support the effective utilization of the advanced manufacturing equipment being proposed for installation; and
- (C) meets the requirements of section 301, 302, or 303 [section 2091, 2092, or 2093 of this Appendix].

(Sept. 8, 1950, ch. 932, title I, §108, as added Pub. L. 102-558, title I, §111, Oct. 28, 1992, 106 Stat. 4202.)

**EFFECTIVE DATE**

Section deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

**TERMINATION DATE**

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

**DELEGATION OF FUNCTIONS**

Functions of the President under act Sept. 8, 1950 [section 2061 et seq. of this Appendix], relating to the production, conservation, use, control, distribution, and allocation of energy, delegated to the 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.

**TITLE II—AUTHORITY TO REQUISITION AND CONDEMN**

**AMENDMENTS**

1951—Act July 31, 1951, ch. 275, title I, §102(a), 65 Stat. 132, in heading inserted “AND CONDEMN”.

**§ 2081. Omitted**

## CODIFICATION

Section, acts Sept. 8, 1950, ch. 932, title II, §201, 64 Stat. 799; July 31, 1951, ch. 275, title I, §102 (b), 65 Stat. 132, which related to requisition of property needed for national defense, terminated at close of June 30, 1953, by the terms of section 2166(a) of this Appendix.

**TITLE III—EXPANSION OF PRODUCTIVE  
CAPACITY AND SUPPLY**

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in sections 2077, 2078, 2161, 2166 of this Appendix.

**§ 2091. Loan guarantees****(a) Purpose of loans; guaranteeing agencies; Presidential determinations**

(1) In order to expedite production and deliveries or services under Government contracts, the President may authorize, subject to such regulations as he may prescribe, the Department of Defense, the Department of Energy, the Department of Commerce, and such other agencies of the United States engaged in procurement for the national defense as he may designate (hereinafter referred to as "guaranteeing agencies"), without regard to provisions of law relating to the making, performance, amendment, or modification of contracts, to guarantee in whole or in part any public or private financing institution (including any Federal Reserve bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount, or advance, or on any commitment in connection therewith, which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential to the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense; but no small-business concern (as defined in section 714(a)(1) of this Act [former section 2163a(a)(1) of this Appendix]) shall be held ineligible for the issuance of such a guaranty by reason of alternative sources of supply.

(2) Except as provided in section 305 [section 2095 of this Appendix] and section 306 [section 2096 of this Appendix], no authority contained in sections 301, 302, or 303 [sections 2091, 2092, or 2093 of this Appendix] may be used in any manner—

(A) in the development, production, or distribution of synthetic fuel;

(B) for any synthetic fuel project;

(C) to assist any person for the purpose of providing goods or services to a synthetic fuel project; or

(D) to provide any assistance to any person for the purchase of synthetic fuel.

(3) Except during periods of national emergency declared by the Congress or the President, a guarantee may be entered into under this section only if the President determines that—

(A) the guaranteed contract or activity is for industrial resources or a critical technology item which is essential to the national defense;

(B) without the guarantee, United States industry cannot reasonably be expected to provide the needed industrial resources or critical technology item in a timely manner;

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

(D) the combination of the United States national defense demand and foreseeable non-defense demand is not less than the output of domestic industrial capability, as determined by the President, including the output to be established through the guarantee.

**(b) Fiscal agents; accountability; reimbursement**

Any Federal agency or any Federal Reserve bank, when designated by the President, is authorized to act, on behalf of any guaranteeing agency, as fiscal agent of the United States in the making of such contracts of guarantee and in otherwise carrying out the purposes of this section. All such funds as may be necessary to enable any such fiscal agent to carry out any guarantee made by it on behalf of any guaranteeing agency shall be supplied and disbursed by or under authority from such guaranteeing agency. No such fiscal agent shall have any responsibility or accountability except as agent in taking any action pursuant to or under authority of the provisions of this section. Each such fiscal agent shall be reimbursed by each guaranteeing agency for all expenses and losses incurred by such fiscal agent in acting as agent on behalf of such guaranteeing agency, including among such expenses, notwithstanding any other provision of law, attorneys' fees and expenses of litigation.

**(c) Supervision; interest, fees, procedures**

All actions and operations of such fiscal agents under authority of or pursuant to this section shall be subject to the supervision of the President, and to such regulations as he may prescribe; and the President is authorized to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

**(d) Funds available for guarantees**

Each guaranteeing agency is authorized to use for the purposes of this section any funds which have heretofore been appropriated or allocated or which hereafter may be appropriated or allocated to it, or which are or may become available to it, for such purposes or for the purpose of meeting the necessities of the national defense.

**(e) Identification of industrial resource shortfall; prevention of personal financial insolvency or bankruptcy**

(1)(A) Except as provided in subparagraph (D), a guarantee may be made under this section only if the industrial resource shortfall which such guarantee is intended to correct has been identified in the Budget of the United States, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of subsection (a)(3) of this section.

(B) Any such guarantee may be made only after 60 days have elapsed after such industrial resource shortfall has been identified pursuant to subparagraph (A).

(C) If the making of any guarantee or guarantees to correct an industrial resource shortfall would cause the aggregate outstanding amount of all guarantees for such industrial resource shortfall to exceed \$50,000,000, any such guarantee or guarantees may be made only if specifically authorized by law.

(D) The requirements of subparagraphs (A), (B), and (C) may be waived—

(i) during periods of national emergency declared by the Congress or the President; or

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

(2) The authority conferred by this section shall not be used primarily to prevent the financial insolvency or bankruptcy of any person, unless

(A) the President certifies that the insolvency or bankruptcy would have a direct and substantially adverse effect upon defense production; and

(B) a copy of such certification, together with a detailed justification thereof, is transmitted to the Congress and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives at least ten days prior to the exercise of that authority for such use.

(Sept. 8, 1950, ch. 932, title III, § 301, 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.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-558, § 121(a)(1), substituted “to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential to the national defense” for “to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense.”

Subsec. (a)(3)(A). Pub. L. 102-558, § 121(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the guaranteed contract or operation

is for a material, or the performance of a service, which is essential to the national defense;”.

Subsec. (a)(3)(B). Pub. L. 102-558, § 121(a)(3), substituted “without” for “Without” and “the needed industrial resources or critical technology item” for “the capability for the needed material or service”.

Subsec. (a)(3)(D). Pub. L. 102-558, § 121(a)(4), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “the United States national defense demand is equal to, or greater than, the output of domestic industrial capability which the President reasonably determines to be available for national defense, including the output to be established through the guarantee.”

Subsec. (e)(1)(A). Pub. L. 102-558, § 121(a)(5), substituted “Except as provided in subparagraph (D)” for “Except during periods of national emergency declared by the Congress or the President”.

Subsec. (e)(1)(C). Pub. L. 102-558, § 121(a)(6), substituted “\$50,000,000” for “\$25,000,000”.

Subsec. (e)(1)(D). Pub. L. 102-558, § 121(a)(7), added subpar. (D).

Subsec. (e)(2)(B). Pub. L. 102-558, § 141, substituted “and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives” for “and to the Committees on Banking and Currency of the respective Houses”.

1984—Subsec. (a)(3). Pub. L. 98-265, § 3(a), added par. (3).

Subsec. (e)(1). Pub. L. 98-265, § 4(a), substituted provision that a guarantee be made under this section only if the industrial resource shortfall which such guarantee is intended to correct is identified for provision that the maximum obligation under this section not exceed \$38,000,000, but if guarantees exceed such amount, Congressional committees be notified and no disapproving resolution be adopted within a 60-day period of continuous session of Congress, with provision for determination of continuity of Congressional session for the purpose of computing such 60-day period.

1980—Subsec. (a). Pub. L. 96-294, § 104(a), designated existing provisions as par. (1), substituted references to Departments of Defense and Energy for references to Departments of Army, Navy, and Air Force, and added par. (2).

Subsec. (e)(1). Pub. L. 96-294, § 104(b), designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B)” for “Except with the approval of Congress” and “\$38,000,000” for “\$20,000,000”, and added subpar. (B).

1970—Subsec. (e). Pub. L. 91-379 added subsec. (e).

1953—Subsec. (a). Act June 30, 1953, made it clear that Government guaranties of credit may be made under this section in connection with the termination of Government contracts, and to provide that no small-business concern shall be denied a guaranty merely because an alternative source of supply exists for the item to be procured on the Government contract involved.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-294 effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as a note under section 2062 of this Appendix.

TERMINATION DATE

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

## TRANSFER OF FUNCTIONS

Act July 30, 1953, ch. 282, title I, §107(a)(2), (b), 67 Stat. 273, required President to transfer functions, powers, duties, and authority of Reconstruction Finance Corporation under sections 2091 to 2094 of this Appendix within sixty days after July 30, 1953, and provided that all assets, funds, contracts, loans, liabilities, commitments, authorizations, allocations, personnel, and records of Corporation, which Director of Bureau of the Budget [now Office of Management and Budget], determined necessary to performance of such functions were to be transferred to officer or agency of Government to which such functions were transferred.

## 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, eff. June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15, Commerce and Trade.

## EXECUTIVE ORDER No. 10223

Ex. Ord. No. 10223, Mar. 12, 1951, 16 F.R. 2247, providing for the performance of certain functions under act Sept. 8, 1950, was revoked by section 404 of Ex. Ord. No. 10281, Aug. 28, 1951, 16 F.R. 8789.

## CROSS REFERENCES

Limitation on aggregate amount of loans, guarantees, etc., under this section, see section 2161 of this Appendix.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2078, 2095, 2096 of this Appendix.

**§ 2092. Loans to private business enterprises****(a) Purposes**

To expedite production and deliveries or services to aid in carrying out Government contracts for the procurement of industrial resources or a critical technology item for the national defense, the President may make provision for loans (including participations in, or guarantees of, loan) to private business enterprises (including research corporations not organized for profit) for the expansion 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, and manufacture of newsprint.

**(b) Terms and conditions; Presidential determinations**

Such loans may be made without regard to the limitations of existing law and 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 on reasonable terms; and

(2) except 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 the expansion of capacity, the development of a technological process, or the production of materials 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; and

(D) the combination of the United States national defense demand and foreseeable nondefense demand is not less than the output of domestic industrial capability, as determined by the President, including the output to be established through the loan.

**(c) Identification of industrial resource shortfall**

(1) Except as provided in paragraph (4), no loans may be made under this section, unless the industrial resource shortfall which such loan is intended to correct has been identified in the Budget of the United States, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of subsection (b)(2) of this section.

(2) Any such loan may be made only after 60 days have elapsed after such industrial resource shortfall has been identified pursuant to paragraph (1).

(3) If the making of any loan or loans to correct an industrial resource shortfall would cause the aggregate outstanding amount of all loans for such industrial resource shortfall to exceed \$50,000,000, any such loan or loans may be made only if specifically authorized by law.

(4) The requirements of paragraphs (1), (2), and (3) may be waived—

(A) during periods 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 guarantee 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, 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.)

## AMENDMENTS

1992—Subsec. (a). Pub. L. 102-558, §121(b)(1), substituted “for the procurement of industrial resources or a critical technology item for the national defense” for “for the procurement of materials or the performance of services for the national defense”.

Subsec. (b)(2)(D). Pub. L. 102-558, §121(b)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “the United States national defense demand is equal to, or greater than, domestic industrial capability which the President reasonably determines to be available for national defense, including the output to be established through the loan.”

Subsec. (c)(1). Pub. L. 102-558, §121(b)(3), substituted “Except as provided in paragraph (4), no loans may be made under this section” for “No such loan may be made under this section, except during periods of national emergency declared by the Congress or the President”.

Subsec. (c)(3). Pub. L. 102-558, §121(b)(4), substituted “\$50,000,000” for “\$25,000,000”.

Subsec. (c)(4). Pub. L. 102-558, §121(b)(5), added par. (4).

1984—Subsec. (a). Pub. L. 98-265, §3(b), designated existing provision as subsec. (a) and struck out provision that loans be made without regard to limitations of existing law on such terms and conditions as the President deems necessary, except that financial assistance be extended only to the extent not available on reasonable terms, and that with respect to loans in excess of \$48,000,000, Congressional committees be notified and no disapproving resolution be adopted within a 60-day period of continuous session of Congress, with provision for determining continuity of Congressional session for the purpose of computing such 60-day period. See subsec. (b).

Subsec. (b). Pub. L. 98-265, §3(b)(2), added subsec. (b).  
 Subsec. (c). Pub. L. 98-265, §4(b), added subsec. (c).  
 1980—Pub. L. 96-294 substituted “\$48,000,000” for “\$25,000,000”.

1973—Pub. L. 93-155 provided for notification of Congressional Committees with respect to certain proposed loans, Congressional resolution of disapproval, continuity of Congressional sessions, and computation of period.

1952—Act June 30, 1952, brought manufacture of newsprint within its provisions.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-294 effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as a note under section 2062 of this Appendix.

#### 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.

#### OBLIGATIONS ENTERED INTO BEFORE NOVEMBER 16, 1973

Amendment by Pub. L. 93-155 not affecting the carrying out of any contract, loan, guarantee, commitment, or other obligation entered into prior to Nov. 16, 1973, see section 807(e) of Pub. L. 93-155, set out as a note under section 2307 of Title 10, Armed Forces.

#### 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.

#### CROSS REFERENCES

Limitation on aggregate amount of loans, guarantees, etc., under this section, see section 2161 of this Appendix.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2078, 2091, 2095, 2096, 2161 of this Appendix.

## § 2093. Purchase of raw materials and installation of equipment

### (a) Presidential provisions

#### (1) In general

To assist in carrying out the objectives of this Act [sections 2061 to 2171 of this Appendix], 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; and

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

#### (2) Treatment of certain agricultural commodities

Purchases 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 expiration 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 or critical technology item is essential to the national defense;

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

(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; and

(D) the combination of the United States national defense demand and foreseeable nondefense demand for the industrial re-

source or critical technology item is not less than the output of domestic industrial capability, as determined by the President, including the output to be established through the purchase, purchase commitment, or other action.

**(6) Identification of shortfall**

**(A) In general**

Except as provided in paragraph (7), the President shall take no action under this section unless the industrial resource shortfall which such action is intended to correct has been identified in the Budget of the United States, or amendments thereto, submitted to the Congress and accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of paragraph (5).

**(B) Timing of action**

Any such action may be taken only after 60 days have elapsed after such industrial resource shortfall has been identified pursuant to subparagraph (A).

**(C) Limitation**

If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed \$50,000,000, any such action or actions may be taken only if specifically authorized by law.

**(7) Waiver**

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

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

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

**(b) Terms and conditions of purchase**

Subject to the limitations in subsection (a) of this section, purchases and commitments to purchase and sales under such subsection may be made without regard to the limitations of existing law, 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 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 there be no established ceiling prices, 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) Subsidy payments on domestically produced materials; exclusion of agricultural products**

If the President finds—

(1) that under generally fair and equitable ceiling prices for any raw or nonprocessed material, there will result a decrease in supplies from high-costs sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of the Act [sections 2061 to 2171 of this Appendix]; or

(2) that 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;

he 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 without regard to the limitations of existing law), and on such terms and conditions, as he determines to be necessary to insure 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) Transportation, storage, and processing**

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**

When in his judgment it will aid the national defense, the President is authorized to install additional equipment, facilities, processes or improvements to plants, factories, and other industrial facilities owned by the United States Government, and to install government-owned equipment in plants, factories, and other industrial facilities owned by private persons.

**(f) Transfer of excess materials to national stockpile**

Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to the provisions of this section which, in the judgment of the President, are excess to the needs of programs under this Act [sections 2061 to 2171 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. Transfers made pursuant to this subsection shall be made without charge against or reimbursement from funds appropriated for the purposes of such Act, except that costs incident to such transfer other than acquisition costs shall be paid or reimbursed from such funds, and the acquisition costs of such metals, minerals, and materials transferred shall be deemed to be net losses incurred by the transferring agency and the notes payable issued to the Secretary of the Treasury representing the amounts thereof shall be canceled. Upon the cancellation of any such notes the aggregate amount of borrowing which may be outstanding at any one time under section 304(b)<sup>1</sup> of this Act, as amended [section 2094(b) of this Appen-

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

dix], shall be reduced in an amount equal to the amount of any notes so canceled.

**(g) Development of substitutes for strategic and critical materials**

When in his judgment it will aid the national defense, the President may make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources.

(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.)

REFERENCES IN TEXT

For expiration 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.

Section 304(b) of this Act, referred to in subsec. (f), is classified to section 2094(b) of this Appendix, and was repealed and a new subsec. (b) was enacted by Pub. L. 93-426, § 2, Sept. 30, 1974, 88 Stat. 1166, which does not relate to limiting aggregate amount of borrowing which may be outstanding.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-558, § 121(c)(1), amended subsec. (a) generally, substituting present provisions for provisions relating to purchases for use or resale, development of strategic minerals, metals, and materials, exclusion of certain agricultural commodities, termination of purchase authority, Presidential action, and identification of industrial resource shortfalls.

Subsec. (b). Pub. L. 102-558, § 121(c)(2), substituted “a date that is not more than 10 years from the date such purchase, purchase commitment, or sale was initially made” for “September 30, 1995”.

Subsec. (g). Pub. L. 102-558, § 121(d), inserted before period at end “, critical components, critical technology items, and other industrial resources”.

1984—Subsec. (a). Pub. L. 98-265, § 3(c), inserted provision requiring President, except during periods of national emergency, to make specific determinations before executing a contract under this subsection.

Pub. L. 98-265, § 4(c), inserted provision requiring President, except during periods of national emergency, to identify industrial resource shortfall before taking any action under this section.

1980—Subsec. (a). Pub. L. 96-294, § 104(d)(1), inserted references to materials after metals wherever appearing.

Subsec. (b). Pub. L. 96-294, § 104(d)(2), substituted “1995” for “1985”.

Subsec. (g). Pub. L. 96-294, § 104(d)(3), struck out provisions relating to certifications by Secretaries of Agriculture and Interior regarding short supply of a particular strategic or critical material.

1979—Subsec. (f). Pub. L. 96-41 substituted “the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et

seq.)” for “the national stockpile established pursuant to the Act of June 7, 1939, as amended (50 U.S.C. 98-98h)” and “from funds appropriated for the purposes of such Act” for “from funds available under such Act of June 7, 1939, as amended”.

1976—Subsec. (b). Pub. L. 94-273 substituted “September” for “June”.

1972—Subsec. (b). Pub. L. 92-325 substituted “June 30, 1985” for “June 30, 1975”.

1964—Subsec. (b). Pub. L. 88-343 substituted “June 30, 1975” for “June 30, 1965”.

1956—Subsec. (b). Act June 29, 1956, substituted “June 30, 1965” for “June 30, 1963”.

1955—Subsec. (g). Act Aug. 9, 1955, added subsec. (g).

1953—Subsec. (b). Act June 30, 1953, § 5, substituted “1963” for “1962”.

Subsec. (f). Act June 30, 1953, § 6, added subsec. (f).

1951—Act July 31, 1951, amended section generally to broaden authority under this section to include materials generally, to continue prohibition against resale of domestic agricultural commodities except for industrial uses or stockpiling but eliminated it as to imported agricultural commodities, to provide that minerals and metals purchased under subsec. (a) may be sold at less than the established ceiling price, but not less than the current domestic market price, to limit provision barring contracts calling for delivery more than one year after the expiration of this section to imported agricultural commodities, to provide that purchases and commitments to purchase under subsec. (a) may not be made for any period extending beyond June 30, 1952, and to provide for a differential subsidy.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-294 effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as a note under section 2062 of this Appendix.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 9, 1955, effective as of close of July 31, 1955, see section 11 of act Aug. 9, 1955, set out as a note under section 2062 of this Appendix.

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.

CLARIFICATION OF STOCKPILE STATUS OF CERTAIN MATERIALS

For provisions that all materials purchased under this section 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 trans-

portation 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.

#### CROSS REFERENCES

Authorization of appropriations to carry out this section, see section 2161 of this Appendix.

Limitation on aggregate amount of loans, guarantees, etc., under this section, see section 2161 of this Appendix.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2078, 2091, 2094, 2095, 2096, 2161 of this Appendix; title 50 section 98c.

### § 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 (hereafter 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(c)<sup>1</sup>; 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 2099a of this Appendix], subject to the limitations set forth in this Act [sections 2061 to 2171 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 \$400,000,000, 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 \$400,000,000, the amount in excess of \$400,000,000 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 2099a 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.

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

(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.)

#### REFERENCES IN TEXT

Section 711(c), referred to in subsec. (b)(1), was classified to section 2161(c) of this Appendix prior to repeal by Pub. L. 104-64, §3(2), Dec. 18, 1995, 109 Stat. 689.

#### AMENDMENTS

1992—Pub. L. 102-558 amended section generally. Prior to amendment, section read as follows:

“(a) For the purposes of sections 302 and 303, the President is authorized to utilize such existing departments, agencies, officials, or corporations of the Government as he may deem appropriate, or to create new agencies (other than corporations).

“(b) The Secretary of the Treasury is authorized and directed to cancel the outstanding balance of all unpaid notes issued to the Secretary of the Treasury pursuant to this section, together with interest accrued and unpaid on such notes.

“(c) Any cash balance remaining on June 30, 1974, in the borrowing authority previously authorized by this section, and any funds thereafter received on transactions heretofore or hereafter entered into pursuant to sections 302 and 303 shall be covered into the Treasury as miscellaneous receipts.”

1974—Subsec. (b). Pub. L. 93-426 substituted provisions authorizing Secretary of the Treasury to cancel outstanding balance of all unpaid notes issued to Secretary of the Treasury together with interest accrued and unpaid on such notes, for provisions relating to borrowing authority mechanism by which all program operations under the Defense Production Act have been financed since the initiation of the Act in 1950 with an overall limit of \$2.1 billion outstanding at any one time and with provisions for payment of interest on the obligations.

Subsec. (c). Pub. L. 93-426 added subsec. (c). Former subsec. (c) was repealed by act July 31, 1951, ch. 275, title I, §103(c), 65 Stat. 134.

1964—Subsec. (b). Pub. L. 88-343 provided that no new purchases or commitments to purchase shall be made or entered into after June 30, 1964, unless President makes a finding that such new purchases or commitments are essential to national security, and that total of such new purchases or commitments including contingent liabilities, could not exceed \$100,000,000.

1960—Subsec. (b). Pub. L. 86-560 substituted “six months” for “quarter”.

1951—Subsec. (b). Act July 31, 1951, §103(b), increased revolving fund from \$600,000,000 to \$2,100,000,000, and limited contingent liability of the United States.

Act June 2, 1951, increased aggregate of borrowing from \$600,000,000 to \$1,600,000,000.

Subsec. (c). Act July 31, 1951, §103(c), repealed subsec. (c) which authorized \$1,400,000,000 to be appropriated to carry out sections 2092 and 2093 of this Appendix.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### TERMINATION DATE

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

#### DEFENSE PRODUCTION ACT FUND MANAGER

Secretary of Defense designated Defense Production Act Fund Manager in accordance with subsec. (f) of this section, see section 309 of Ex. Ord. No. 12919, June 3,



1994, 59 F.R. 29529, set out as a note under section 2153 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2093 of this Appendix.

**§ 2095. Synthetic fuel production**

**(a) Immediate Presidential action to meet national defense needs; exercise of authorities; United States Synthetic Fuel Corporation authority unaffected**

(1)(A) Subject to subsection (k)(1), in order to encourage and expedite the development of synthetic fuel for use for national defense purposes, the President, utilizing the provisions of this Act [sections 2061 to 2171 of this Appendix] (other than sections 101(a), 101(b), 301, 302, 303, and 306 [sections 2071(a), 2071(b), 2091, 2092, 2093, and 2096 of this Appendix]), and any other applicable provision of law, shall take immediate action to achieve production of synthetic fuel to meet national defense needs.

(B) The President shall exercise the authority granted by this section—

- (i) in consultation with the Secretary of Energy;
- (ii) through the Department of Defense and any other Federal department or agency designated by the President; and
- (iii) consistent with an orderly transition to the separate authorities established pursuant to the United States Synthetic Fuels Corporation Act of 1980 [42 U.S.C. 8701 et seq.].

(2) This section shall not affect the authority of the United States Synthetic Fuels Corporation.

**(b) Specific Presidential authorities; requisites, limitations, etc.**

(1)(A) To assist in carrying out the objectives of this section, the President, subject to subsections (c) and (d), shall—

- (i) contract for purchases of, or commitments to purchase, synthetic fuel for Government use for defense needs;
- (ii) subject to paragraph (3), issue guarantees in accordance with the provisions of section 301 [section 2091 of this Appendix], except that the provisions of section 301(e)(1)(B) [section 2091(e)(1)(B) of this Appendix] shall not apply with respect to such guarantees; and
- (iii) subject to paragraph (3), make loans in accordance with the provisions of section 302 [section 2092 of this Appendix], except that the provisions of section 302(2) [section 2092(2) of this Appendix] shall not apply with respect to such loans.

(2)(A) Except as provided in subparagraph (B) assistance authorized under this subsection may be provided only to persons who are participating in a synthetic fuel project.

(B) For purposes of fabrication or manufacture of any component of a synthetic fuel project, assistance authorized under paragraph (1)(A)(ii) and paragraph (1)(A)(iii) may be provided to any fabricator or manufacturer of such component.

(3) The President may not utilize the authority under paragraph (1) to provide any loan or guarantee in accordance with the provisions of

section 301 [section 2091 of this Appendix] or section 302 [section 2092 of this Appendix] in amounts which exceed the limitations established in such sections unless the President submits to the Congress notification of the proposed loan or guarantee in the manner specified under section 307<sup>1</sup> [section 2097 of this Appendix] and such proposed action is either approved or not disapproved by the Congress under such section. For purposes of section 307<sup>1</sup> [section 2097 of this Appendix], any proposal pertaining to a proposed loan or guarantee, notice of which is transmitted to the Congress under this paragraph, shall be considered to be a synthetic fuel action.

**(c) Purchases and commitments to purchase by President; authority; limitations; advance payments prior to construction of synthetic fuel project**

(1) Subject to paragraph (2), purchases and commitments to purchase under subsection (b) may be made—

- (A) without regard to the limitations of existing law (other than the limitations contained in this Act [sections 2061 to 2171 of this Appendix]) regarding the procurement of goods or services by the Government; and
- (B) subject to section 717(a) [section 2166(a) of this Appendix], for such quantities, on such terms and conditions (including advance payments subject to paragraph (3)), and for such periods as the President deems necessary.

(2) Purchases or commitments to purchase under subsection (b) involving higher than established ceiling prices (or if there are no established ceiling prices, currently prevailing market prices as determined by the Secretary of Energy) shall not be made unless it is determined that supplies of synthetic fuel could not be effectively increased at lower prices or on terms more favorable to the Government, or that such commitments or purchases are necessary to assure the availability to the United States of supplies overseas for use for national defense purposes.

(3) Advance payments may not be made under this section unless construction has begun on the synthetic fuel project involved or the President determines that all conditions precedent to construction have been met.

**(d) Bidding and contracting procedures and requirements applicable to purchases and commitments to purchase**

(1) Except as provided in paragraph (2), any purchase of or commitment to purchase synthetic fuel under subsection (b) shall be made by solicitation of sealed competitive bids.

(2) In any case in which no such bids are submitted to the President or the President determines that no such bids which have been submitted to the President are acceptable, the President may negotiate contracts for such purchases and commitments to purchase.

(3) Any contract for such purchases or commitments to purchase shall provide that the President has the right to refuse delivery of the synthetic fuel involved and to pay the person in-

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

volved an amount equal to the amount by which the price for such synthetic fuel, as specified in the contract involved, exceeds the market price, as determined by the Secretary of Energy, for such synthetic fuel on the delivery date specified in such contract.

(4)(A)(i) With respect to any person, including any other person who is substantially controlled by such person (as determined by the Secretary of Energy), the President, subject to subparagraph (A)(ii), may not award contracts for the purchase of or commitment to purchase more than 100,000 barrels per day crude oil equivalent of synthetic fuel.

(ii) With respect to any person, including any other person who is substantially controlled by such person (as determined by the Secretary of Energy), the President may not award any contract for the purchase or commitment to purchase of more than 75,000 barrels per day crude oil equivalent of synthetic fuel unless the President submits to the Congress notification of such proposed contract or commitment in the manner specified under section 307<sup>2</sup> [section 2097 of this Appendix] and such proposed action is either approved or not disapproved by the Congress under such section. For purposes of section 307<sup>2</sup> [section 2097 of this Appendix], any proposal pertaining to such a proposed contract or commitment, notice of which is transmitted to the Congress under this subparagraph, shall be considered to be a synthetic fuel action.

(B) A contract for the purchase of or commitment to purchase synthetic fuel may be entered into only for synthetic fuel which is produced in a synthetic fuel project which is located in the United States.

(C) Each contract entered into under this section for the purchase of or commitment to purchase synthetic fuel shall provide that all parties to such contract agree to review and to possibly renegotiate such contract within 10 years after the date of the initial production at the synthetic fuel project involved. At the time of such review, the President shall determine the need for continued financial assistance pursuant to such contract.

(5) In any case in which the President, under the provisions of this section, accepts delivery of any synthetic fuel, such synthetic fuel may be used by an appropriate Federal agency. Such Federal agency shall pay for such synthetic fuel the prevailing market price for the product which such synthetic fuel is replacing, as determined by the Secretary of Energy, from sums appropriated to such Federal agency for the purchase of fuel, and the President shall pay, from sums appropriated for such purpose pursuant to the authorizations contained in sections 711(a)(2) and 711(a)(3)<sup>2</sup> [section 2161(a)(2) and 2161(a)(3) of this Appendix], an amount equal to the amount by which the contract price for such synthetic fuel as specified in the contract involved exceeds such prevailing market price.

(6) In considering any proposed contract under this section, the President shall take into account the socioeconomic impacts on communities which would be affected by any new or expanded facilities required for the production of the synthetic fuel under such contract.

**(e) Scope of Presidential procurement power**

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

**(f) Determinations necessary for purchase and sale of synthetic fuel**

(1) No authority contained in this section may be exercised to acquire any amount of synthetic fuel unless the President determines that such synthetic fuel is needed to meet national defense needs and that it is not anticipated that such synthetic fuel will be resold by the Government.

(2) In any case in which synthetic fuel is acquired by the Government under this section, such synthetic fuel is no longer needed to meet national defense needs, and such synthetic fuel is not accepted by a Federal agency pursuant to subsection (d)(5), the President shall offer such synthetic fuel to the Secretary of Energy for purposes of meeting the storage requirements of the Strategic Petroleum Reserve.

(3) Any synthetic fuel which is acquired by the Government under this section and which is not used by the Government or accepted by the Secretary of Energy pursuant to paragraph (2) shall be sold in accordance with applicable Federal law.

**(g) Maximum liability of Federal Government under contracts; budgetary certifications**

(1) Any contract under this section including any amendment or other modification of such contract, shall, subject to the availability of unencumbered appropriations in advance, specify in dollars the maximum liability of the Federal Government under such contract as determined in accordance with paragraph (2).

(2) For the purpose of determining the maximum liability under any contract under paragraph (1)—

(A) loans shall be valued at the initial face value of the loan;

(B) guarantees shall be valued at the initial face value of such guarantee (including any amount of interest which is guaranteed under such guarantee);

(C) purchase agreements shall be valued as of the date of each such contract based upon the President's estimate of the maximum liability under such contract; and

(D) any increase in the liability of the Government pursuant to any amendment or other modification to a contract for a loan, guarantee, or purchase agreement shall be valued in accordance with the applicable preceding subparagraph.

(3) If more than one form of assistance is provided under this section to any synthetic fuel project, then the maximum liability under such contract for purposes of paragraphs (1) and (2) shall be valued at the maximum potential exposure on such project at any time during the life of such project.

(4) Any such contract shall be accompanied by a certification by the Director of the Office of Management and Budget that the necessary appropriations have been made for the purpose of such contract and are available. The remaining

<sup>2</sup> See References in Text note below.

available and unencumbered appropriations shall equal the total aggregate appropriations less the aggregate maximum liability of the Federal Government under all contracts pursuant to this section.

(5) Any commitment made under this section which is nullified or voided for any reason shall not be considered in the aggregate maximum liability for the purposes of paragraph (4).

**(h) Loan, guarantee, or purchase agreement not to be deemed a major Federal action significantly affecting the quality of the human environment**

For purposes of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), no action in providing any loan, guarantee, or purchase agreement under this section shall be deemed to be a major Federal action significantly affecting the quality of the human environment.

**(i) Labor standards; applicability, certifications, etc.**

All laborers and mechanics employed for the construction, repair, or alteration of any synthetic fuel project funded, in whole or in part, by a guarantee or loan entered into pursuant to this section shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (40 U.S.C. 276a et seq.) and commonly known as the Davis-Bacon Act. Guaranteeing agencies shall not extend guarantees and the President shall not make loans for the construction, repair or alteration of any synthetic fuel project unless a certification is provided to the agency or the President, as the case may be, prior to the commencement of construction or at the time of filing an application for a loan or guarantee, if construction has already commenced, that these labor standards will be maintained at the synthetic fuel project. With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276(c)<sup>3</sup> of title 40 [40 U.S.C. 276c].

**(j) Other jurisdictional, etc., authorities relating to water resources and rights unaffected**

(1) Nothing in this section shall—

(A) affect the jurisdiction of the States and the United States over waters of any stream or over any ground water resource;

(B) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States; or

(C) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

(2) No synthetic fuel project constructed pursuant to the authorities of this section shall be

considered to be a Federal project for purposes of the application for or assignment of water rights.

**(k) Termination of contracting or commitment authority of President; renewal or extension of contracts**

(1) Subject to paragraph (2), the authority of the President to enter into any new contract or commitment under this section shall cease to be effective on the date on which the President determines that the United States Synthetic Fuels Corporation is established and fully operational consistent with the provisions of the United States Synthetic Fuels Corporation Act of 1980 [42 U.S.C. 8701 et seq.].

(2) Contracts entered into under this section before the date specified in paragraph (1) may be renewed and extended by the President after the date specified in paragraph (1) but only to the extent that Congress has specifically appropriated funds for such renewals and extensions.

(Sept. 8, 1950, ch. 932, title III, §305, as added Pub. L. 96-294, title I, §104(e), June 30, 1980, 94 Stat. 619.)

REFERENCES IN TEXT

The United States Synthetic Fuels Corporation Act of 1980, referred to in subsecs. (a)(1)(B)(iii) and (k)(1), is Pub. L. 96-294, title I, pt. B, June 30, 1980, 94 Stat. 633, which was classified generally to chapter 95 (§8701 et seq.) of Title 42, The Public Health and Welfare, and was omitted from the Code. For complete classification of this Act to the Code, see Tables.

Section 307, referred to in subsecs. (b)(3) and (d)(4)(A)(ii), is classified to section 2097 of this Appendix and was amended by Pub. L. 102-558, title I, §151, Oct. 28, 1992, 106 Stat. 4218, and as so amended, provisions relating to congressional approval of synthetic fuel action by the President were struck out.

Section 711, referred to in subsec. (d)(5), is classified to section 2161 of this Appendix and was amended by Pub. L. 102-558, title I, §152, Oct. 28, 1992, 106 Stat. 4218, repealing subsec. (a)(2) and redesignating subsec. (a)(3) as subsec. (b). Subsec. (b) was subsequently repealed and a new subsec. (b) added by Pub. L. 104-64, §3(2), Dec. 18, 1995, 109 Stat. 689.

Act approved March 3, 1931 (40 U.S.C. 276a et seq.) and commonly known as the Davis-Bacon Act, referred to in subsec. (i), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (i), is set out in the Appendix to Title 5, Government Organization and Employees.

Section 276(c) of title 40, referred to in subsec. (i), was repealed by Pub. L. 86-249, §17(13)-(15), Sept. 9, 1959, 73 Stat. 485. Reference should probably be to section 276c of Title 40, Public Buildings, Property, and Works.

EFFECTIVE DATE

Section effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as an Effective Date of 1980 Amendment note under section 2062 of this Appendix.

TERMINATION DATE

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

TERMINATION OF UNITED STATES SYNTHETIC FUELS CORPORATION

United States Synthetic Fuels Corporation terminated by Pub. L. 99-272, title VII, §7403(b), Apr. 7, 1986,

<sup>3</sup> See References in Text note below.

100 Stat. 144, set out as a note under section 8791 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 12242

Ex. Ord. No. 12242, Sept. 30, 1980, 45 F.R. 65175, which related to delegation and exercise of functions relating to synthetic fuels, was revoked, except with respect to any loan guarantee issued under the provisions of that order, by Ex. Ord. No. 12346, § 4, Feb. 8, 1982, 47 F.R. 5993, set out below.

EX. ORD. NO. 12346. TRANSITION OF SYNTHETIC FUEL RESPONSIBILITIES FROM DEPARTMENT OF ENERGY TO UNITED STATES SYNTHETIC FUELS CORPORATION

Ex. Ord. No. 12346, Feb. 8, 1982, 47 F.R. 5993, provided: By the authority vested in me as President by Section 305(k) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2095(k)), and having determined that the United States Synthetic Fuels Corporation is established and fully operational consistent with the provisions of the United States Synthetic Fuels Corporation Act of 1980 (Public Law 96-294; 94 Stat. 633 *et seq.*) [42 U.S.C. 8701 *et seq.*], and to provide for an orderly transition of synthetic fuel responsibilities from the Department of Energy to the United States Synthetic Fuels Corporation, it is hereby ordered as follows:

SECTION 1. No new awards for purchases or commitments for financial assistance shall be made under the provisions of Section 305 of the Defense Production Act of 1950, as amended [this section].

SEC. 2. Synthetic fuels projects or actions initiated by the Department of Energy shall, to the extent provided in the Supplemental Appropriations and Rescissions Act, 1980 (Public Law 96-304; 94 Stat. 880-881) [see 42 U.S.C. 5915 note], transfer to the Corporation upon a majority vote of the Board of Directors of the Corporation, and unexpended balances of the funds obligated for such projects shall be transferred to the Corporation to the extent such projects are transferred to the Corporation.

SEC. 3. The balance of the amounts not committed or not conditionally committed by the Department of Energy which were appropriated by Public Law 96-304 and Public Law 96-126 [see 42 U.S.C. 5915 note] from the Energy Security Reserve to the Department of Energy are available as provided in the Supplemental Appropriations and Rescissions Act, 1981 (Public Law 97-12; 95 Stat. 48) [see 42 U.S.C. 5915 note], to carry out the provisions of Title I of the Energy Security Act (Public Law 96-294; 94 Stat. 616 *et seq.*) [which enacted sections 2075, 2076, and 2095 to 2098 of this Appendix and section 8701 *et seq.* of Title 42, The Public Health and Welfare, amended sections 2062, 2091 to 2093, 2151, 2161, and 2166 of this Appendix, and enacted provisions set out as notes under sections 2061 and 2062 of this Appendix and section 8701 of Title 42].

SEC. 4. Executive Order No. 12242 of September 30, 1980 is revoked.

SEC. 5. Notwithstanding the revocation of Executive Order No. 12242, the provisions of that Order shall continue in full force and effect with respect to any loan guarantee issued under the provisions of that Order.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2076, 2091, 2096, 2096a, 2098, 2161 of this Appendix.

**§ 2096. Synthetic fuel production subsequent to determinations respecting a national energy supply shortage of defense fuels**

**(a) Invocation of authorities; judicial review prohibited**

(a)(1) At any time after the date of the enactment of this section [June 30, 1980], the President may, subject to paragraph (2), invoke the

authorities provided under this section upon making all the following determinations and transmitting a report to the Congress regarding such determinations:

(A) a national energy supply shortage has resulted or is likely to result in a shortfall of petroleum supplies in the United States, and such shortage is expected to persist for a period of time sufficient to seriously threaten the adequacy of defense fuel supplies essential to direct defense and direct defense industrial base programs;

(B) the continued adequacy of such supplies cannot be assured and requires expedited production of synthetic fuel to provide such defense fuel supplies;

(C) the expedited production of synthetic fuel to provide such defense fuel supplies will not be accomplished in a timely manner by the United States Synthetic Fuels Corporation; and

(D) the exercise of the authorities provided under subsection (c) is necessary to provide for the expedited production of synthetic fuel to provide such defense fuel supplies.

(2)(A) Any transmittal under paragraph (1) shall contain a determination by the President regarding the extent of the anticipated shortage of petroleum supplies. If the President determines that such shortage is greater than 25 percent, the authorities invoked by the President under this section shall be effective on the date on which the report required under paragraph (1) is transmitted to the Congress.

(B) If the President determines that such shortage is less than 25 percent, the transmittal under paragraph (1) shall be made in accordance with section 307<sup>1</sup> [section 2097 of this Appendix] and the authorities under this section shall be effective only as provided under such section. For purposes of section 307<sup>1</sup> [section 2097 of this Appendix], any determination to invoke authorities under this section, notice of which is transmitted to the Congress under this subsection, shall be considered to be a synthetic fuel action.

(3) No court shall have the authority to review any determination made by the President under this subsection.

**(b) Immediate Presidential action to meet national defense needs; exercise of authorities; United States Synthetic Fuels Corporation authority unaffected**

(1)(A) Subject to the requirements of subsection (a), in order to encourage and expedite the development of synthetic fuel for use for national defense purposes, the President, utilizing the provisions of this Act [sections 2061 to 2171 of this Appendix] (other than sections 101(a), 101(b), 301, 302, 303, and 305 [sections 2071(a), 2071(b), 2091, 2092, 2093, and 2095 of this Appendix]), and any other applicable provision of law, shall take immediate action to achieve production of synthetic fuel to meet national defense needs.

(B) The President shall exercise the authority granted by this section—

(i) in consultation with the Secretary of Energy; and

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

(ii) through the Department of Defense and any other Federal department or agency designated by the President.

(2) This section shall not affect the authority of the United States Synthetic Fuels Corporation.

**(c) Specific Presidential authorities; requisites, limitations, etc.**

(1)(A) To assist in carrying out the objectives of this section, the President, subject to subsections (d) and (e), shall—

(i) contract for purchases of or commitments to purchase synthetic fuel for Government use for defense needs;

(ii) subject to paragraph (4), issue guarantees in accordance with the provisions of section 301 [section 2091 of this Appendix], except that the provisions of section 301(e)(1)(B) [section 2091(e)(1)(B) of this Appendix] shall not apply with respect to such guarantees;

(iii) subject to paragraph (4), make loans in accordance with the provisions of section 302 [section 2092 of this Appendix], except that the provisions of section 302(2) [section 2092(2) of this Appendix] shall not apply with respect to such loans;

(iv) have the authority to require fuel suppliers to provide synthetic fuel in any case in which the President deems it practicable and necessary to meet the national defense needs of the United States. Nothing in this paragraph shall be intended to provide authority for the President to require fuel suppliers to produce synthetic fuel if such suppliers are not already producing synthetic fuel or do not intend to produce synthetic fuel;

(v) have the authority to install additional equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities owned by the Government, and to install Government-owned equipment in plants, factories, and other industrial facilities owned by private persons; and

(vi) have the authority to undertake Government synthetic fuel projects in accordance with the provisions of paragraph (2).

(B)(i) Except as provided in clause (ii), assistance authorized under this subsection may be provided only to persons who are participating in a synthetic fuel project.

(ii) For purposes of fabrication or manufacture of any component of a synthetic fuel project, assistance authorized under paragraph (1)(A)(ii) and paragraph (1)(A)(iii) may be provided to any fabricator or manufacturer of such component.

(2)(A) The Government, acting through the President, is authorized to own Government synthetic fuel projects. In any case in which the Government owns a Government synthetic fuel project, the Government shall contract for the construction and operation of such project.

(B) The authority of the Government pursuant to subparagraph (A) to own and contract for the construction and operation of any Government synthetic fuel project shall include, among other things, the authority to—

(i) subject to subparagraph (C), take delivery of synthetic fuel from such project; and

(ii) transport and store and have processed and refined such synthetic fuel.

(C) Any synthetic fuel which the Government takes delivery of from a Government synthetic fuel project shall be disposed of in accordance with subsection (g).

(D) To the maximum extent feasible, the President shall utilize the private sector for the activities associated with this paragraph.

(3)(A) Except as provided in subparagraph (B), any contract for the construction or operation of a Government synthetic fuel project shall be made by solicitation of sealed competitive bids.

(B) In any case in which no such bids are submitted to the President or the President determines that no such bids have been submitted which are acceptable to the President, the President may negotiate contracts for such construction and operation.

(4) The President may not utilize the authority under paragraph (1) to provide any loan or guarantee in accordance with the provisions of section 301 [section 2091 of this Appendix] or section 302 [section 2092 of this Appendix] in amounts which exceed the limitations established in such sections unless the President submits to the Congress notification of the proposed loan or guarantee in the manner specified under section 307<sup>2</sup> [section 2097 of this Appendix] and such proposed action is either approved or not disapproved by the Congress under such section. For purposes of section 307<sup>2</sup> [section 2097 of this Appendix], any proposal pertaining to a proposed loan or guarantee, notice of which is transmitted to the Congress under this paragraph, shall be considered to be a synthetic fuel action.

(5) Before the President may utilize any specific authority described under paragraph (1), the President shall transmit to the Congress a statement containing a certification that the determinations made by the President in the transmittal to the Congress under subsection (a)(1) are still valid at the time of the transmittal of such certification.

(6)(A) No authority contained in paragraphs (1)(A)(i) through (1)(A)(iv) may be utilized by the President unless the use of such authority has been authorized by the Congress in an Act hereinafter enacted by the Congress.

(B) The President may not utilize any authority under paragraph (1)(A)(v) or paragraph (1)(A)(vi) unless the proposed exercise of authority has been specifically authorized on a project-by-project basis in an Act hereinafter enacted by the Congress and funds have been specifically appropriated by the Congress for purposes of exercising such authority.

**(d) Purchases and commitments to purchase by President; authority; limitations; advance payments prior to construction of synthetic fuel project**

(1) Subject to paragraph (2), purchases and commitments to purchase under subsection (c) may be made—

(A) without regard to the limitations of existing law (other than those limitations contained in this Act [sections 2061 to 2171 of this Appendix]) regarding the procurement of goods or services by the Government; and

<sup>2</sup> See References in Text note below.

(B) subject to section 717(a) [section 2166(a) of this Appendix], for such quantities, on such terms and conditions (including advance payments subject to paragraph (3)), and for such periods as the President deems necessary.

(2) Purchases or commitments to purchase under subsection (c) involving higher than established ceiling prices (or if there are no established ceiling prices, currently prevailing market prices as determined by the Secretary of Energy) shall not be made unless it is determined that supplies of synthetic fuel could not be effectively increased at lower prices or on terms more favorable to the Government, or that such commitments or purchases are necessary to assure the availability to the United States of supplies overseas for use for national defense purposes.

(3) Advance payments may not be made under this section unless construction has begun on the synthetic fuel project involved or the President determines that all conditions precedent to construction have been met.

**(e) Bidding and contracting procedures and requirements applicable to purchases and commitments to purchase**

(1) Except as provided in paragraph (2), any purchase or commitment to purchase synthetic fuel under subsection (c) shall be made by solicitation of sealed competitive bids.

(2) In any case in which no such bids are submitted to the President or the President determines that no such bids which have been submitted to the President are acceptable, the President may negotiate contracts for such purchases and commitments to purchase.

(3) Any contract for such purchases or commitments to purchase shall provide that the President has the right to refuse delivery of the synthetic fuel involved and to pay the person involved an amount equal to the amount by which the price for such synthetic fuel, as specified in the contract involved, exceeds the market price, as determined by the Secretary of Energy, for such synthetic fuel on the delivery date specified in such contract.

(4)(A) With respect to any person, including any other person who is substantially controlled by such person (as determined by the Secretary of Energy), the President, subject to subparagraph (B), may not award contracts for the purchase of or commitment to purchase more than 100,000 barrels per day crude oil equivalent of synthetic fuel.

(B) With respect to any person, including any other person who is substantially controlled by such person (as determined by the Secretary of Energy), the President may not award any contract for the purchase of or commitment to purchase more than 75,000 barrels per day crude oil equivalent of synthetic fuel unless the President submits to the Congress notification of such proposed contract or commitment in the manner specified under section 307<sup>3</sup> [section 2097 of this Appendix] and such proposed action is either approved or not disapproved by the Congress under such section. For purposes of section 307<sup>3</sup> [section 2097 of this Appendix], any proposal

pertaining to such a proposed contract or commitment, notice of which is transmitted to the Congress under this subparagraph, shall be considered to be a synthetic fuel action.

(5) A contract for the purchase of or commitment to purchase synthetic fuel may be entered into only for synthetic fuel which is produced in a synthetic fuel project which is located in the United States.

(6) Each contract entered into under this section for the purchase of or commitment to purchase synthetic fuel shall provide that all parties to such contract agree to review and to possibly renegotiate such contract within 10 years after the date of the initial production at the synthetic fuel project involved. At the time of such review, the President shall determine the need for continued financial assistance pursuant to such contract.

(7) In any case in which the President, under the provisions of this section, accepts delivery of any synthetic fuel, such synthetic fuel may be used by an appropriate Federal agency. Such Federal agency shall pay for such synthetic fuel the prevailing market price for the product which such synthetic fuel is replacing, as determined by the Secretary of Energy, from sums appropriated to such Federal agency for the purchase of fuel, and the President shall pay, from sums appropriated for such purpose, an amount equal to the amount by which the contract price for such synthetic fuel as specified in the contract involved exceeds such prevailing market price.

(8) In considering any proposed contract under this section, the President shall take into account the socioeconomic impacts on communities which would be affected by any new or expanded facilities required for the production of the synthetic fuel under such contract.

**(f) Scope of Presidential procurement power**

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

**(g) Determinations respecting purchase and sale of synthetic fuel**

(1) No authority contained in this section may be exercised to acquire any amount of synthetic fuel unless the President determines that such synthetic fuel is needed to meet national defense needs and that it is not anticipated that such synthetic fuel will be resold by the Government.

(2) In any case in which synthetic fuel is acquired by the Government under this section, such synthetic fuel is no longer needed to meet national defense needs, and such synthetic fuel is not accepted by a Federal agency pursuant to subsection (e)(7), the President shall offer such synthetic fuel to the Secretary of Energy for purposes of meeting the storage requirements of the Strategic Petroleum Reserve.

(3) Any synthetic fuel which is acquired by the Government under this section and which is not used by the Government or accepted by the Secretary of Energy pursuant to paragraph (2), shall be sold in accordance with applicable Federal law.

<sup>3</sup> See References in Text note below.

**(h) Maximum liability of Federal Government under contracts; budgetary certifications**

(1) Any contract under this section, including any amendment or other modification of such contract, shall, subject to the availability of unencumbered appropriations in advance, specify in dollars the maximum liability of the Federal Government under such contract as determined in accordance with paragraph (2).

(2) For the purpose of determining the maximum liability under any contract under paragraph (1)—

(A) loans shall be valued at the initial face value of the loan;

(B) guarantees shall be valued at the initial face value of such guarantee (including any amount of interest which is guaranteed under such guarantee);

(C) purchase agreements shall be valued as of the date of each such contract based upon the President's estimate of the maximum liability under such contract;

(D) contracts for activities under subsection (c)(1)(A)(v) shall be valued at the initial face value of such contract;

(E) Government synthetic fuel projects pursuant to subsection (c)(1)(A)(vi) shall be valued at the current estimated cost to the Government, as determined annually by the President; and

(F) any increase in the liability of the Government pursuant to any amendment or other modification to a contract for a loan, guarantee, purchase agreement, contract for activities under subsection (c)(1)(A)(v), or Government synthetic fuel project pursuant to subsection (c)(1)(A)(vi) shall be valued in accordance with the applicable preceding subparagraph.

(3) If more than one form of assistance is provided under this section to any synthetic fuel project then the maximum liability under such contract for purposes of paragraphs (1) and (2) shall be valued at the maximum potential exposure on such project at any time during the life of such project.

(4) Any such contract shall be accompanied by a certification by the Director of the Office of Management and Budget that the necessary appropriations have been made for the purpose of such contract and are available. The remaining available and unencumbered appropriations shall equal the total aggregate appropriations less the aggregate maximum liability of the Federal Government under all contracts pursuant to this section.

(5) Any commitment made under this section which is nullified or voided for any reason shall not be considered in the aggregate maximum liability for the purposes of paragraph (4).

**(i) Loan, guarantee, or purchase not to be deemed a major Federal action significantly affecting the quality of the human environment**

For purposes of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), no action in providing any loan, guarantee, or purchase agreement under this section, shall be deemed to be a major Federal action significantly affecting the quality of the human environment.

**(j) Labor standards; applicability, certifications, etc.**

All laborers and mechanics employed for the construction, repair, or alteration of any synthetic fuel project funded, in whole or in part, by a guarantee or loan entered into pursuant to this section shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors and for other purposes", approved March 3, 1931 (40 U.S.C. 276a et seq.) and commonly known as the Davis-Bacon Act. Guaranteeing agencies shall not extend guarantees and the President shall not make loans for the construction, repair or alteration of any synthetic fuel project unless a certification is provided to the agency or the President, as the case may be, prior to the commencement of construction or at the time of filing an application for a loan or guarantee, if construction has already commenced, that these labor standards will be maintained at the synthetic fuel project. With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276(c)<sup>4</sup> of title 40 [40 U.S.C. 276c].

**(k) Other jurisdictional, etc., authorities relating to water resources and rights unaffected**

(1) Nothing in this section shall—

(A) affect the jurisdiction of the States and the United States over waters of any stream or over any ground water resource;

(B) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States; or

(C) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

(2) No synthetic fuel project constructed pursuant to the authorities of this section shall be considered to be a Federal project for purposes of the application for or assignment of water rights.

**(l) Renewals and extensions of contracts**

Renewals and extensions of contracts entered into under this section shall be made only to the extent that Congress has specifically appropriated funds for such renewals and extensions, unless the President certifies that the determinations under section 306(a)(1) [subsec. (a)(1) of this section] remain in effect for purposes of the use of such authority.

(Sept. 8, 1950, ch. 932, title III, §306, as added Pub. L. 96-294, title I, §104(e), June 30, 1980, 94 Stat. 623.)

## REFERENCES IN TEXT

Section 307, referred to in subsecs. (a)(2)(B), (c)(4), and (e)(4)(B), is classified to section 2097 of this Appendix and was amended by Pub. L. 102-558, title I, §151,

<sup>4</sup>See References in Text note below.

Oct. 28, 1992, 106 Stat. 4218, and as so amended, provisions relating to congressional approval of synthetic fuel action by the President were struck out.

Act approved March 3, 1931 (40 U.S.C. 276a et seq.) and commonly known as the Davis-Bacon Act, referred to in subsec. (j), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (j), is set out in the Appendix to Title 5, Government Organization and Employees.

Section 276(c) of title 40, referred to in subsec. (j), was repealed by Pub. L. 86-249, §17(13) to (15), Sept. 9, 1959, 73 Stat. 485. Reference should probably be to section 276c of Title 40, Public Buildings, Property, and Works.

#### EFFECTIVE DATE

Section effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as an Effective Date of 1980 Amendment note under section 2062 of this Appendix.

#### TERMINATION DATE

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

#### TERMINATION OF UNITED STATES SYNTHETIC FUELS CORPORATION

United States Synthetic Fuels Corporation terminated by Pub. L. 99-272, title VII, §7403(b), Apr. 7, 1986, 100 Stat. 144, set out as a note under section 8791 of Title 42, The Public Health and Welfare.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2076, 2091, 2095, 2096a, 2098, 2161 of this Appendix.

### § 2096a. Annual reports on synthetic fuel production

Beginning one year after the effective date of this part [June 30, 1980], and annually thereafter, the President shall submit a report to the Congress on actions taken under sections 305 and 306 of the Defense Production Act of 1950 [sections 2095 and 2096 of this Appendix].

(Pub. L. 96-294, title I, §106, June 30, 1980, 94 Stat. 633.)

#### CODIFICATION

Section was enacted as part of the Energy Security Act, and not as part of the Defense Production Act of 1950 which comprises sections 2061 to 2171 of this Appendix.

#### EFFECTIVE DATE

Section effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as an Effective Date of 1980 Amendment note under section 2062 of this Appendix.

### § 2097. Synthetic fuel action

#### (a) "Synthetic fuel action" defined

For purposes of this section, the term "synthetic fuel action" means any matter required to be transmitted, or submitted to the Congress in accordance with the procedures of this section.

#### (b) Submission to Congress by President

The President shall transmit any synthetic fuel action (bearing an identification number) to both Houses of the Congress on the same day.

(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.)

#### AMENDMENTS

1992—Subsec. (b). Pub. L. 102-558, §151(1), struck out after first sentence "If both Houses are not in session on the day on which any synthetic fuel action is received by the appropriate officers of each House, such synthetic fuel action shall be deemed to have been received on the first succeeding day on which both Houses are in session."

Subsecs. (c) to (g). Pub. L. 102-558, §151(2), struck out subsec. (c) relating to effective date of synthetic fuel action, resolution of disfavor, and earlier effective date; subsec. (d) relating to congressional sessions for purposes of effective date; subsec. (e) relating to later effective date of synthetic fuel action; subsec. (f) relating to construction and applicability of procedures with rules of each House; and subsec. (g) relating to procedures applicable to resolutions of approval and disapproval.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### EFFECTIVE DATE

Section effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as an Effective Date of 1980 Amendment note under section 2062 of this Appendix.

#### TERMINATION DATE

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

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2095, 2096 of this Appendix.

### § 2098. Definitions

(a) For purposes of this Act [sections 2061 to 2171 of this Appendix], the term "Government synthetic fuel project" means a synthetic fuel project undertaken in accordance with the provisions of section 306(c) [section 2096(c) of this Appendix].

(b)(1)(A) For purposes of this Act [sections 2061 to 2171 of this Appendix], the term "synthetic fuel" means any solid, liquid, or gas, or combination thereof, which can be used as a substitute for petroleum or natural gas (or any derivatives thereof, including chemical feedstocks) and which is produced by chemical or physical transformation (other than washing, coking, or desulfurizing) of domestic sources of—

(i) coal, including lignite and peat;

(ii) shale;

(iii) tar sands, including those heavy oil resources where—

(I) the cost and the technical and economic risks make extraction and processing of a heavy oil resource uneconomical under applicable pricing and tax policies; and

(II) the costs and risks are comparable to those associated with shale, coal, and tar sand resources (other than heavy oil) qualifying for assistance under section 305 [section 2095 of this Appendix] or section 306 [section 2096 of this Appendix]; and

(iv) water, as a source of hydrogen only through electrolysis.



(B) Such term includes mixtures of coal and combustible liquids, including petroleum.

(C) Such term does not include solids, liquids, or gases, or combinations thereof, derived from biomass, which includes timber, animal and timber waste, municipal and industrial waste, sewage, sludge, oceanic and terrestrial plants, and other organic matter.

(2)(A) For purposes of this Act [sections 2061 to 2171 of this Appendix], the term “synthetic fuel project” means any facility using an integrated process or processes at a specific geographic location in the United States for the purpose of commercial production of synthetic fuel. The project may include only—

(i) the facility, including the equipment, plant, machinery, supplies, and other materials associated with the facility, which converts the domestic resource to synthetic fuel;

(ii) the land and mineral rights required directly for use in connection with the facilities for the production of synthetic fuels;

(iii) any facility or equipment to be used in the extraction of a mineral for use directly and exclusively in such conversion;

(I) which—

(aa) is co-located with the conversion facility or is located in the immediate vicinity of the conversion facility; or

(bb) if not co-located or located in the immediate vicinity, is incidental to the project (except in the event of a coal mine where no other reasonable source of coal is available to the project); and

(II) which is necessary to the project; and

(iv) any transportation facility, electric powerplant, electric transmission line or other facility—

(I) which is for the exclusive use of the project;

(II) which is incidental to the project; and

(III) which is necessary to the project, except that transportation facilities used to transport synthetic fuel away from the project shall be used exclusively to transport synthetic fuel to a storage facility or pipeline connecting to an existing pipeline or processing facility or area within close proximity of the project.

(B)(i) Such term may also include a project which will result in the replacement of a significant amount of oil and is—

(I) used solely for the production of a mixture of coal and combustible liquids, including petroleum, for direct use as a fuel, but shall not include—

(aa) any mineral right; or

(bb) any facility or equipment for extraction of any mineral;

(II) used solely for the commercial production of hydrogen from water through electrolysis; and

(III) a magnetohydrodynamic topping cycle used solely for the commercial production of electricity.

(ii) Such a synthetic fuel project using magnetohydrodynamic technology shall only be eligible for guarantees under section 305 [section 2095 of this Appendix] or section 306 [section 2096 of this Appendix].

(C) For purposes of this paragraph—

(i) the term “exclusive” means for the sole use of the project, except that an incidental by-product might be used for other purposes;

(ii) the term “incidental” means a relatively small portion of the total project cost; and

(iii) the term “necessary” means an integrated part of the project taking into account considerations of economy and efficiency of operation.

(c) For purposes of section 305 [section 2095 of this Appendix] and section 306 [section 2096 of this Appendix], the term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Sept. 8, 1950, ch. 932, title III, §308, as added Pub. L. 96-294, title I, §104(e), June 30, 1980, 94 Stat. 631.)

#### EFFECTIVE DATE

Section effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as an Effective Date of 1980 Amendment note under section 2062 of this Appendix.

#### TERMINATION DATE

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

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

### § 2099. Annual report on impact of offsets

#### (a) Annual report on impact of offsets

##### (1) Report required

Not later than 18 months after April 17, 1984, and annually thereafter, the President shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a detailed report on the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States.

##### (2) Duties of the Secretary of Commerce

The Secretary of Commerce (hereafter in this subsection referred to as “the Secretary”) shall—

(A) prepare the report required by paragraph (1);

(B) consult with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative in connection with the preparation of such report; and

(C) function as the President’s Executive Agent for carrying out this section.

#### (b) Interagency studies and related data

##### (1) Purpose of report

Each report required under subsection (a) shall identify the cumulative effects of offset agreements on—

(A) the full range of domestic defense productive capability (with special attention paid to the firms serving as lower-tier subcontractors or suppliers); and

(B) the domestic defense technology base as a consequence of the technology transfers associated with such offset agreements.

**(2) Use of data**

Data developed or compiled by any agency while conducting any interagency study or other independent study or analysis shall be made available to the Secretary to facilitate the execution of the Secretary's responsibilities with respect to trade offset and counter-trade policy development.

**(c) Notice of offset agreements**

**(1) In general**

If a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset agreement exceeding \$5,000,000 in value, such firm shall furnish to the official designated in the regulations promulgated pursuant to paragraph (2) information concerning such sale.

**(2) Regulations**

The information to be furnished under paragraph (1) shall be prescribed in regulations promulgated by the Secretary. Such regulations shall provide protection from public disclosure for such information, unless public disclosure is subsequently specifically authorized by the firm furnishing the information.

**(d) Contents of report**

**(1) In general**

Each report under subsection (a) shall include—

(A) a net assessment of the elements of the industrial base and technology base covered by the report;

(B) recommendations for appropriate remedial action under the authority of this Act [sections 2061 to 2171 of this Appendix], or other law or regulations;

(C) a summary of the findings and recommendations of any interagency studies conducted during the reporting period under subsection (b);

(D) a summary of offset arrangements concluded during the reporting period for which information has been furnished pursuant to subsection (c); and

(E) a summary and analysis of any bilateral and multilateral negotiations relating to the use of offsets completed during the reporting period.

**(2) Alternative findings or recommendations**

Each report required under this section shall include any alternative findings or recommendations offered by any departmental Secretary, agency head, or the United States Trade Representative to the Secretary.

**(e) Utilization of annual report in negotiations**

The findings and recommendations of the reports required by subsection (a), and any inter-

agency reports and analyses shall be considered by representatives of the United States during bilateral and multilateral negotiations to minimize the adverse effects of offsets.

(Sept. 8, 1950, ch. 932, title III, §309, as added Pub. L. 98-265, §6, Apr. 17, 1984, 98 Stat. 152; amended Pub. L. 99-441, §4, Oct. 3, 1986, 100 Stat. 1117; Pub. L. 102-558, title I, §124, Oct. 28, 1992, 106 Stat. 4207.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-558, §124(1), inserted heading, designated existing provisions as par. (1), struck after first sentence “Each such report also shall include a discussion of bilateral and multilateral negotiations on offsets in international procurement and provide information on the types, terms, and magnitude of the offsets.”, and added par. (2).

Subsec. (b). Pub. L. 102-558, §124(2), amended subsec. (b) generally, substituting present provisions for provisions delineating the scope and contents of reports based on interagency studies.

Subsecs. (c) to (e). Pub. L. 102-558, §124(3), added subsecs. (c) to (e).

1986—Pub. L. 99-441 designated existing provisions as subsec. (a), inserted subsec. heading, substituted “a detailed report on” for “a report on”, and added subsec. (b).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

TERMINATION DATE

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

DELEGATION OF FUNCTIONS

Authority of President under this section with respect to offsets delegated to Secretary of Commerce by section 401 of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29529, set out as a note under section 2153 of this Appendix.

DECLARATION OF OFFSET POLICY

Section 123 of Pub. L. 102-558 provided that:

“(a) IN GENERAL.—Recognizing that certain offsets for military exports are economically inefficient and market distorting, and mindful of the need to minimize the adverse effects of offsets in military exports while ensuring that the ability of United States firms to compete for military export sales is not undermined, it is the policy of the Congress that—

“(1) no agency of the United States Government shall encourage, enter directly into, or commit United States firms to any offset arrangement in connection with the sale of defense goods or services to foreign governments;

“(2) United States Government funds shall not be used to finance offsets in security assistance transactions, except in accordance with policies and procedures that were in existence on March 1, 1992;

“(3) nothing in this section shall prevent agencies of the United States Government from fulfilling obligations incurred through international agreements entered into before March 1, 1992; and

“(4) the decision whether to engage in offsets, and the responsibility for negotiating and implementing

offset arrangements, reside with the companies involved.

“(b) PRESIDENTIAL APPROVAL OF EXCEPTIONS.—It is the policy of the Congress that the President may approve an exception to the policy stated in subsection (a) after receiving the recommendation of the National Security Council.

“(c) CONSULTATION.—It is the policy of the Congress that the President shall designate the Secretary of Defense to lead, in coordination with the Secretary of State, an interagency team to consult with foreign nations on limiting the adverse effects of offsets in defense procurement. The President shall transmit an annual report on the results of these consultations to the Congress as part of the report required under section 309(a) of the Defense Production Act of 1950 [50 App. U.S.C. 2099(a)].”

### § 2099a. Civil-military integration

An important purpose of this title [sections 2091 to 2099a of this title] is the creation of production capacity that will remain economically viable after guarantees and other assistance provided under this title [said sections] have expired.

(Sept. 8, 1950, ch. 932, title III, §310, as added Pub. L. 102-558, title I, §125, Oct. 28, 1992, 106 Stat. 4208.)

#### EFFECTIVE DATE

Section deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

#### TERMINATION DATE

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

### TITLE IV—PRICE AND WAGE STABILIZATION

#### §§ 2101 to 2112. Omitted

##### CODIFICATION

Section 2101, act Sept. 8, 1950, ch. 932, title IV, §401, 64 Stat. 803, related to purposes of price and wage stabilization and cooperation by government agencies.

Section 2102, acts Sept. 8, 1950, ch. 932, title IV, §402, 64 Stat. 803; July 31, 1951, ch. 275, title I, §104 (a) to (h), 65 Stat. 134; June 30, 1952, ch. 530, title I, §§105 to 111, 66 Stat. 298, related to price and wage controls.

Section 2103, acts Sept. 8, 1950, ch. 932, title IV, §403, 64 Stat. 807; July 31, 1951, ch. 275, title I, §105(a), 65 Stat. 137; June 30, 1952, ch. 530, title I, §112, 66 Stat. 300, authorized an independent agency to administer price and wage controls and rationing, created a Wage Stabilization Board in the Economic Stabilization Agency and prescribed its duties and functions and prescribed the jurisdiction of the Salary Stabilization Board and the Office of Salary Stabilization within the Economic Stabilization Agency. Act Sept. 8, 1950, ch. 932, title IV, §403, 64 Stat. 807, formerly classified to section 2103 of this Appendix, was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 656.

Section 2104, act Sept. 8, 1950, ch. 932, title IV, §404, 64 Stat. 807, authorized consultation by the President with representatives of persons affected by regulations or orders relating to price and wage controls.

Section 2105, acts Sept. 8, 1950, ch. 932, title IV, 405, 64 Stat. 807; July 31, 1951, ch. 275, title I, §104(i), 65 Stat. 136, related to unlawfulness for violating sections 2101 to 2112 of this appendix or any regulations, orders or requirements issued thereunder.

Section 2106, act Sept. 8, 1950, ch. 932, title IV, §406, 64 Stat. 807, prohibited any construction of sections 2101 to 2112 of this Appendix as requiring any person to

sell any material or service, or to perform personal services.

Section 2107, acts Sept. 8, 1950, ch. 932, title IV, §407, 64 Stat. 807; June 30, 1952, ch. 530, title I, §113(a), 66 Stat. 301, related to objections to price and rent control regulations, filing, hearing and determination of protests, procedure, and review.

Section 2108, acts Sept. 8, 1950, ch. 932, title IV, §408, 64 Stat. 808; June 30, 1952, ch. 530, title I, §113(b), 66 Stat. 302, related to determination, by the Emergency Court of Appeals, of validity of price, wage and rent control regulations, procedure, review by the Supreme Court, and stay of civil and criminal proceedings in other courts for determination of such validity.

Section 2109, acts Sept. 8, 1950, ch. 932, title IV, §409, 64 Stat. 811; July 31, 1951, ch. 275, title I, §104(j) to (l) 65 Stat. 136, in connection with actions for violations of section 2105 of this Appendix, and regulations or orders, related to injunctions, criminal penalties, recovery of overcharges, and disallowance of fines, penalties, and compromise sums for tax or other purposes.

Section 2110, act Sept. 8, 1950, ch. 932, title IV, §410, 64 Stat. 812, required certain price representations and agreements to be contained in contracts providing for the purchase of processed chickens and turkeys by government agencies.

Section 2111, act Sept. 8, 1950, ch. 932, title IV, §411, as added June 30, 1952, ch. 530, title I, §114, 66 Stat. 304, made it unnecessary to furnish reports on sales or services below ceiling prices if such sales at such prices had been certified to the President.

Section 2112, act Sept. 8, 1950, ch. 932, title IV, §412, as added June 30, 1952, ch. 530, title I, §114, 66 Stat. 304, permitted suspension or termination of price and wage controls over any materials or services, from time to time as economic factors might warrant, and their restoration if deemed necessary.

#### TERMINATION DATE

Sections 2101 to 2112 terminated at close of Apr. 30, 1953, by the terms of section 2166(a) of this Appendix.

#### EXECUTIVE ORDER NO. 10160

Ex. Ord. No. 10160, Sept. 9, 1950, 15 F.R. 6103, which related to preservation of records for certain purposes, was revoked by Ex. Ord. No. 10662, Mar. 13, 1956, 21 F.R. 1673.

#### EX. ORD. NO. 10434. SUSPENSION OF WAGE AND PRICE CONTROLS

Ex. Ord. No. 10434, Feb. 6, 1953, 18 F.R. 809, provided:

1. All regulations and orders issued pursuant to the Defense Production Act of 1950, as amended [see section 2061 of this Appendix], stabilizing wages, salaries, and other compensation, are hereby suspended.

2. The wage, salary, and other compensation adjustments proposed in petitions pending before wage and salary control agencies may now be placed in effect without the approval of such agencies. To the extent that agreements involved in such petitions are conditioned upon approval under Title IV of the Defense Production Act [sections 2101 to 2112 of this Appendix], this order shall be deemed such approval, but such approval shall be subject to paragraph 3 hereof.

3. This order shall not operate to defeat any suit, action, prosecution, or administrative enforcement proceeding, whether heretofore or hereafter commenced, with respect to any right, liability, or offense possessed, incurred, or committed, prior to this date.

DWIGHT D. EISENHOWER.

#### EXECUTIVE ORDER NO. 10494

Ex. Ord. No. 10494, Oct. 14, 1953, 18 F.R. 6585, 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 the disposition of remaining functions, was revoked by section 5-103 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.

TITLE V—SETTLEMENT OF LABOR  
DISPUTES

§§ 2121 to 2123. Omitted

CODIFICATION

Section 2121, act Sept. 8, 1950, ch. 932, title V, § 501, 64 Stat. 812, stated intent of Congress in providing for settlement of labor disputes affecting national defense.

Section 2122, acts Sept. 8, 1950, ch. 932, title V, § 502, 64 Stat. 812; July 31, 1951, ch. 275, title I, § 105(b), 65 Stat. 137, stated national policy in connection with such settlement, and provided for voluntary conferences.

Section 2123, acts Sept. 8, 1950, ch. 932, title V, § 503, 64 Stat. 812; July 31, 1951, ch. 275, title I, § 105(c), 65 Stat. 137; June 30, 1952, ch. 530, title I, § 115, 66 Stat. 305, provided that, in such settlements, due regard should be given to collective bargaining and other laws, and, as amended by the act of June 30, 1952, requested the President to invoke the Labor-Management Relations Act, 1947, (29 U.S.C. 141 et seq.), with regard to the steel strike then existing.

TERMINATION DATE

Sections 2121 to 2123 terminated at close of Apr. 30, 1953, by the terms of section 2166(a) of this Appendix.

TITLE VI—CONTROL OF REAL ESTATE  
CREDIT

CODIFICATION

Sections 2132 to 2137 of this Appendix, which comprised this title, terminated on June 30, 1953, by the terms of section 2166(a) of this Appendix. Previous to such termination, act June 30, 1952, ch. 530, title I, § 116(a), 66 Stat. 305 amended catchline of title to omit reference to consumer credit control and subtitle heading of this title to read "This title authorizes the regulation of real estate construction credit only."

§ 2131. Repealed. June 30, 1952, ch. 530, title I,  
§ 116(a), 66 Stat. 305

Section, acts Sept. 8, 1950, ch. 932, title VI, § 601, 64 Stat. 812; July 31, 1951, ch. 275, title I, § 106(a), 65 Stat. 138, related to power to exercise consumer credit controls.

§§ 2132 to 2137. Omitted

CODIFICATION

Section 2132, act Sept. 8, 1950, ch. 932, title VI, § 602, 64 Stat. 813, related to real estate construction credit.

Section 2133, acts Sept. 8, 1950, ch. 932, title VI, § 603, 64 Stat. 814; July 31, 1951, ch. 275, title I, § 106(b), 65 Stat. 138, prescribed penalties for violating sections 2131, 2132 and 2135 of this Appendix or any regulation or order issued thereunder.

Section 2134, act Sept. 8, 1950, ch. 932, title VI, § 604, 64 Stat. 814, related to consumer credit controls.

Section 2135, acts Sept. 8, 1950, ch. 932, title VI, § 605, 64 Stat. 814; July 31, 1951, ch. 275, title I, § 106(c), 65 Stat. 138; Sept. 1, 1951, ch. 378, title VI, § 602(a), 65 Stat. 313, related to real estate loans by government agencies.

Section 2136, act Sept. 8, 1950, ch. 932, title VI, § 606, as added Sept. 1, 1951, ch. 378, title VI, § 602(b), 65 Stat. 313, related to down-payment requirements on veterans homes.

Section 2137, act Sept. 8, 1950, ch. 932, title VI, § 607, as added June 30, 1952, ch. 530, title I, § 116(b), 66 Stat. 305, related to credit controls on residential property.

TERMINATION DATE

Sections 2132 to 2137 terminated at close of June 30, 1953, by the terms of section 2166(a) of this Appendix.

TITLE VII—GENERAL PROVISIONS

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in section 2166 of this Appendix.

§ 2151. Small business

(a) Participation

Small business concerns shall be given the maximum practicable opportunity to participate as contractors, and subcontractors at various tiers, in all programs to maintain and strengthen the Nation's industrial base and technology base undertaken pursuant to this Act [sections 2061 to 2171 of this Appendix].

(b) Administration of Act

In administering the programs, implementing regulations, policies, and procedures under this Act [sections 2061 to 2171 of this Appendix], requests, applications, or appeals from small business concerns shall, to the maximum extent practicable, be expeditiously handled.

(c) Advisory committee participation

Representatives of small business concerns shall be afforded the maximum opportunity to participate in such advisory committees as may be established pursuant to this Act [sections 2061 to 2171 of this Appendix].

(d) Information

Information about this Act [sections 2061 to 2171 of this Appendix] and activities undertaken in accordance with this Act [said sections] shall be made available to small business concerns.

(e) Allocations under section 101

Whenever the President makes a determination to exercise any authority to allocate any material pursuant to section 101 [section 2071 of this Appendix], small business concerns shall be accorded, to the extent practicable, a fair share of such material, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging small business concerns.

(Sept. 8, 1950, ch. 932, title VII, § 701, 64 Stat. 815; July 31, 1951, ch. 275, title I, § 108, 65 Stat. 138; June 30, 1953, ch. 171, § 7, 67 Stat. 130; Aug. 9, 1955, ch. 655, §§ 4, 5, 69 Stat. 580; Pub. L. 96-294, title I, § 105(c), June 30, 1980, 94 Stat. 633; Pub. L. 102-558, title I, § 131, Oct. 28, 1992, 106 Stat. 4209.)

AMENDMENTS

1992—Pub. L. 102-558 amended section generally, substituting present provisions for provisions stating policy to encourage small business enterprises and providing for measures to carry out this policy, for allocation of materials in the civilian market, and for distribution of defense contracts.

1980—Subsec. (d). Pub. L. 96-294 substituted "enactment of the Defense Production Act Amendments of 1980" for "enactment of the Defense Production Act Amendments of 1955".

1955—Subsec. (c). Act Aug. 9, 1955, § 4, struck out specific dates which were the basis for determination of materials in civilian market and inserted provisions requiring that a business receive its fair share based on a representative period before imposition of the allocation.

Subsec. (d). Act Aug. 9, 1955, § 5, added subsec. (d).  
1953—Subsec. (c). Act June 30, 1953, amended subsec. (c) generally, the principal change being to provide, in the allocation to business of a fair share of available civilian supply, a new base period for allocating materials not under control on July 1, 1953.

1951—Subsec. (c). Act July 31, 1951, provided that limitations and restrictions on production of specific items shall not exclude new concerns.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-294 effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as a note under section 2062 of this Appendix.

## EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 9, 1955, effective as of close of July 31, 1955, see section 11 of act Aug. 9, 1955, set out as a note under section 2062 of this Appendix.

## 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.

## § 2152. Definitions

For purposes of this Act [sections 2061 to 2171 of this Appendix], the following definitions shall apply:

**(1) Critical component**

The term “critical component” includes such components, subsystems, systems, and related special tooling and test equipment essential to the production, repair, maintenance, or operation of weapon systems or other items of military equipment identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States. Components identified as critical by a National Security Assessment conducted pursuant to section 113(i) of title 10, United States Code, or by a Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862] shall be designated as critical components for purposes of this Act [sections 2061 to 2171 of this Appendix], unless the President determines that the designation is unwarranted.

**(2) Critical industry for national security**

The term “critical industry for national security” means any industry (or industry sector) identified pursuant to section 2503(6)<sup>1</sup> of title 10, United States Code, and such other industries or industry sectors as may be designated by the President as essential to provide industrial resources required for the execution of the national security strategy of the United States.

**(3) Critical technology**

The term “critical technology” includes any technology that is included in 1 or more of the plans submitted pursuant to section 6681 of title 42, United States Code, or section 2508<sup>1</sup> of

title 10, United States Code (unless subsequently deleted), or such other emerging or dual use technology as may be designated by the President.

**(4) Critical technology item**

The term “critical technology item” means materials directly employing, derived from, or utilizing a critical technology.

**(5) Defense contractor**

The term “defense contractor” means any person who enters into a contract with the United States—

(A) to furnish materials, industrial resources, or a critical technology for the national defense; or

(B) to perform services for the national defense.

**(6) Domestic defense industrial base**

The term “domestic defense industrial base” means domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during peacetime, graduated mobilization, national emergency, or war.

**(7) Domestic source**

The term “domestic source” means a business concern—

(A) that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern under a contract with the United States relating to a critical component or a critical technology item; and

(B) that procures from business concerns described in subparagraph (A) substantially all of any components and assemblies required under a contract with the United States relating to a critical component or critical technology item.

**(8) Essential weapon system**

The term “essential weapon system” means a major weapon system and other items of military equipment identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States.

**(9) Facilities**

The term “facilities” includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

**(10) Foreign source**

The term “foreign source” means a business entity other than a “domestic source”.

**(11) Industrial resources**

The term “industrial resources” means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial capacity.

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

**(12) Materials**

The term “materials” includes—

(A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(B) any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

**(13) National defense**

The term “national defense” means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5195 et seq.].

**(14) Person**

The term “person” includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

**(15) Services**

The term “services” includes any effort that is needed for or incidental to—

(A) the development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item; or

(B) the construction of facilities.

**(16) Small business concern**

The term “small business concern” means a business concern that meets the requirements of section 3(a) of the Small Business Act [15 U.S.C. 632(a)] and the regulations promulgated pursuant to that section, and includes such business concerns owned and controlled by socially and economically disadvantaged individuals or by women.

**(17) Small business concern owned and controlled by socially and economically disadvantaged individuals**

The term “small business concern owned and controlled by socially and economically disadvantaged individuals” has the same meaning as in section 8(d)(3)(C) of the Small Business Act [15 U.S.C. 637(d)(3)(C)].

(Sept. 8, 1950, ch. 932, title VII, § 702, 64 Stat. 815; June 30, 1953, ch. 171, § 8, 67 Stat. 130; Pub. L. 91-379, title I, § 102, Aug. 15, 1970, 84 Stat. 796; Pub. L. 102-558, title I, § 132, Oct. 28, 1992, 106 Stat. 4210; Pub. L. 103-337, div. C, title XXXIV, § 3411(b), Oct. 5, 1994, 108 Stat. 3110.)

## REFERENCES IN TEXT

Section 2503 of title 10, referred to in par. (2), was repealed and a new section 2503 relating to analysis of the technology and industrial base was enacted by Pub. L. 102-484, div. D, title XLII, §§ 4202(a), 4213(a), Oct. 23, 1992, 106 Stat. 2659, 2665.

Section 2508 of title 10, referred to in par. (3), was renumbered section 2522 of title 10 by Pub. L. 102-190, div. A, title VIII, § 821(b)(1), Dec. 5, 1991, 105 Stat. 1431, and

was repealed and a new section relating to defense advanced manufacturing technology partnerships was enacted and renumbered section 2522 by Pub. L. 102-484, div. D, title XLII, §§ 4202(a), 4232(a), (b), Oct. 23, 1992, 106 Stat. 2659, 2687, and was subsequently repealed.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in par. (13), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended. Title VI of the Act is classified generally to subchapter IV-B (§5195 et seq.) of chapter 68 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

## AMENDMENTS

1994—Par. (13). Pub. L. 103-337 inserted at end “Such term includes emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act.”

1992—Pub. L. 102-558 amended section generally, substituting present provisions for provisions defining terms “person”, “materials”, “facilities”, “national defense”, “wages, salaries, and other compensation”, and “defense contractor”.

1970—Subsec. (d). Pub. L. 91-379, § 102(1), inserted reference to space in definition of national defense.

Subsec. (f). Pub. L. 91-379, § 102(2), added subsec. (f).

1953—Subsec. (d). Act June 30, 1953, amended subsec. (d) generally which, among other changes, inserted references to construction, military assistance to foreign nations and stockpiling, and struck out specific reference to “operations or activities in connection with the Mutual Defense Assistance Act of 1949, as amended”.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

## TERMINATION DATE

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

**§ 2153. Civilian personnel**

Any officer or agency head may—

(1) appoint civilian personnel without regard to section 5331(b) of title 5, United States Code, and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(2) fix the rate of basic pay for such personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates,

except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule, as the President deems appropriate to carry out this Act [sections 2061 to 2171 of this Appendix].

(Sept. 8, 1950, ch. 932, title VII, § 703, 64 Stat. 816; July 31, 1951, ch. 275, title I, § 109(a), (b), 65 Stat. 138; Pub. L. 102-558, title I, § 133, Oct. 28, 1992, 106 Stat. 4212.)

## REFERENCES IN TEXT

The provisions of title 5, United States Code, governing appointments in the competitive service, referred to in par. (1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

## AMENDMENTS

1992—Pub. L. 102-558 amended section generally, substituting present provisions for provisions relating to

delegation of Presidential authority, creation of new agencies, appointment and compensation of officers and personnel, and State representation in regional offices.

1951—Subsec. (a). Act July 31, 1951, §109(a), provided that executive head of one agency under this act shall be paid at a rate comparable to that paid heads of executive departments.

Subsec. (b). Act July 31, 1951, §109(b), to provide for State representation in regional offices.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### TERMINATION DATE

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

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

#### COMPENSATION OF CERTAIN OFFICIALS IN DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Compensation for certain officials in Domestic and International Business Administration, fixed at certain prescribed rates, see Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, formerly set out as a note under section 1511 of Title 15, Commerce and Trade.

#### COMPENSATION OF DIRECTOR AND DEPUTY DIRECTOR, BUREAU OF DOMESTIC COMMERCE

Compensation for Director and Deputy Director, Bureau of Domestic Commerce, Department of Commerce, was fixed at certain prescribed rates by Ex. Ord. No. 11567, Nov. 16, 1970, 35 F.R. 17701, which was superseded by Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, formerly set out as a note under section 1511 of Title 15, Commerce and Trade.

#### EXECUTIVE ORDER No. 10193

Ex. Ord. No. 10193, Dec. 16, 1950, 15 F.R. 9031, which provided for conduct of mobilization effort of the Government, was revoked by Ex. Ord. No. 10480, Aug. 14, 1953, 18 F.R. 4939, formerly set out below.

#### EXECUTIVE ORDER No. 10200

Ex. Ord. No. 10200, Jan. 3, 1951, 16 F.R. 61, as amended by Ex. Ord. No. 10281, Aug. 28, 1951, 16 F.R. 8789; Ex. Ord. No. 10433, Feb. 4, 1953, 18 F.R. 761, which related to establishment of Defense Production Administration, was revoked by Ex. Ord. No. 10480, Aug. 18, 1953, 18 F.R. 4939, formerly set out below.

#### EXECUTIVE ORDER No. 10224

Ex. Ord. No. 10224, Mar. 15, 1951, 16 F.R. 2543, as amended by Ex. Ord. No. 10461, June 17, 1953, 18 F.R. 3513, which provided for establishment of the National Advisory Board on Mobilization Policy was revoked by section 7(1) of Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061, which was subsequently 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.

#### EXECUTIVE ORDER No. 10281

Ex. Ord. No. 10281, Aug. 28, 1951, 16 F.R. 8789, which related to defense materials procurement and supply, was revoked by Ex. Ord. No. 10480, Aug. 14, 1953, 18 F.R. 4939, formerly set out below.

#### EXECUTIVE ORDER No. 10308

Ex. Ord. No. 10308, Dec. 3, 1951, 16 F.R. 12303, creating the Committee on Government Contract Compliance, was revoked and the Committee abolished by Ex. Ord. No. 10479, Aug. 17, 1953, 18 F.R. 4899, which was subsequently revoked by Ex. Ord. No. 10925, Mar. 7, 1961, 26 F.R. 1977.

#### EXECUTIVE ORDER No. 10433

Ex. Ord. No. 10433, Feb. 4, 1953, 18 F.R. 761, which provided for merger of Defense Production Administration with the Office of Defense Mobilization, was revoked by Ex. Ord. No. 10480, Aug. 14, 1953, 18 F.R. 4939, formerly set out below.

#### EXECUTIVE ORDER No. 10461

Ex. Ord. No. 10461, June 17, 1953, 18 F.R. 3513 which related to transfer of functions effected by Reorganization Plan No. 3 of 1953, 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.

#### EXECUTIVE ORDER No. 10480

Ex. Ord. No. 10480, Aug. 14, 1953, 18 F.R. 4939, as amended by Ex. Ord. No. 10489, Sept. 26, 1953, 18 F.R. 6201; Ex. Ord. No. 10537, June 22, 1954, 19 F.R. 3807; Ex. Ord. No. 10574, Nov. 8, 1954, 19 F.R. 7249; Ex. Ord. No. 10662, Mar. 14, 1956, 21 F.R. 1673; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 10819, May 11, 1959, 24 F.R. 3779; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 11062, Nov. 19, 1962, 27 F.R. 11447; Ex. Ord. No. 11956, Jan. 13, 1977, 42 F.R. 2947; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12381, §4, Sept. 8, 1982, 47 F.R. 39795; Ex. Ord. No. 12521, June 24, 1985, 50 F.R. 26335; Ex. Ord. No. 12649, Aug. 11, 1988, 53 F.R. 30639; Ex. Ord. No. 12773, Sept. 26, 1991, 56 F.R. 49387, which provided for administration of defense mobilization program, was revoked by section 904(a)(3) of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29533, set out below.

#### EXECUTIVE ORDER No. 10660

Ex. Ord. No. 10660, Feb. 15, 1956, 21 F.R. 1117, 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; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, which established a National Defense Executive Reserve, was superseded by Ex. Ord. No. 11179, Sept. 22, 1964, 29 F.R. 13239, formerly set out below.

#### EXECUTIVE ORDER No. 11179

Ex. Ord. No. 11179, Sept. 22, 1964, 29 F.R. 13239, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which established National Defense Executive Reserve, was revoked by section 904(a)(5) of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29533, set out below.

#### EX. ORD. No. 12919. NATIONAL DEFENSE INDUSTRIAL RESOURCES PREPAREDNESS

Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29525, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (64 Stat. 798; 50 U.S.C. App. 2061, *et seq.*), and section 301 of title 3, United States Code, and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

#### PART I—PURPOSE, POLICY AND IMPLEMENTATION

SECTION 101. *Purpose.* This order delegates authorities and addresses national defense industrial resource policies and programs under the Defense Production Act of 1950, as amended (“the Act”), except for the amendments to Title III of the Act [50 App. U.S.C. 2091 *et seq.*] in the Energy Security Act of 1980 [Pub. L. 96-294] and telecommunication authorities under Executive Order No. 12472 [50 App. U.S.C. 2251 note].

SEC. 102. *Policy.* The United States must have an industrial and technology base capable of meeting national defense requirements, and capable of contributing to the technological superiority of its defense equipment in peacetime and in times of national emergency. The domestic industrial and technological base is the foundation for national defense preparedness. The authorities provided in the Act shall be used to strengthen this base and to ensure it is capable of responding to all threats to the national security of the United States.

SEC. 103. *General Functions.* Federal departments and agencies responsible for defense acquisition (or for industrial resources needed to support defense acquisition) shall:

(a) Identify requirements for the full spectrum of national security emergencies, including military, industrial, and essential civilian demand;

(b) Assess continually the capability of the domestic industrial and technological base to satisfy requirements in peacetime and times of national emergency, specifically evaluating the availability of adequate industrial resource and production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;

(c) Be prepared, in the event of a potential threat to the security of the United States, to take actions necessary to ensure the availability of adequate industrial resources and production capability, including services and critical technology for national defense requirements;

(d) Improve the efficiency and responsiveness, to defense requirements, of the domestic industrial base; and

(e) Foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment to enhance industrial base efficiency and responsiveness.

SEC. 104. *Implementation.* (a) The National Security Council is the principal forum for consideration and resolution of national security resource preparedness policy.

(b) The Director, Federal Emergency Management Agency (“Director, FEMA”) shall:

(1) Serve as an advisor to the National Security Council on issues of national security resource preparedness and on the use of the authorities and functions delegated by this order;

(2) Provide for the central coordination of the plans and programs incident to authorities and functions delegated under this order, and provide guidance and procedures approved by the Assistant to the President for National Security Affairs to the Federal departments and agencies under this order;

(3) Establish procedures, in consultation with Federal departments and agencies assigned functions under this order, to resolve in a timely and effective manner conflicts and issues that may arise in implementing the authorities and functions delegated under this order; and

(4) Report to the President periodically concerning all program activities conducted pursuant to this order.

(c) The head of every Federal department and agency assigned functions under this order shall ensure that the performance of these functions is consistent with National Security Council policy and guidelines.

#### PART II—PRIORITIES AND ALLOCATIONS

SEC. 201. *Delegations of Priorities and Allocations.* (a) The authority of the President conferred by section 101 of the Act [50 App. U.S.C. 2071] to require acceptance and priority performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, is delegated to the following agency heads:

(1) The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;

(2) The Secretary of Energy with respect to all forms of energy;

(3) The Secretary of Health and Human Services with respect to health resources;

(4) The Secretary of Transportation with respect to all forms of civil transportation;

(5) The Secretary of Defense with respect to water resources; and

(6) The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

(b) The Secretary of Commerce, in consultation with the heads of those departments and agencies specified in subsection 201(a) of this order, shall administer the Defense Priorities and Allocations System (“DPAS”) regulations that will be used to implement the authority of the President conferred by section 101 of the Act as delegated to the Secretary of Commerce in subsection 201(a)(6) of this order. The Secretary of Commerce will redelegate to the Secretary of Defense, and the heads of other departments and agencies as appropriate, authority for the priority rating of contracts and orders for all materials, services, and facilities needed in support of programs approved under section 202 of this order. The Secretary of Commerce shall act as appropriate upon Special Priorities Assistance requests in a time frame consistent with the urgency of the need at hand.

(c) The Director, FEMA, shall attempt to resolve issues or disagreements on priorities or allocations between Federal departments or agencies in a time frame consistent with the urgency of the issue at hand and, if not resolved, such issues will be referred to the Assistant to the President for National Security Affairs for final determination.

(d) The head of each Federal department or agency assigned functions under subsection 201(a) of this order, when necessary, shall make the finding required under subsection 101(b) of the Act. This finding shall be submitted for the President’s approval through the Assistant to the President for National Security Affairs. Upon such approval the head of the Federal department or agency that made the finding may use the authority of subsection 101(a) of the Act to control the general distribution of any material (including applicable services) in the civilian market.

(e) The Assistant to the President for National Security Affairs is hereby delegated the authority under subsection 101(c)(3) of the Act, and will be assisted by the Director, FEMA, in ensuring the coordinated administration of the Act.

SEC. 202. *Determinations.* The authority delegated by section 201 of this order may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense:

(a) By the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities;

(b) By the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and

(c) By the Director, FEMA, with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities.

SEC. 203. *Maximizing Domestic Energy Supplies.* The authority of the President to perform the functions provided by subsection 101(c) of the Act [50 App. U.S.C. 2071(c)] is delegated to the Secretary of Commerce, who shall redelegate to the Secretary of Energy the authority to make the findings described in subsection 101(c)(2)(A) that the materials (including equipment), services, and facilities are critical and essential. The Secretary of Commerce shall make the finding described in subsection 101(c)(2)(A) of the Act that the



materials (including equipment), services, or facilities are scarce, and the finding described in subsection 101(c)(2)(B) that it is necessary to use the authority provided by subsection 101(c)(1).

SEC. 204. *Chemical and Biological Warfare.* The authority of the President conferred by subsection 104(b) of the Act [50 App. U.S.C. 2074(b)] is delegated to the Secretary of Defense. This authority may not be further delegated by the Secretary.

#### PART III—EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

SEC. 301. (a) *Financing Institution Guarantees.* To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, the head of each Federal department or agency engaged in procurement for the national defense (referred to as “agency head” in this part) and the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) are authorized to guarantee in whole or in part any public or private financing institution, subject to provisions of section 301 of the Act [50 App. U.S.C. 2091]. Guarantees shall be made in consultation with the Department of the Treasury as to the terms and conditions thereof. The Director of the Office of Management and Budget (“OMB”) shall be informed when such guarantees are to be made.

(b) *Direct Loan Guarantees.* To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, each agency head is authorized to make direct loan guarantees from funds appropriated to their agency for Title III [50 App. U.S.C. 2091 et seq.].

(c) *Fiscal Agent.* Each Federal Reserve Bank is designated and authorized to act, on behalf of any guaranteeing agency, as fiscal agent in the making of guarantee contracts and in otherwise carrying out the purposes of section 301 of the Act.

(d) *Regulations.* The Board of Governors of the Federal Reserve System is authorized, after consultation with heads of guaranteeing departments and agencies, the Secretary of the Treasury, and the Director, OMB, to prescribe regulations governing procedures, forms, rates of interest, and fees for such guarantee contracts.

SEC. 302. *Loans.* (a) To expedite production and deliveries or services to aid in carrying out government contracts for the procurement of industrial resources or a critical technology item for the national defense, an agency head is authorized, subject to the provisions of section 302 of the Act [50 App. U.S.C. 2092], to submit to the Secretary of the Treasury or the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) applications for loans.

(b) To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, each agency head may make direct loans from funds appropriated to their agency for Title III.

(c) After receiving a loan application and determining that financial assistance is not otherwise available on reasonable terms, the Secretary of the Treasury or the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) may make loans, subject to provisions of section 302 of the Act.

SEC. 303. *Purchase Commitments.* (a) In order to carry out the objectives of the Act, and subject to the provisions of section 303 [50 App. U.S.C. 2093] thereof, an agency head is authorized to make provision for purchases of, or commitments to purchase, an industrial resource or a critical technology item for government use or resale.

(b) Materials acquired under section 303 of the Act that exceed the needs of the programs under the Act may be transferred to the National Defense Stockpile, if such transfer is determined by the Secretary of Defense as the National Defense Stockpile Manager to be in the public interest.

SEC. 304. *Subsidy Payments.* In order to ensure the supply of raw or non-processed materials from high-cost sources, an agency head is authorized to make subsidy payments, after consultation with the Secretary of the Treasury and the Director, OMB, and subject to the provisions of section 303(c) of the Act [50 App. U.S.C. 2093(c)].

SEC. 305. *Determinations and Findings.* When carrying out the authorities in sections 301 through 303 of this order, an agency head is authorized to make the required determinations, judgments, statements, certifications, and findings, in consultation with the Secretary of Defense, Secretary of Energy or Director, FEMA, as appropriate. The agency head shall provide a copy of the determination, judgment, statement, certification, or finding to the Director, OMB, to the Director, FEMA, and, when appropriate, to the Secretary of the Treasury.

SEC. 306. *Strategic and Critical Materials.* (a) The Secretary of the Interior, in consultation with the Secretary of Defense as the National Defense Stockpile Manager and subject to the provisions of section 303 of the Act [50 App. U.S.C. 2093], is authorized to encourage the exploration, development, and mining of critical and strategic materials and other materials.

(b) An agency head is authorized, pursuant to section 303(g) of the Act, to make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources to aid the national defense.

(c) An agency head is authorized, pursuant to section 303(a)(1)(B) of the Act, to make provisions to encourage the exploration, development, and mining of critical and strategic materials and other materials.

SEC. 307. *Government-owned Equipment.* An agency head is authorized, pursuant to section 303(e) of the Act [50 App. U.S.C. 2093(e)], to install additional equipment, facilities, processes, or improvements to facilities owned by the government and to install government-owned equipment in industrial facilities owned by private persons.

SEC. 308. *Identification of Shortfalls.* Except during periods of national emergency or after a Presidential determination in accordance with sections 301(e)(1)(D)(ii), 302(c)(4)(B), or 303(a)(7)(B) of the Act [50 App. U.S.C. 2091(e)(1)(D)(ii), 2092(c)(4)(B), 2093(a)(7)(B)], no guarantee, loan or other action pursuant to sections 301, 302, and 303 of the Act to correct an industrial shortfall shall be taken unless the shortfall has been identified in the Budget of the United States or amendments thereto.

SEC. 309. *Defense Production Act Fund Manager.* The Secretary of Defense is designated the Defense Production Act Fund Manager, in accordance with section 304(f) of the Act [50 App. U.S.C. 2094(f)], and shall carry out the duties specified in that section, in consultation with the agency heads having approved Title III projects and appropriated Title III funds.

SEC. 310. *Critical Items List.* (a) Pursuant to section 107(b)(1)(A) of the Act [50 App. U.S.C. 2077(b)(1)(A)], the Secretary of Defense shall identify critical components and critical technology items for each item on the Critical Items List of the Commanders-in-Chief of the Unified and Specified Commands and other items within the inventory of weapon systems and defense equipment.

(b) Each agency head shall take appropriate action to ensure that critical components or critical technology items are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency. “Appropriate action” may include restricting contract solicitations to reliable sources, restricting contract solicitations to domestic sources (pursuant to statutory au-

thority), stockpiling critical components, and developing substitutes for critical components or critical technology items.

SEC. 311. *Strengthening Domestic Capability.* An agency head, in accordance with section 107(a) of the Act [50 App. U.S.C. 2077(a)], may utilize the authority of Title III of the Act [50 App. U.S.C. 2091 et seq.] or any other provision of law, in consultation with the Secretary of Defense, to provide appropriate incentives to develop, maintain, modernize, and expand the productive capacities of domestic sources for critical components, critical technology items, and industrial resources essential for the execution of the national security strategy of the United States.

SEC. 312. *Modernization of Equipment.* An agency head, in accordance with section 108(b) of the Act [50 App. U.S.C. 2078(b)], may utilize the authority of Title III of the Act to guarantee the purchase or lease of advance manufacturing equipment and any related services with respect to any such equipment for purposes of the Act.

#### PART IV—IMPACT OF OFFSETS

SEC. 401. *Offsets.* (a) The responsibilities and authority conferred upon the President by section 309 of the Act [50 App. U.S.C. 2099] with respect to offsets are delegated to the Secretary of Commerce, who shall function as the President's Executive Agent for carrying out this authority.

(b) The Secretary of Commerce shall prepare the annual report required by section 309(a) of the Act in consultation with the Secretaries of Defense, Treasury, Labor, State, the United States Trade Representative, the Arms Control and Disarmament Agency, the Director of Central Intelligence, and the heads of other departments and agencies as required. The heads of Federal departments and agencies shall provide the Secretary of Commerce with such information as may be necessary for the effective performance of this function.

(c) The offset report shall be subject to the normal interagency clearance process conducted by the Director, OMB, prior to the report's submission by the President to Congress.

#### PART V—VOLUNTARY AGREEMENTS AND ADVISORY COMMITTEES

SEC. 501. *Appointments.* The authority of the President under sections 708(c) and (d) of the Act [50 App. U.S.C. 2158(c), (d)] is delegated to the heads of each Federal department or agency, except that, insofar as that authority relates to section 101 of the Act [50 App. U.S.C. 2071], it is delegated only to the heads of each Federal department or agency assigned functions under section 201(a) of this order. The authority delegated under this section shall be exercised pursuant to the provisions of section 708 of the Act, and copies and the status of the use of such delegations shall be furnished to the Director, FEMA.

SEC. 502. *Advisory Committees.* The authority of the President under section 708(d) of the Act [50 App. U.S.C. 2158(d)] and delegated in section 501 of this order (relating to establishment of advisory committees) shall be exercised only after consultation with, and in accordance with, guidelines and procedures established by the Administrator of General Services.

#### PART VI—EMPLOYMENT OF PERSONNEL

SEC. 601. *National Defense Executive Reserve.* (a) In accordance with section 710(e) of the Act [50 App. U.S.C. 2160(e)], there is established in the Executive Branch a National Defense Executive Reserve ("NDER") composed of persons of recognized expertise from various segments of the private sector and from government (except full-time federal employees) for training for employment in executive positions in the Federal Government in the event of an emergency that requires such employment.

(b) The head of any department or agency may establish a unit of the NDER in the department or agency and train members of that unit.

(c) The head of each department or agency with an NDER unit is authorized to exercise the President's authority to employ civilian personnel in accordance with section 703(a) of the Act [50 App. U.S.C. 2153(a)] when activating all or a part of its NDER unit. The exercise of this authority shall be subject to the provisions of subsections 601(d) and (e) of this order and shall not be redelegated.

(d) The head of a department or agency may activate an NDER unit, in whole or in part, upon the written determination that an emergency affecting the national security or defense preparedness of the United States exists and that the activation of the unit is necessary to carry out the emergency program functions of the department or agency.

(e) At least 72 hours prior to activating the NDER unit, the head of the department or agency shall notify, in writing, the Assistant to the President for National Security Affairs of the impending activation and provide a copy of the determination required under subsection 601(d) of this order.

(f) The Director, FEMA, shall coordinate the NDER program activities of departments and agencies in establishing units of the Reserve; provide for appropriate guidance for recruitment, training, and activation; and issue necessary rules and guidance in connection with the program.

(g) This order suspends any delegated authority, regulation, or other requirement or condition with respect to the activation of any NDER unit, in whole or in part, or appointment of any NDER member that is inconsistent with the authorities delegated herein, provided that the aforesaid suspension applies only as long as sections 703(a) and 710(e) of the Act are in effect.

SEC. 602. *Consultants.* The head of each department or agency assigned functions under this order is delegated authority under sections 710(b) and (c) of the Act [50 App. U.S.C. 2160(b), (c)] to employ persons of outstanding experience and ability without compensation and to employ experts, consultants, or organizations. The authority delegated by this section shall not be redelegated.

#### PART VII—LABOR SUPPLY

SEC. 701. *Secretary of Labor.* The Secretary of Labor, identified in this section as the Secretary, shall:

(a) Collect, analyze, and maintain data needed to make a continuing appraisal of the nation's labor requirements and the supply of workers for purposes of national defense. All agencies of the government shall cooperate with the Secretary in furnishing information necessary for this purpose, to the extent permitted by law;

(b) In response to requests from the head of a Federal department or agency engaged in the procurement for national defense, consult with and advise that department or agency with respect to (1) the effect of contemplated actions on labor supply and utilization, (2) the relation of labor supply to materials and facilities requirements, and (3) such other matters as will assist in making the exercise of priority and allocations functions consistent with effective utilization and distribution of labor;

(c) Formulate plans, programs, and policies for meeting defense and essential civilian labor requirements;

(d) Project skill shortages to facilitate meeting defense and essential civilian needs and establish training programs;

(e) Determine the occupations and skills critical to meeting the labor requirements of defense and essential civilian activities and, with the assistance of the Secretary of Defense, the Director of Selective Service, and such other persons as the Director, FEMA, may designate, develop policies regulating the induction and deferment of personnel for the armed services, except for civilian personnel in the reserves; and

(f) Administer an effective labor-management relations policy to support the activities and programs under this order with the cooperation of other Federal agencies, including the National Labor Relations Board and the Federal Mediation and Conciliation Service.

PART VIII—DEFENSE INDUSTRIAL BASE  
INFORMATION AND REPORTS

SEC. 801. *Foreign Acquisition of Companies.* The Secretary of the Treasury, in cooperation with the Department of State, the Department of Defense, the Department of Commerce, the Department of Energy, the Department of Agriculture, the Attorney General, and the Director of Central Intelligence, shall complete and furnish a report to the President and then to Congress in accordance with the requirements of section 721(k) of the Act [50 App. U.S.C. 2170(k)] concerning foreign efforts to acquire United States companies involved in research, development, or production of critical technologies and industrial espionage activities directed by foreign governments against private U.S. companies.

SEC. 802. *Defense Industrial Base Information System.* (a) The Secretary of Defense and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense, shall establish an information system on the domestic defense industrial base in accordance with the requirements of section 722 of the Act [50 App. U.S.C. 2171].

(b) In establishing the information system required by subsection (a) of this order, the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense in consultation with the Secretary of Commerce, shall consult with each other for the purposes of performing the duties listed in section 722(d)(1) of the Act.

(c) The Secretary of Defense shall convene a task force consisting of the Secretary of Commerce and the Secretary of each military department and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense in consultation with the Secretary of Commerce, to carry out the duties under section 722(d)(2) of the Act.

(d) The Secretary of Defense shall report to Congress on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components and critical technology items. The plans shall include an assessment of the performance and cost-effectiveness of procedures specified in section 722(b) of the Act.

(e) The Secretary of Commerce, acting through the Bureau of the Census, shall consult with the Secretary of Defense and the Director, FEMA, to improve the usefulness of information derived from the Census of Manufacturers in carrying out section 722 of the Act.

(f) The Secretary of Defense shall perform an analysis of the production base for not more than two major weapons systems of each military department in establishing the information system under section 722 of the Act. Each analysis shall identify the critical components of each system.

(g) The Secretary of Defense, in consultation with the Secretary of Commerce, and the heads of other Federal departments and agencies as appropriate, shall issue a biennial report on critical components and technology in accordance with section 722(e) of the Act.

PART IX—GENERAL PROVISIONS

SEC. 901. *Definitions.* In addition to the definitions in section 702 of the Act [50 App. U.S.C. 2152], the following definitions apply throughout this order:

(a) "Civil transportation" includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its territories and possessions, and the District of Columbia, and, without limitation, related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. However, "civil transportation" shall not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly. As applied herein, "civil transportation" shall include direction, control,

and coordination of civil transportation capacity regardless of ownership.

(b) "Energy" means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquification, and coal gasification), and atomic energy, and the production, conservation, use, control, and distribution (including pipelines) of all of these forms of energy.

(c) "Farm equipment" means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

(d) "Fertilizer" means any product or combination of products that contain one or more of the elements—nitrogen, phosphorus, and potassium—for use as a plant nutrient.

(e) "Food resources" means all commodities and products, simple, mixed, or compound, or complements to such commodities or products, that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. "Food resources" also means all starches, sugars, vegetable and animal or marine fats and oils, cotton, tobacco, wool, mohair, hemp, flax fiber, and naval stores, but does not mean any such material after it loses its identity as an agricultural commodity or agricultural product.

(f) "Food resource facilities" means plants, machinery, vehicles (including on-farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, livestock and poultry feed and seed, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).

(g) "Functions" include powers, duties, authority, responsibilities, and discretion.

(h) "Head of each Federal department or agency engaged in procurement for the national defense" means the heads of the Departments of Defense, Energy, and Commerce, as well as those departments and agencies listed in Executive Order No. 10789 [50 U.S.C. 1431 note].

(i) "Heads of other appropriate Federal departments and agencies" as used in part VIII of this order means the heads of such other Federal agencies and departments that acquire information or need information with respect to making any determination to exercise any authority under the Act.

(j) "Health resources" means materials, facilities, health supplies, and equipment (including pharmaceutical, blood collecting and dispensing supplies, biological, surgical textiles, and emergency surgical instruments and supplies) required to prevent the impairment of, improve, or restore the physical and mental health conditions of the population.

(k) "Metals and minerals" means all raw materials of mineral origin (excluding energy) including their refining, smelting, or processing, but excluding their fabrication.

(l) "Strategic and Critical Materials" means materials (including energy) that (1) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national security emergency, and (2) are not found or produced in the United States in sufficient quantities to meet such need and are vulnerable to the termination or reduction of the availability of the material.

(m) "Water resources" means all usable water, from all sources, within the jurisdiction of the United States, which can be managed, controlled, and allocated to meet emergency requirements.

SEC. 902. *General.* (a) Except as otherwise provided in subsection 902(c) of this order, the authorities vested in the President by title VII of the Act [50 App. U.S.C. 2151 et seq.] may be exercised and performed by the head of each department and agency in carrying out the delegated authorities under the Act and this order.

(b) The authorities which may be exercised and performed pursuant to subsection 902(a) of this order shall

include (1) the power to redelegate authorities, and to authorize the successive redelegation of authorities, to departments and agencies, officers, and employees of the government, and (2) the power of subpoena with respect to authorities delegated in parts II, III, and IV of this order, provided that the subpoena power shall be utilized only after the scope and purpose of the investigation, inspection, or inquiry to which the subpoena relates have been defined either by the appropriate officer identified in subsection 902(a) of this order or by such other person or persons as the officer shall designate.

(c) Excluded from the authorities delegated by subsection 902(a) of this order are authorities delegated by parts V, VI, and VIII of this order and the authority with respect to fixing compensation under section 703(a) of the Act [50 App. U.S.C. 2153(a)].

SEC. 903. *Authority.* All previously issued orders, regulations, rulings, certificates, directives, and other actions relating to any function affected by this order shall remain in effect except as 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 other assignment of authority under the Act.

SEC. 904. *Effect on other Orders.* (a) The following are superseded or revoked:

(1) Section 3, Executive Order No. 8248 of September 8, 1939, (4 FR 3864).

(2) Executive Order No. 10222 of March 8, 1951 (16 FR 2247) [50 App. U.S.C. 2256 note].

(3) Executive Order No. 10480 of August 14, 1953 (18 FR 4939) [formerly set out above].

(4) Executive Order No. 10647 of November 28, 1955 (20 FR 8769) [50 App. U.S.C. 2160 note].

(5) Executive Order No. 11179 of September 22, 1964 (29 FR 13239) [formerly set out above].

(6) Executive Order No. 11355 of May 26, 1967 (32 FR 7803) [50 App. U.S.C. 2160 note].

(7) Sections 7 and 8, Executive Order No. 11912 of April 13, 1976 (41 FR 15825, 15826-27) [42 U.S.C. 6201 note].

(8) Section 3, Executive Order No. 12148 of July 20, 1979 (44 FR 43239, 43241) [42 U.S.C. 5195 note].

(9) Executive Order No. 12521 of June 24, 1985 (50 FR 26335).

(10) Executive Order No. 12649 of August 11, 1988 (53 FR 30639).

(11) Executive Order No. 12773 of September 26, 1991 (56 FR 49387), except that part of the order that amends section 604 of Executive Order [No.] 10480.

(b) Executive Order No. 10789 of November 14, 1958 [50 U.S.C. 1431 note], is amended by deleting "and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950," as it appears in the first sentence.

(c) Executive Order No. 11790 [15 U.S.C. 761 note], as amended, relating to the Federal Energy Administration Act of 1974 [15 U.S.C. 761 et seq.], is amended by deleting "Executive Order No. 10480" where it appears in section 4 and substituting this order's number.

(d) Subject to subsection 904(c) of this order, to the extent that any provision of any prior Executive order is inconsistent with the provisions of this order, this order shall control and such prior provision is amended accordingly.

SEC. 905. *Judicial Review.* This order is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON.

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

## § 2154. Regulations and orders

### (a) In general

Subject to section 709 [section 2159 of this Appendix] and subsection (b), the President may

prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out this Act [sections 2061 to 2171 of this Appendix].

### (b) Procurement regulations

Any procurement regulation, procedure, or form issued pursuant to subsection (a) shall be issued pursuant to section 25 of the Office of Federal Procurement Policy Act [41 U.S.C. 421], and shall conform to any governmentwide procurement policy or regulation issued pursuant to section 6 or 25 of that Act [41 U.S.C. 405, 421].

(Sept. 8, 1950, ch. 932, title VII, § 704, 64 Stat. 816; July 31, 1951, ch. 275, title I, § 109(c), 65 Stat. 139; Pub. L. 102-558, title I, § 134, Oct. 28, 1992, 106 Stat. 4212.)

#### AMENDMENTS

1992—Pub. L. 102-558 amended section generally, substituting present provisions for provisions authorizing promulgation of rules, regulations, and orders by the President in order to carry out sections 2061 to 2170 of this Appendix.

1951—Act July 31, 1951, limited authority to regulate natural gas where a State agency is handling the matter.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### 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, eff. June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15, Commerce and Trade.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2072 of this Appendix.

## § 2155. Investigations; records; reports; subpoenas; right to counsel

(a) The President shall be entitled, while this Act [sections 2061 to 2171 of this Appendix] is in effect and for a period of two years thereafter, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act [said sections] and the regulations or orders issued thereunder. The President shall issue regulations insuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from

any Federal or other responsible agency. In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) The production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person usually keeps them, if, prior to the return date specified in the regulations, subpoena, or other document issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) Any person who willfully performs any act prohibited or willfully fails to perform any act required by the above provisions of this section, or any rule, regulation, or order thereunder, shall upon conviction be fined not more than \$10,000 or imprisoned for not more than one year or both.

(d) Information obtained under this section which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both.

(e) Any person subpoenaed under this section shall have the right to make a record of his testimony and to be represented by counsel.

(Sept. 8, 1950, ch. 932, title VII, § 705, 64 Stat. 816; July 31, 1951, ch. 275, title I, § 109(d), 65 Stat. 139; June 30, 1952, ch. 530, title I, § 117, 66 Stat. 306; June 30, 1953, ch. 171, § 9, 67 Stat. 131; Pub. L. 91-452, title II, § 251, Oct. 15, 1970, 84 Stat. 931; Pub. L. 102-558, title I, § 142, Oct. 28, 1992, 106 Stat. 4217.)

#### AMENDMENTS

1992—Subsec. (a). Pub. L. 102-558, § 142(1), substituted "subpoena" for "subpena" in two places.

Subsec. (b). Pub. L. 102-558, § 142(1), (2), redesignated subsec. (c) as (b) and substituted "subpoena" for "subpena".

Subsec. (c). Pub. L. 102-558, § 142(2), (3), redesignated subsec. (d) as (c) and substituted "\$10,000" for "\$1,000". Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 102-558, § 142(2), (4), redesignated subsec. (e) as (d) and struck out second undesignated par. which read as follows: "All information obtained by the Office of Price Stabilization under this section 705, as amended, and not made public prior to April 30, 1953, shall be deemed confidential and shall not be pub-

lished or disclosed, either to the public or to another Federal agency except the Congress or any duly authorized committee thereof, and except the Department of Justice for such use as it may deem necessary in the performance of its functions, unless the President determines that the withholding thereof is contrary to the interests of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both." Former subsec. (d) redesignated (c).

Subsecs. (e), (f). Pub. L. 102-558, § 142(2), (5), redesignated subsec. (f) as (e) and substituted "subpoenaed" for "subpenaed". Former subsec. (e) redesignated (d).

1970—Subsec. (b). Pub. L. 91-452 struck out subsec. (b) which related to immunity from prosecution of any natural person compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination, and that any such immunity granted would not be construed to vest in any individual any right to priorities assistance, to the allocation of materials, or to any other benefit within the power of the President to grant under sections 2061 to 2166 of this Appendix.

1953—Subsec. (e). Act June 30, 1953, added second par. 1952—Subsec. (f). Act June 30, 1952, added subsec. (f).

1951—Subsec. (a). Act July 31, 1951, made it clear that President has authority to administer oaths and affirmations.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

#### 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.

#### CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

### § 2156. Jurisdiction of courts; injunctions; venue; process; effect of termination of provisions

(a) Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act [sections 2061 to 2171 of this Appendix], he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent

or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(b) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this Act [sections 2061 to 2171 of this Appendix] or any rule, regulation, order, or subpoena thereunder, and of all civil actions under this Act [said sections] to enforce any liability or duty created by, or to enjoin any violation of, this Act [said sections] or any rule, regulation, order, or subpoena thereunder. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; the subpoena for witnesses who are required to attend a court in any district in such case may run into any other district. The termination of the authority granted in any title or section of this Act [said sections], or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. No costs shall be assessed against the United States in any proceeding under this Act [said sections]. All litigation arising under this Act [said sections] or the regulations promulgated thereunder shall be under the supervision and control of the Attorney General.

(Sept. 8, 1950, ch. 932, title VII, § 706, 64 Stat. 817; July 31, 1951, ch. 275, title I, § 109(e), 65 Stat. 139.)

#### AMENDMENTS

1951—Subsec. (a). Act July 31, 1951, broadened relief a court may grant when Government seeks to enjoin violations.

#### 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.

### § 2157. Liability for compliance with invalid regulations; discrimination against orders or contracts affected by priorities or allocations

No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this Act [sections 2061 to 2171 of this Appendix], notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or

other competent authority to be invalid. No person shall discriminate against orders or contracts to which priority is assigned or for which materials or facilities are allocated under title I of this Act [sections 2071 to 2078 of this Appendix] or under any rule, regulation, or order issued thereunder, by charging higher prices or by imposing different terms and conditions for such orders or contracts than for other generally comparable orders or contracts, or in any other manner.

(Sept. 8, 1950, ch. 932, title VII, § 707, 64 Stat. 818; June 30, 1952, ch. 530, title I, § 118, 66 Stat. 306.)

#### AMENDMENTS

1952—Act June 30, 1952, in first sentence struck out “his” before “compliance with”.

#### TERMINATION DATE

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

### § 2158. Voluntary agreements and plans of action for preparedness programs and expansion of production capacity and supply

#### (a) Immunity from civil and criminal liability or defense to action under antitrust laws; exceptions

Except as specifically provided in subsection (j) of this section, no provision of this Act [sections 2061 to 2171 of this Appendix] shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

#### (b) Definitions

For purposes of this Act [sections 2061 to 2171 of this Appendix]—

##### (1) Antitrust laws

The term “antitrust laws” has the meaning given to such term in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], except that such term includes section 5 of the Federal Trade Commission Act [15 U.S.C. 45] to the extent that such section 5 applies to unfair methods of competition.

##### (2) Plan of action

The term “plan of action” means any of 1 or more documented methods adopted by participants in an existing voluntary agreement to implement that agreement.

#### (c) Prerequisites for agreements and plans of action; delegation of authority to Presidential designees

(1) Upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.

(2) The authority granted to the President in paragraph (1) and subsection (d) may be dele-

gated by him (A) to individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate, (B) upon the condition that such individuals consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any persons under paragraph (1), and (C) upon the condition that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (1).

**(d) Advisory committees; establishment; applicable provisions; membership; notice and participation in meetings; verbatim transcript; availability to public**

(1) To achieve the objectives of subsection (c)(1) of this section, the President or any individual designated pursuant to subsection (c)(2) may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section and except as provided in subsection (n), any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act [sections 2061 to 2171 of this Appendix] or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) and shall include representatives of the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of paragraphs (1), (3), and (4) of section 552(b) of title 5, United States Code.

**(e) Rules; promulgation by Presidential designees; consultation by Attorney General with Chairman of Federal Trade Commission; approval of Attorney General; procedures; incorporation of standards and procedures for development of agreements and plans of action**

(1) The individual or individuals referred to in subsection (c)(2) shall, after approval of the Attorney General, after consultation by the Attorney General with the Chairman of the Federal Trade Commission, promulgate rules, in accordance with section 553 of title 5, United States Code, incorporating standards and procedures by which voluntary agreements and plans of action may be developed and carried out.

(2) In addition to the requirements of section 553 of title 5, United States Code—

(A) general notice of the proposed rule-making referred to in paragraph (1) shall be

published in the Federal Register, and such notice shall include—

(i) a statement of the time, place, and nature of the proposed rulemaking proceedings;

(ii) reference to the legal authority under which the rule is being proposed; and

(iii) either the terms of substance of the proposed rule or a description of the subjects and issues involved;

(B) the required publication of a rule shall be made not less than thirty days before its effective date; and

(C) the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.

(3) The rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide, among other things, that—

(A) such agreements shall be developed at meetings which include—

(i) the Attorney General or his delegate,

(ii) the Chairman of the Federal Trade Commission or his delegate, and

(iii) an individual designated by the President in subsection (c)(2) or his delegate,

and which are chaired by the individual referred to in clause (iii);

(B) at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register;

(C) interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation;

(D) interested persons may attend any such meeting unless the individual designated by the President in subsection (c)(2) finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code;

(E) a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission;

(F) any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General, the Chairman of the Federal Trade Commission, and the Congress; and

(G) any transcript referred to in subparagraph (E) and any voluntary agreement referred to in subparagraph (F) shall be available for public inspection and copying, subject to paragraphs (1), (3), and (4) of section 552(b) of title 5, United States Code.

**(f) Commencement of agreements and plans of action; expiration date; extensions**

(1) A voluntary agreement or plan of action may not become effective unless and until—

(A) the individual referred to in subsection (c)(2) who is to administer the agreement or plan approves it and certifies, in writing, that

the agreement or plan is necessary to carry out the purposes of subsection (c)(1) and submits a copy of such agreement or plan to the Congress; and

(B) the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement or plan of action having less anticompetitive effects or without any voluntary agreement or plan of action and publishes such finding in the Federal Register.

(2) Each voluntary agreement or plan of action which becomes effective under paragraph (1) shall expire two years after the date it becomes effective (and at two-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the individual referred to in subsection (c)(2) who administers the agreement or plan and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraph (1) with respect to such voluntary agreement or plan of action and publish such certification or finding in the Federal Register, in which case, the voluntary agreement or plan of action may be extended for an additional period of two years.

**(g) Monitoring of agreements and plans of action by Attorney General and Chairman of Federal Trade Commission**

The Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement or plan of action to assure—

(1) that the agreement or plan is carrying out the purposes of subsection (c)(1);

(2) that the agreement or plan is being carried out under rules promulgated pursuant to subsection (e);

(3) that the participants are acting in accordance with the terms of the agreement or plan; and

(4) the protection and fostering of competition and the prevention of anticompetitive practices and effects.

**(h) Required provisions of rules for implementation of agreements and plans of action**

The rules promulgated under subsection (e) with respect to the carrying out of voluntary agreements and plans of action shall provide—

(1) for the maintenance, by participants in any voluntary agreement or plan of action, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement or plan of action;

(2) that participants in any voluntary agreement or plan of action agree, in writing, to make available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to paragraph (1);

(3) that any item made available to the individual designated by the President in sub-

section (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to paragraph (1), (3), or (4) of section 552(b) of title 5, United States Code;

(4) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement or plan of action;

(5) that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement or plan of action;

(6) that participants in any voluntary agreement or plan of action provide the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement or plan of action;

(7) for the attendance by interested persons of any meeting held to carry out any voluntary agreement or plan of action, unless the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code;

(8) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement or plan of action, unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting;

(9) that—

(A) the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action), or

(B) the individual designated by the President in subsection (c)(2), to administer a voluntary agreement or plan of action (after consultation with the Attorney General and the Chairman of the Federal Trade Commission),

may terminate or modify, in writing, the voluntary agreement or plan of action at any



time, and that effective, immediately upon such termination or modification, any antitrust immunity conferred upon the participants in the voluntary agreement or plan of action by subsection (j) shall not apply to any act or omission occurring after the time of such termination or modification;

(10) that participants in any voluntary agreement or plan of action be reasonably representative of the appropriate industry or segment of such industry; and

(11) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action shall provide prior written notification of the time, place, and nature of any meeting to carry out a voluntary agreement or plan of action to the Attorney General, the Chairman of the Federal Trade Commission and the Congress.

**(i) Rules; promulgation by Attorney General and Chairman of Federal Trade Commission**

The Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as each deems necessary or appropriate to carry out his responsibility under this section.

**(j) Defenses**

**(1) In general**

Subject to paragraph (4), there shall be available as a defense for any person to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out any voluntary agreement or plan of action under this section that—

(A) such action was taken—

(i) in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement; or

(ii) to carry out a voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement, and

(B) such person—

(i) complied with the requirements of this section and any regulation prescribed under this section; and

(ii) acted in accordance with the terms of the voluntary agreement or plan of action.

**(2) Scope of defense**

Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense established in paragraph (1) shall be available only if and to the extent that the person asserting the defense demonstrates that the action was specified in, or was within the scope of, an approved voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement and approved in accordance with this section. The defense established in paragraph (1) shall not be available unless the President or the President's designee has authorized and actively su-

pervised the voluntary agreement or plan of action.

**(3) Burden of persuasion**

Any person raising the defense established in paragraph (1) shall have the burden of proof to establish the elements of the defense.

**(4) Exception for actions taken to violate the antitrust laws**

The defense established in paragraph (1) shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

**(k) Surveys and studies by Attorney General and Federal Trade Commission; content; annual report to Congress and President by Attorney General**

The Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements and plans of action authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and plans of action.

**(l) Annual report to Congress and President by Presidential designees; contents**

The individual or individuals designated by the President in subsection (c)(2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement or plan of action in effect and its contribution to achievement of the purpose of subsection (c)(1).

**(m) Jurisdiction to enjoin statutory exemption or suspension and order for production of transcripts, etc.; procedures**

On complaint, the United States District Court for the District of Columbia shall have jurisdiction to enjoin any exemption or suspension pursuant to subsections (d)(2), (e)(3)(D) and (G), and (h)(3), (7), and (8), and to order the production of transcripts, agreements, items, or other records maintained pursuant to this section by the Attorney General, the Federal Trade Commission or any individual designated under subsection (c)(2), where the court determines that such transcripts, agreements, items, or other records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such transcripts, agreements, items, or other records in camera to determine whether such transcripts, agreements, items, or other records or any parts thereof shall be withheld under any of the exemption or suspension provisions referred to in this subsection, and the burden is on the Attorney General, the Federal Trade Commission, or such designated individual, as the case may be, to sustain its action.

**(n) Exemption from Advisory Committee Act provisions**

Notwithstanding any other provision of law, any activity conducted under a voluntary agreement or plan of action approved pursuant to this section, when conducted in compliance with the requirements of this section, any regulation prescribed under this subsection, and the provisions of the voluntary agreement or plan of action, shall be exempt from the Federal Advisory Committee Act and any other Federal law and any Federal regulation relating to advisory committees.

**(o) Preemption of contract law in emergencies**

In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

(Sept. 8, 1950, ch. 932, title VII, § 708, 64 Stat. 818; June 30, 1952, ch. 530, title I, § 116(c), 66 Stat. 305; Aug. 9, 1955, ch. 655, § 6, 69 Stat. 581; Pub. L. 87-305, § 5(b), Sept. 26, 1961, 75 Stat. 667; Pub. L. 91-151, title I, § 9, Dec. 23, 1969, 83 Stat. 376; Pub. L. 94-152, § 3, Dec. 16, 1975, 89 Stat. 810; Pub. L. 102-99, § 5, Aug. 17, 1991, 105 Stat. 487.)

## REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsecs. (d)(1) and (n), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

## AMENDMENTS

1991—Subsec. (a). Pub. L. 102-99, § 5(1), struck out “and subsection (j) of section 708A” after “subsection (j) of this section”.

Subsec. (b). Pub. L. 102-99, § 5(2), added subsec. (b) and struck out former subsec. (b) which read as follows: “As used in this section and section 708A the term ‘antitrust laws’ means—

“(1) the Act entitled ‘An Act to protect trade and commerce against unlawful restraints and monopolies’, approved July 2, 1890 (15 U.S.C. 1 et seq.);

“(2) the Act entitled ‘An act to supplement existing laws against unlawful restraints and monopolies and for other purposes’, approved October 15, 1914 (15 U.S.C. 12 et seq.);

“(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

“(4) sections 73 and 74 of the Act entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes’, approved August 27, 1894 (15 U.S.C. 8 and 9);

“(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a); and

“(6) the Act entitled ‘An Act to promote export trade and for other purposes’, approved April 10, 1918 (15 U.S.C. 61-65).”

Subsec. (c)(1). Pub. L. 102-99, § 5(3), inserted “and plans of action” after “voluntary agreements” and substituted “Upon” for “Except as otherwise provided in section 708A(o), upon”.

Subsec. (c)(2). Pub. L. 102-99, § 5(4), struck out at end “For the purpose of carrying out the objectives of title I of this Act, the authority granted in paragraph (1) of this subsection shall not be delegated to more than one individual.”

Subsec. (d)(1). Pub. L. 102-99, § 5(5), inserted “and except as provided in subsection (n)” after “specified in

this section” and struck out “, and the meetings of such committees shall be open to the public” after “representatives of the public”.

Subsec. (d)(2). Pub. L. 102-99, § 5(6), substituted “paragraphs (1), (3), and (4) of section 552(b)” for “section 552(b)(1) and (b)(3)”.

Subsec. (e)(1). Pub. L. 102-99, § 5(7), substituted “voluntary agreements and plans of action” for “voluntary agreements”.

Subsec. (e)(3)(D). Pub. L. 102-99, § 5(8), substituted “section 552b(c)” for “subsection (b)(1) or (b)(3) of section 552”.

Subsec. (e)(3)(F). Pub. L. 102-99, § 5(9), inserted reference to Congress.

Subsec. (e)(3)(G). Pub. L. 102-99, § 5(10), substituted “paragraphs (1), (3), and (4) of section 552(b)” for “subsections (b)(1) and (b)(3) of section 552”.

Subsec. (f)(1). Pub. L. 102-99, § 5(11)(A), inserted “or plan of action” after “voluntary agreement”.

Subsec. (f)(1)(A). Pub. L. 102-99, § 5(12), inserted “and submits a copy of such agreement or plan to the Congress” after “subsection (c)(1)”.

Pub. L. 102-99, § 5(11)(B), inserted “or plan” after “the agreement” wherever appearing.

Subsec. (f)(1)(B). Pub. L. 102-99, § 5(13), inserted before period “and publishes such finding in the Federal Register”.

Pub. L. 102-99, § 5(11)(A), inserted “or plan of action” after “voluntary agreement” wherever appearing.

Subsec. (f)(2). Pub. L. 102-99, § 5(14), inserted “and publish such certification or finding in the Federal Register” before “, in which case”.

Pub. L. 102-99, § 5(11), inserted “or plan” after “the agreement”, and “or plan of action” after “voluntary agreement” wherever appearing.

Subsec. (g). Pub. L. 102-99, § 5(11)(A), inserted “or plan of action” after “voluntary agreement”.

Subsec. (g)(1) to (3). Pub. L. 102-99, § 5(11)(B), inserted “or plan” after “the agreement”.

Subsec. (h). Pub. L. 102-99, § 5(15)(A), inserted “and plans of action” after “voluntary agreements”.

Subsec. (h)(1), (2). Pub. L. 102-99, § 5(15)(B), inserted “or plan of action” after “voluntary agreement” wherever appearing.

Subsec. (h)(3). Pub. L. 102-99, § 5(16), substituted “paragraph (1), (3), or (4) of section 552(b)” for “subsections (b)(1) and (b)(3) of section 552”.

Pub. L. 102-99, § 5(15)(B), inserted “or plan of action” after “voluntary agreement”.

Subsec. (h)(4) to (6). Pub. L. 102-99, § 5(15)(B), inserted “or plan of action” after “voluntary agreement” wherever appearing.

Subsec. (h)(7), (8). Pub. L. 102-99, § 5(15)(B), (17), inserted “or plan of action” after “voluntary agreement” wherever appearing and substituted “section 552b(c)” for “subsection (b)(1) or (b)(3) of section 552”.

Subsec. (h)(9), (10). Pub. L. 102-99, § 5(15)(B), inserted “or plan of action” after “voluntary agreement” wherever appearing.

Subsec. (h)(11). Pub. L. 102-99, § 5(15)(C)–(E), added par. (11).

Subsec. (j). Pub. L. 102-99, § 5(18), added subsec. (j) and struck out former subsec. (j) which read as follows: “There shall be available as a defense for any person to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that—

“(1) such act or omission to act was taken in good faith by that person—

“(A) in the course of developing a voluntary agreement under this section, or

“(B) to carry out a voluntary agreement under this section; and

“(2) such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.”

Subsec. (k). Pub. L. 102-99, § 5(19), inserted “and plans of action” after “voluntary agreements” wherever appearing.

Subsec. (l). Pub. L. 102-99, §5(20), inserted “or plan of action” after “voluntary agreement”.

Subsecs. (n), (o). Pub. L. 102-99, §5(21), added subsecs. (n) and (o).

1975—Subsec. (a). Pub. L. 94-152 substituted provisions relating to immunity from civil and criminal liability under the antitrust laws for provisions authorizing President to approve voluntary programs and agreements under section 2061 et seq. of this Appendix.

Subsec. (b). Pub. L. 94-152 substituted definition of “antitrust laws” for provisions exempting under certain conditions acts or omissions to act pursuant to section 2061 et seq. of this Appendix from the antitrust laws or the Federal Trade Commission Act.

Subsec. (c). Pub. L. 94-152 restructured subsec. (c) into pars. (1) and (2), and, as so restructured, inserted provisions of par. (1) authorizing President to consult with leaders of industry, finance, agriculture and labor with a view to developing voluntary agreements to help provide for the defense of the United States whenever he finds conditions exist which pose a threat to the national defense or preparedness programs and transferred existing provisions to par. (2), and, as transferred, substituted provisions which authorized President to delegate authority granted to him in par. (1) of this subsection and under subsec. (d) of this section, for provisions authorizing delegation of authority of subsec. (b) of this section.

Subsec. (d). Pub. L. 94-152 substituted provisions relating to establishment, membership, meetings, transcripts, etc. of advisory committees, for provisions relating to application of this section to acts or omissions to act after withdrawal of any request or finding under this section or withdrawal of approval of Attorney General.

Subsec. (e). Pub. L. 94-152 substituted provisions relating to promulgation of rules for voluntary agreements, procedures for promulgation and required provisions, for provisions relating to monitoring by Attorney General of agreements in force and reports to President and Congress.

Subsecs. (f) to (m). Pub. L. 94-152 added subsecs. (f) to (m).

1969—Subsec. (b). Pub. L. 91-151, §9(a), struck out provision under which exemption from prohibitions of antitrust laws and application of Federal Trade Commission Act had been limited to only those voluntary agreements covering military equipment purchased by Defense Department.

Subsec. (f). Pub. L. 91-151, §9(b), struck out subsec. (f) which prohibited approval of voluntary credit control agreements under this section after June 30, 1952.

1961—Subsec. (e). Pub. L. 87-305 struck out “, and the reports hereafter required,” after “Such surveys” and “within ninety days after the approval of this Act [Sept. 8, 1950], and” after “President” and substituted “studies of voluntary agreements and programs authorized by this section” for “such surveys and including such recommendations as he may deem desirable”.

1955—Subsec. (b). Act Aug. 9, 1955, §6(1), inserted proviso.

Subsec. (d). Act Aug. 9, 1955, §6(2), exempted subsequent acts or omissions to act upon withdrawal by Attorney General of his approval of voluntary agreement or program.

Subsec. (e). Act Aug. 9, 1955, §6(3), (4), included studies of voluntary agreements and programs in surveys and reports, and required Attorney General to report to Congress at least once every three months.

1952—Subsec. (f). Act June 30, 1952, added subsec. (f).

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-99 effective Oct. 20, 1990, see section 7 of Pub. L. 102-99, set out as a note under section 2071 of this Appendix.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Section 9 of Pub. L. 94-152, as amended by Pub. L. 94-153, Dec. 16, 1975, 89 Stat. 822; Pub. L. 94-220, Feb. 27,

1976, 90 Stat. 195, provided that: “This Act and the amendments made by it [enacting section 2158a of this Appendix, amending sections 2160, 2162, 2166, 2168, and 2169 of this Appendix, and enacting provisions set out as notes under this section and section 2061 of this Appendix] shall take effect at the close of November 30, 1975, except that the amendment made by section 3 [amending this section] shall take effect upon the one hundred and twentieth day beginning after the date of its enactment [Dec. 16, 1975].”

#### EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 9, 1955, effective as of the close of July 31, 1955, see section 11 of act Aug. 9, 1955, set out as a note under section 2062 of this Appendix.

#### TERMINATION DATE

Provision for termination of section on June 30, 1972, eliminated in amendment by Pub. L. 92-15, §2, May 18, 1971, 85 Stat. 38, of section 2166(a) of this Appendix.

#### DELEGATION OF FUNCTIONS

Functions conferred upon President under this section necessary to effect changes in composition of, or to take other action respecting voluntary agreements and programs relating to, small business production pools approved prior to July 31, 1953, delegated to Administrator of Small Business Administration by Ex. Ord. No. 10493, Oct. 14, 1953, 18 F.R. 6583, set out as a note under section 640 of Title 15, Commerce and Trade.

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.

For delegation of authority of President under subsecs. (c) and (d) of this section to heads of each Federal department or agency, see sections 501 and 502 of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29525, set out as a note under section 2153 of this Appendix.

#### CONTINUATION IN EFFECT OF EXISTING VOLUNTARY AGREEMENTS

Section 4 of Pub. L. 94-152 provided that:

“(a) Any voluntary agreement—

“(1) entered into under section 708 of the Defense Production Act of 1950 [this section] prior to the effective date of this Act [see Effective Date of 1975 Amendment note below], and

“(2) in effect immediately prior to such date may continue in effect (except as otherwise provided in section 708A(o) of the Defense Production Act of 1950, as amended by this Act) [former section 2158a(o) of this Appendix] and shall be carried out in accordance with such section 708, as amended by this Act, and such section 708A.

“(b) No provision of the Defense Production Act of 1950, as amended by this Act [see Short Title of 1975 Amendment note set out under section 2061 of this Appendix] shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this Act [Dec. 16, 1975], (2) outside the scope and purpose or not in compliance with the terms and conditions of the Defense Production Act of 1950 [see section 2061 of this Appendix], or (3) subsequent to the expiration or repeal of the Defense Production Act of 1950.

“(c) Effective on the date of enactment of this Act [Dec. 16, 1975], the immunity conferred by section 708 or 708A of the Defense Production Act of 1950, as amended by this Act [this section and section 2158a of this Appendix], shall not apply to any action taken or authorized to be taken by or under the Emergency Petroleum Allocation Act of 1973 [section 751 et seq. of Title 15, Commerce and Trade].”

## TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2166 of this Appendix; title 42 section 6272.

**§ 2158a. Repealed. Pub. L. 102-99, § 4, Aug. 17, 1991, 105 Stat. 487**

Section, act Sept. 8, 1950, ch. 932, title VII, §708A, as added Dec. 16, 1975, Pub. L. 94-152, §3, 89 Stat. 815, related to voluntary agreements and plans of action for international agreements for international allocation of petroleum products and related information systems.

## EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 20, 1990, see section 7 of Pub. L. 102-99, set out as an Effective Date of 1991 Amendment note under section 2071 of this Appendix.

**§ 2159. Public participation in rulemaking**

**(a) Exemption from Administrative Procedure Act**

Any regulation issued under this Act [sections 2061 to 2171 of this Appendix] shall not be subject to sections 551 through 559 of title 5, United States Code.

**(b) Opportunity for notice and comment**

**(1) In general**

Except as provided in subsection (c), any regulation issued under this Act [sections 2061 to 2171 of this Appendix] shall be published in the Federal Register and opportunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5, United States Code.

**(2) Waiver for temporary provisions**

The requirements of paragraph (1) may be waived, if—

(A) the officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable;

(B) the regulation is issued on a temporary basis; and

(C) the publication of such temporary regulation is accompanied by the finding made under subparagraph (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final.

**(3) Consideration of public comments**

All comments received during the public comment period specified pursuant to paragraph (1) or (2) shall be considered and the publication of the final regulation shall contain written responses to such comments.

**(c) Public comment on procurement regulations**

Any procurement policy, regulation, procedure, or form (including any amendment or modification of any such policy, regulation, procedure, or form) issued under this Act [sections 2061 to 2171 of this Appendix] shall be subject to section 22 of the Office of Federal Procurement Policy Act [41 U.S.C. 418b].

(Sept. 8, 1950, ch. 932, title VII, §709, 64 Stat. 819; Pub. L. 102-558, title I, §136(a), Oct. 28, 1992, 106 Stat. 4216.)

## REFERENCES IN TEXT

The Administrative Procedure Act, referred to in subsec. (a), was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof principally in subchapter II (§551 et seq.) of chapter 5, and chapter 7 (§701 et seq.), of Title 5, Government Organization and Employees.

## AMENDMENTS

1992—Pub. L. 102-558 amended section generally. Prior to amendment, section read as follows: “The functions exercised under this Act shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof. Any rule, regulation, or order, or amendment thereto, issued under authority of this Act shall be accompanied by a statement that in the formulation thereof there has been consultation with industry representatives, including trade association representatives, and that consideration has been given to their recommendations, or that special circumstances have rendered such consultation impracticable or contrary to the interest of the national defense, but no such rule, regulation, or order shall be invalid by reason of any subsequent finding by judicial or other authority that such a statement is inaccurate.”

## EFFECTIVE DATE OF 1992 AMENDMENT

Section 136(b) of Pub. L. 102-558 provided that: “Section 709 of the Defense Production Act of 1950 (50 U.S.C. App. 2159), as amended by subsection (a) of this section, shall not apply to any regulation issued in proposed or final form on or before the date of enactment of this Act [Oct. 28, 1992].”

## TERMINATION DATE

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

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2154 of this Appendix.

**§ 2160. Employment of personnel; appointment policies; nucleus executive reserve; use of confidential information by employees; printing and distribution of reports**

(a) Repealed. June 28, 1955, ch. 189, §12(c)(1), 69 Stat. 180.

(b)(1) The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act [sections 2061 to 2171 of this Appendix] and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation;

(2) The President shall be guided in the exercise of the authority provided in this subsection by the following policies:

(i) So far as possible, operations under the Act [said sections] shall be carried on by full-time, salaried employees of the Government, and appointments under this authority shall be to advisory or consultative positions only.

(ii) Appointments to positions other than advisory or consultative may be made under this authority only when the requirements of the position are such that the incumbent must personally possess outstanding experience and ability not obtainable on a full-time, salaried basis.

(iii) In the appointment of personnel and in assignment of their duties, the head of the department or agency involved shall take steps to avoid, to as great an extent as possible, any conflict between the governmental duties and the private interests of such personnel.

(3) Appointees under this subsection shall, when policy matters are involved, be limited to advising appropriate full-time salaried Government officials who are responsible for making policy decisions.

(4) Any person employed under this subsection is exempted, with respect to such employment, from the operation of sections 281, 283, 284, 434, and 1914<sup>1</sup> of title 18, United States Code, and section 190<sup>1</sup> of the Revised Statutes (5 U.S.C. 99), except that—

(i) exemption hereunder shall not extend to the negotiation or execution, by such appointee, of Government contracts with the private employer of such appointee or with any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest;

(ii) exemption hereunder shall not extend to making any recommendation or taking any action with respect to individual applications to the Government for relief or assistance, on appeal or otherwise, made by the private employer of the appointee or by any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest;

(iii) exemption hereunder shall not extend to the prosecution by the appointee, or participation by the appointee in any fashion in the prosecution, of any claims against the Government involving any matter concerning which the appointee had any responsibility during his employment under this subsection, during the period of such employment and the further period of two years after the termination of such employment; and

(iv) exemption hereunder shall not extend to the receipt or payment of salary in connection with the appointee's Government service hereunder from any source other than the private employer of the appointee at the time of his appointment hereunder.

(5) Appointments under this subsection shall be supported by written certification by the head of the employing department or agency—

(i) that the appointment is necessary and appropriate in order to carry out the provisions of the Act [sections 2061 to 2171 of this Appendix];

(ii) that the duties of the position to which the appointment is being made require outstanding experience and ability;

(iii) that the appointee has the outstanding experience and ability required by the position; and

(iv) that the department or agency head has been unable to obtain a person with the qualifications necessary for the position on a full-time, salaried basis.

(6) NOTICE AND FINANCIAL DISCLOSURE REQUIREMENTS.—

(A) PUBLIC NOTICE OF APPOINTMENT.—The head of any department or agency who appoints any individual under this subsection shall publish a notice of such appointment in the Federal Register, including the name of the appointee, the employing department or agency, the title of the appointee's position, and the name of the appointee's private employer.

(B) FINANCIAL DISCLOSURE.—Any individual appointed under this subsection who is not required to file a financial disclosure report pursuant to section 101 of the Ethics in Government Act of 1978, shall file a confidential financial disclosure report pursuant to section 107 of that Act with the appointing department or agency.

(7) At least once every three months the Director of the Office of Personnel Management shall survey appointments made under this subsection and shall report his or her findings to the President and make such recommendations as he or she may deem proper.

(8) Persons appointed under the authority of this subsection may be allowed reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(c) The President is authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act [sections 2061 to 2171 of this Appendix] to employ experts and consultants or organizations thereof as authorized by section 55a<sup>2</sup> of title 5 of the United States Code [5 U.S.C. 3109]. Individuals so employed may be compensated at rates not in excess of \$50 per diem and while away from their homes or regular places of business they may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence and other expenses while so employed. The President is authorized to provide by regulation for the exemption of such persons from the operation of sections 281, 283, 284, 434, and 1914<sup>2</sup> of title 18 of the United States Code and section 190<sup>2</sup> of the Revised Statutes (5 U.S.C. 99).

(d) The President may utilize the services of Federal, State, and local agencies and may uti-

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

<sup>2</sup> See References in Text note below.

lize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed; and he is authorized to provide by regulation for the exemption of persons whose services are utilized under this subsection from the operation of sections 281, 283, 284, 434, and 1914<sup>2</sup> of title 18 of the United States Code and section 190<sup>2</sup> of the Revised Statutes (5 U.S.C. 99).

(e) The President is further authorized to provide for the establishment and training of a nucleus executive reserve for employment in executive positions in Government during periods of emergency. Members of this executive reserve who are not full-time Government employees may be allowed transportation and per diem in lieu of subsistence, in accordance with title 5 of the United States Code (with respect to individuals serving without pay, while away from their homes or regular places of business), for the purpose of participating in the executive reserve training program. The President is authorized to provide by regulation for the exemption of such persons who are not full-time Government employees from the operation of sections 281, 283, 284, 434, and 1914<sup>2</sup> of title 18 of the United States Code and section 190<sup>2</sup> of the Revised Statutes (5 U.S.C. 99).

(f) Whoever, being an officer or employee of the United States or any department or agency thereof (including any Member of the Senate or House of Representatives), receives, by virtue of his office or employment, confidential information, and (1) uses such information in speculating directly or indirectly on any commodity exchange, or (2) discloses such information for the purpose of aiding any other person so to speculate, shall be fined not more than \$10,000 or imprisoned not more than one year, or both. As used in this section, the term "speculate" shall not include a legitimate hedging transaction, or a purchase or sale which is accompanied by actual delivery of the commodity.

(g) The President, when he deems such action necessary, may make provision for the printing and distribution of reports, in such number and in such manner as he deems appropriate, concerning the actions taken to carry out the objectives of this Act [sections 2061 to 2171 of this Appendix].

(Sept. 8, 1950, ch. 932, title VII, § 710, 64 Stat. 819; July 31, 1951, ch. 275, title I, § 109(f), 65 Stat. 139; June 28, 1955, ch. 189, § 12(c)(1), 69 Stat. 180; Aug. 9, 1955, ch. 655, §§ 7, 8, 69 Stat. 582, 583; Pub. L. 94-152, § 5, Dec. 16, 1975, 89 Stat. 820; Pub. L. 102-558, title I, § 143, Oct. 28, 1992, 106 Stat. 4217.)

#### ANNUAL SUBMISSION OF REPORTS

*Pub. L. 89-348, § 2(11), Nov. 8, 1965, 79 Stat. 1313, modified the provisions of subsection (b)(7) of this section to require annual instead of quarterly submission of the report to the Congress.*

#### REFERENCES IN TEXT

Sections 281 and 283 of title 18, referred to in subsecs. (b)(4), (c), (d), and (e), were repealed by Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126, except as they may apply to retired officers of the armed forces of the United States, and were supplanted by sections 203 and 205 of Title 18, Crimes and Criminal Procedure. For further

details, see Exemptions note set out under section 203 of Title 18.

Sections 284, 434, and 1914 of title 18, referred to in subsecs. (b)(4), (c), (d), and (e), were repealed by Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126, and were supplanted by sections 207, 208, and 209, respectively, of Title 18.

Section 190 of the Revised Statutes (5 U.S.C. 99), referred to in subsecs. (b)(4), (c), (d), and (e), was repealed by Pub. L. 87-849, § 3, Oct. 23, 1962, 76 Stat. 1126. See section 207 of Title 18.

Sections 101 and 107 of the Ethics in Governments Act of 1978, referred to in subsec. (b)(6)(B), are sections 101 and 107 of Pub. L. 95-521, which are set out in the Appendix to Title 5, Government Organization and Employees.

Section 55a of title 5, referred to in subsec. (c), which was based on section 15 of act Aug. 2, 1946, ch. 744, 60 Stat. 810, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as section 3109 of Title 5.

#### AMENDMENTS

1992—Subsec. (b)(6). Pub. L. 102-558, § 143(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The heads of the departments or agencies making appointments under this subsection shall file with the Division of the Federal Register for publication in the Federal Register a statement including the name of the appointee, the employing department or agency, the title of his position, and the name of his private employer, and the appointee shall file with such Division for publication in the Federal Register a statement listing the names of any corporations of which he is an officer or director or within sixty days preceding his appointment has been an officer or director, or in which he owns, or within sixty days preceding his appointment has owned, any stocks, bonds, or other financial interests, and the names of any partnerships in which he is, or was within sixty days preceding his appointment, a partner, and the names of any other businesses in which he owns, or within such sixty-day period has owned, any similar interest. At the end of each succeeding six-month period, the appointee shall file with such Division for publication in the Federal Register a statement showing any changes in such interests during such period."

Subsec. (b)(7). Pub. L. 102-558, § 143(b)(1), substituted "Director of the Office of Personnel Management" for "Chairman of the United States Civil Service Commission" and "his or her findings" for "his findings", struck out "and the Joint Committee on Defense Production" after "to the President", and substituted "he or she may" for "he may".

Subsec. (b)(8). Pub. L. 102-558, § 143(b)(2), substituted "reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code" for "transportation and not to exceed \$15 per diem in lieu of subsistence while away from their homes or regular places of business pursuant to such appointment".

1975—Subsec. (e). Pub. L. 94-152 substituted provisions authorizing per diem in lieu of subsistence in accordance with provisions of title 5 of the United States Code with respect to individuals serving without pay while away from their homes or regular places of business, for provisions authorizing \$15 per diem in lieu of subsistence.

1955—Subsec. (a). Act June 28, 1955, repealed subsec. (a) which authorized President to place positions and employ persons temporarily in grades 16, 17, and 18 of the General Schedule established by Classification Act of 1949.

Subsec. (b). Act Aug. 9, 1955, § 7, imposed additional restrictions on employment of persons without compensation by establishing guides to be used by President, requiring written certification, publication of statements, and a survey of appointments.

Subsecs. (e) to (g). Act Aug. 9, 1955, §8, added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1951—Subsec. (f). Act July 31, 1951, added subsec. (f).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-152 effective at close of Nov. 30, 1975, see section 9 of Pub. L. 94-152, as amended, set out as a note under section 2158 of this Appendix.

#### EFFECTIVE DATE OF 1955 AMENDMENTS

Amendment by act Aug. 9, 1955, effective as of close of July 31, 1955, see section 11 of act Aug. 9, 1955, set out as a note under section 2062 of this Appendix.

Amendment by act June 28, 1955, effective June 28, 1955, see section 13(b) of act June 28, 1955.

#### 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 under section 761 of Title 15, Commerce and Trade.

The head of each department or agency assigned functions under Ex. Ord. No. 12919 (relating to national defense industrial resources preparedness) delegated authority under subsecs. (b) and (c) of this section to employ persons of outstanding experience and ability without compensation and to employ experts, consultants, or organizations, with authority so delegated not to be redelegated, pursuant to section 602 of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29525, set out as a note under section 2153 of this Appendix.

#### EXECUTIVE ORDER No. 10182

Ex. Ord. No. 10182, Nov. 21, 1950, 15 F.R. 8013, as amended by Ex. Ord. No. 10205, Jan. 16, 1951, 16 F.R. 419, which provided for appointments and exemptions, was revoked by Ex. Ord. No. 10647, Nov. 28, 1955, 20 F.R. 8769, formerly set out below.

#### EXECUTIVE ORDER No. 10647

Ex. Ord. No. 10647, Nov. 28, 1955, 20 F.R. 8769, as amended by Ex. Ord. No. 11355, May 26, 1967, 32 F.R. 7803; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which delegated authority to make appointments, was revoked by section 904(a)(4) of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29533, set out as a note under section 2153 of this Appendix.

#### CROSS REFERENCES

Mutual security program, employment of persons of outstanding experience and ability for, see section 2386 of Title 22, Foreign Relations and Intercourse.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 2386, 2581.

### § 2161. Authorization of appropriations; availability of funds

#### (a) Authorization

Except as provided in subsection (b), there are hereby authorized to be appropriated such sums as may be necessary and appropriate for

the carrying out of the provisions and purposes of this Act [sections 2061 to 2171 of this Appendix] (including sections 302 and 303 [sections 2092 and 2093 of this Appendix], but excluding sections 305 and 306 [sections 2095 and 2096 of this Appendix]) by the President and such agencies as he may designate or create. Funds made available pursuant to this paragraph for the purposes of this Act [said sections] may be allocated or transferred for any of the purposes of this Act [said sections], with the approval of the Office of Management and Budget, to any agency designated to assist in carrying out this Act [said sections]. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available.

#### (b) Title III authorization

There are authorized to be appropriated for each of the fiscal years 1996, 1997, 1998, and 1999, such sums as may be necessary to carry out title III [sections 2091 to 2099a of this Appendix].

(Sept. 8, 1950, ch. 932, title VII, §711, 64 Stat. 820; Pub. L. 93-426, §3, Sept. 30, 1974, 88 Stat. 1167; Pub. L. 96-294, title I, §105(a), June 30, 1980, 94 Stat. 632; Pub. L. 98-265, §5, Apr. 17, 1984, 98 Stat. 151; Pub. L. 99-441, §3, Oct. 3, 1986, 100 Stat. 1117; Pub. L. 101-137, §9(b), Nov. 3, 1989, 103 Stat. 826; Pub. L. 102-99, §3, Aug. 17, 1991, 105 Stat. 487; Pub. L. 102-558, title I, §§144, 152, 161, Oct. 28, 1992, 106 Stat. 4218, 4219; Pub. L. 104-64, §3, Dec. 18, 1995, 109 Stat. 689; Pub. L. 105-261, div. A, title X, §1072(b), Oct. 17, 1998, 112 Stat. 2137.)

#### AMENDMENTS

1998—Subsec. (b). Pub. L. 105-261 substituted “1998, and 1999” for “and 1998”.

1995—Subsec. (a). Pub. L. 104-64, §3(1), struck out paragraph designation “(1)” and former par. (1) heading “In general” and in text substituted “Except as provided in subsection (b),” for “Except as provided in subsection (c),”.

Subsecs. (b) to (d). Pub. L. 104-64, §3(2), added subsec. (b) and struck out former subsec. (b) which authorized appropriations to carry out provisions of section 2095(k)(2) of this Appendix, former subsec. (c) which authorized appropriations for fiscal year 1991 to carry out provisions of sections 2091 to 2093 of this Appendix, and former subsec. (d) which authorized appropriations for fiscal years 1993, 1994, and 1995 to carry out sections 2091 to 2099a of this Appendix.

1992—Subsec. (a). Pub. L. 102-558, §152(2)(A), inserted heading.

Subsec. (a)(1). Pub. L. 102-558, §152(2)(A), (B), inserted par. heading, substituted “Except as provided in subsection (c),” for “Except as provided in paragraph (2) and paragraph (4)”, and struck out “and for payment of interest under subsection (b) of this section” after “sections 302 and 303”.

Pub. L. 102-558, §144, substituted “Office of Management and Budget” for “Bureau of the Budget”.

Subsec. (a)(2). Pub. L. 102-558, §152(2)(C), struck out par. (2) which read as follows:

“(A) There are hereby authorized to be appropriated without fiscal year limitation not to exceed \$3,000,000,000 to carry out the provisions of section 305 until the date on which the authority of the President under such section ceases to be effective in accordance with section 305(k)(1). Subject to subparagraphs (B) and (C), all such funds shall remain available until expended.

“(B) Such funds may be expended to carry out section 305 after such date only if such funds were obligated by the President before such date, or are required to be re-

tained as a reserve against a contingent obligation incurred before such date.

“(C) Any sums appropriated pursuant to this paragraph which have not been expended or obligated pursuant to subparagraph (B) as of the date determined under section 305(k)(1) or are not required to be retained as a reserve against a contingent obligation as specified in subparagraph (B), shall be transferred to the Energy Security Reserve and made available to the Secretary of the Treasury for the United States Synthetic Fuels Corporation pursuant to section 195 of the United States Synthetic Fuels Corporation Act of 1980.”

Subsec. (a)(3). Pub. L. 102-558, § 152(2)(D), redesignated par. (3) as subsec. (b). See below.

Subsec. (a)(4). Pub. L. 102-558, § 152(2)(E), redesignated subpar. (A) as subsec. (c) (see below) and struck out subpar. (B) which read as follows: “The aggregate amount of loans, guarantees, purchase agreements, and other actions under sections 301, 302, and 303 during fiscal years 1987, 1988, and 1989 may not exceed \$150,000,000.”

Subsec. (b). Pub. L. 102-558, § 152(1), (2)(D), redesignated par. (3) of subsec. (a) as subsec. (b), inserted heading, struck out “There are” before “hereby”, and struck out former subsec. (b) which read as follows: “Interest shall accrue on (1) the cumulative amount of disbursements to carry out the purposes of sections 302 and 303 (except for storage maintenance, and other operating and administrative expenses), plus any unpaid accrued interest, less the cumulative amount of any funds received on transactions entered into pursuant to sections 302 and 303 and any net losses incurred by an agency in carrying out its functions under sections 302 and 303 when the head of the agency determines that such net losses have occurred; and (2) the current market value of the inventory of materials procured under section 303 as of the first day of each fiscal year commencing with the fiscal year beginning July 1, 1975. At the close of each fiscal year there shall be deposited into the Treasury as miscellaneous receipts, from any amounts appropriated under this section, an amount which the Secretary of the Treasury determines necessary to provide for the payment of any interest accrued and unpaid under this subsection. The rate of interest shall be determined by the Secretary of the Treasury, taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States with one year remaining to maturity.”

Subsec. (c). Pub. L. 102-558, § 152(2)(E), redesignated subpar. (A) of par. (4) of subsec. (a) as subsec. (c) and inserted heading.

Subsec. (d). Pub. L. 102-558, § 161, added subsec. (d). 1991—Subsec. (a)(4). Pub. L. 102-99 amended par. (4) generally. Prior to amendment, par. (4) read as follows:

“(4)(A) There are authorized to be appropriated for fiscal year 1990, not to exceed \$50,000,000 to carry out the provisions of section 303.

“(B) The aggregate amount of loans, guarantees, purchase agreements, and other actions under sections 301, 302, and 303 during fiscal year 1990 may not exceed \$50,000,000.”

1989—Subsec. (a)(4). Pub. L. 101-137 amended par. (4) generally. Prior to amendment, par. (4) read as follows:

“(A) There are authorized to be appropriated for fiscal years 1987, 1988, and 1989 not to exceed \$150,000,000 to carry out the provisions of section 303, except that not more than \$30,000,000 is authorized to be appropriated for fiscal year 1987.

“(B) The aggregate amount of loans, guarantees, purchase agreements, and other actions under sections 301, 302, and 303 during fiscal years 1987, 1988, and 1989 may not exceed \$150,000,000.”

1986—Subsec. (a)(4). Pub. L. 99-441 amended par. (4) generally. Prior to amendment, par. (4) read as follows:

“(A) There are authorized to be appropriated to carry out the provisions of section 303 not to exceed \$100,000,000 for fiscal years 1985 and 1986, except that not more than \$25,000,000 is authorized to be appropriated for fiscal year 1985.

“(B) The aggregate amount of loans, guarantees, purchase agreements, and other actions under sections 301, 302, and 303 during fiscal years 1985 and 1986 may not exceed \$100,000,000.”

1984—Subsec. (a)(1), (4). Pub. L. 98-265 inserted “and paragraph (4)” after “paragraph (2)” in par. (1) and added par. (4).

1980—Subsec. (a). Pub. L. 96-294, § 105(a), designated existing provisions as par. (1), inserted exclusions of sections 305 and 306, reference to funds made available pursuant to this paragraph, and exception for par. (2), and added pars. (2) and (3).

1974—Pub. L. 93-426 designated existing provisions as subsec. (a), inserted reference to sections 302 and 303 of this Appendix, and added subsec. (b).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-99 effective Oct. 20, 1990, see section 7 of Pub. L. 102-99, set out as a note under section 2071 of this Appendix.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-294 effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as a note under section 2062 of this Appendix.

#### 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.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2094, 2095, 2166 of this Appendix.

### § 2162. Repealed. Pub. L. 102-558, title I, § 153, Oct. 28, 1992, 106 Stat. 4219

Section, acts Sept. 8, 1950, ch. 932, title VII, § 712, 64 Stat. 820; June 30, 1952, ch. 530, title I, § 119, 66 Stat. 306; Aug. 9, 1955, ch. 655, § 9, 69 Stat. 583; June 29, 1956, ch. 474, §§ 3, 5, 70 Stat. 408, 409; June 30, 1966, Pub. L. 89-482, § 2, 80 Stat. 235; July 1, 1968, Pub. L. 90-370, § 2, 82 Stat. 279; Dec. 16, 1975, Pub. L. 94-152, § 6, 89 Stat. 820, established a Joint Committee on Defense Production.

#### EFFECTIVE DATE OF REPEAL

Repeal deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

### § 2163. Territorial application of Act

The provisions of this Act [sections 2061 to 2171 of this Appendix] shall be applicable to the United States, its Territories and possessions, and the District of Columbia.

(Sept. 8, 1950, ch. 932, title VII, § 713, 64 Stat. 821.)

#### TERMINATION DATE

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



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2166 of this Appendix.

**§ 2163a. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 656**

Section, act Sept. 8, 1950, ch. 932, title VII, § 714, as added July 31, 1951, ch. 275, title I, § 110(a) 65 Stat. 139; amended June 30, 1952, ch. 530, title I, § 121(a) 66 Stat. 306; June 30, 1953, ch. 171, § 10, 67 Stat. 131, created Small Defense Plants Administration, and related generally to encouragement and aid to small-business concerns with respect to defense production. It terminated at close of July 31, 1953, by terms of section 2166(a) of this Appendix. For provisions relating to aid to small business, see section 631 et seq. of Title 15, Commerce and Trade.

## REVOLVING FUND CONTINUATION

Act July 16, 1953, ch. 204, § 1, 67 Stat. 176, provided in part that the revolving fund established under the Small Defense Plants Administration was to remain available through July 31, 1953, for payment of obligations and direct costs under contracts entered into during fiscal year 1953.

**§ 2164. Separability**

If any provision of this Act [sections 2061 to 2171 of this Appendix] or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act [said sections], and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Sept. 8, 1950, ch. 932, title VII, § 715, formerly § 714, 64 Stat. 821; renumbered § 715, July 31, 1951, ch. 275, title I, § 110(b), 65 Stat. 144.)

## TERMINATION DATE

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

**§ 2165. Repealed. Pub. L. 102-558, title I, § 154, Oct. 28, 1992, 106 Stat. 4219**

Section, acts Sept. 8, 1950, ch. 932, title VII, § 716, formerly § 715, 64 Stat. 821; renumbered § 716, July 31, 1951, ch. 275, title I, § 110(b), 65 Stat. 144, related to persons disqualified from employment and penalties.

## EFFECTIVE DATE OF REPEAL

Repeal deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

**§ 2166. Termination of Act**

(a) Title I [sections 2071 to 2078 of this Appendix] (except section 104),<sup>1</sup> title III [sections 2091 to 2099a of this Appendix], and title VII [sections 2151 to 2171 of this Appendix] (except sections 708 and 721 [sections 2158 and 2170 of this Appendix]), and all authority conferred thereunder, shall terminate at the close of September 30, 1999: *Provided*, That all authority hereby or hereafter extended under title III of this Act [sections 2091 to 2099 of this Appendix] shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts. Section 714 of this Act [section

2163a of this Appendix], and all authority conferred thereunder, shall terminate at the close of July 31, 1953. Section 104,<sup>1</sup> and title II [section 2081 of this Appendix], and title VI [sections 2131 to 2137 of this Appendix] of this Act, and all authority conferred thereunder, shall terminate at the close of June 30, 1953. Title IV [sections 2101 to 2112 of this Appendix] and V [sections 2121 to 2123 of this Appendix] of this Act, and all authority conferred thereunder, shall terminate at the close of April 30, 1953.

(b) Notwithstanding the foregoing—

(1) The Congress by concurrent resolution or the President by proclamation may terminate this Act [sections 2061 to 2171 of this Appendix] prior to the termination otherwise provided therefor.

(2) The Congress may also provide by concurrent resolution that any section of this Act [said sections] and all authority conferred thereunder shall terminate prior to the termination otherwise provided therefor.

(3) Any agency created under this Act [said sections] may be continued in existence for purposes of liquidation for not to exceed six months after the termination of the provision authorizing the creation of such agency.

(c) The termination of any section of this Act [sections 2061 to 2171 of this Appendix], or of any agency or corporation utilized under this Act [said sections], shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment or other obligation entered into pursuant to this Act [said sections] prior to the date of such termination, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this Act [said sections], or the taking of any action (including the making of new guarantees) deemed by a guaranteeing agency to be necessary to accomplish the orderly liquidation, adjustment or settlement of any loans guaranteed under this Act [said sections], including actions deemed necessary to avoid undue hardship to borrowers in reconverting to normal civilian production; and all of the authority granted to the President, guaranteeing agencies, and fiscal agents, under section 301 of this Act [section 2091 of this Appendix] shall be applicable to actions taken pursuant to the authority contained in this subsection.

Notwithstanding any other provision of this Act [sections 2061 to 2171 of this Appendix], the termination of title VI [sections 2132 to 2137 of this Appendix] or any section thereof shall not be construed as affecting any obligation, condition, liability, or restriction arising out of any agreement heretofore entered into pursuant to, or under the authority of, section 602 or section 605 of this Act [section 2132 or 2135 of this Appendix], or any issuance thereunder, by any person or corporation and the Federal Government or any agency thereof relating to the provision of housing for defense workers or military personnel in an area designated as a critical defense housing area pursuant to law.

(d) No action for the recovery of any cooperative payment made to a cooperative association by a Market Administrator under an invalid provision of a milk marketing order issued by

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

the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act of 1937 [7 U.S.C. 671 et seq.] shall be maintained unless such action is brought by producers specifically named as party plaintiffs to recover their respective share of such payments within ninety days after the date of enactment of the Defense Production Act Amendments of 1952 [June 30, 1952] with respect to any cause of action heretofore accrued and not otherwise barred, or within ninety days after accrual with respect to future payments, and unless each claimant shall allege and prove (1) that he objected at the hearing to the provisions of the order under which such payments were made and (2) that he either refused to accept payments computed with such deduction or accepted them under protest to either the Secretary or the Administrator. The district courts of the United States shall have exclusive original jurisdiction of all such actions regardless of the amount involved. This subsection shall not apply to funds held in escrow pursuant to court order. Notwithstanding any other provision of this Act [sections 2061 to 2171 of this Appendix], no termination date shall be applicable to this subsection.

(Sept. 8, 1950, ch. 932, title VII, § 717, formerly § 716, 64 Stat. 822; June 30, 1951, ch. 198, § 1, 65 Stat. 110; renumbered § 717, July 31, 1951, ch. 275, title I, §§ 110(b), 111, 65 Stat. 144; June 30, 1952, ch. 530, title I, §§ 120, 121(b), 66 Stat. 306; June 30, 1953, ch. 170, § 20, 67 Stat. 126; June 30, 1953, ch. 171, §§ 11, 12, 67 Stat. 131; June 30, 1955, ch. 251, § 5, 69 Stat. 225; Aug. 9, 1955, ch. 655, § 10, 69 Stat. 583; June 29, 1956, ch. 474, § 1, 70 Stat. 408; Pub. L. 85-471, June 28, 1958, 72 Stat. 241; Pub. L. 86-560, § 1, June 30, 1960, 74 Stat. 282; Pub. L. 87-505, June 28, 1962, 76 Stat. 112; Pub. L. 88-343, § 1, June 30, 1964, 78 Stat. 235; Pub. L. 89-482, § 1, June 30, 1966, 80 Stat. 235; Pub. L. 90-370, § 1, July 1, 1968, 82 Stat. 279; Pub. L. 91-300, June 30, 1970, 84 Stat. 367; Pub. L. 91-371, Aug. 1, 1970, 84 Stat. 694; Pub. L. 91-379, title I, § 101, Aug. 15, 1970, 84 Stat. 796; Pub. L. 92-15, § 2, May 18, 1971, 85 Stat. 38; Pub. L. 92-325, § 2, June 30, 1972, 86 Stat. 390; Pub. L. 93-323, June 30, 1974, 88 Stat. 280; Pub. L. 93-367, Aug. 7, 1974, 88 Stat. 419; Pub. L. 93-426, § 4, Sept. 30, 1974, 88 Stat. 1167; Pub. L. 94-42, § 1, June 28, 1975, 89 Stat. 232; Pub. L. 94-100, § 1, Oct. 1, 1975, 89 Stat. 483; Pub. L. 94-152, § 2, Dec. 16, 1975, 89 Stat. 810; Pub. L. 95-37, § 2, June 1, 1977, 91 Stat. 178; Pub. L. 96-77, Sept. 29, 1979, 93 Stat. 588; Pub. L. 96-188, Jan. 28, 1980, 94 Stat. 3; Pub. L. 96-225, Apr. 3, 1980, 94 Stat. 310; Pub. L. 96-250, May 26, 1980, 94 Stat. 371; Pub. L. 96-294, title I, § 105(b), June 30, 1980, 94 Stat. 633; Pub. L. 97-47, § 1, Sept. 30, 1981, 95 Stat. 954; Pub. L. 97-336, Oct. 15, 1982, 96 Stat. 1630; Pub. L. 98-12, Mar. 29, 1983, 97 Stat. 53; Pub. L. 98-181, title VII, § 703, Nov. 30, 1983, 97 Stat. 1267; Pub. L. 98-265, § 2, Apr. 17, 1984, 98 Stat. 149; Pub. L. 99-441, § 2, Oct. 3, 1986, 100 Stat. 1117; Pub. L. 101-137, § 9(a), Nov. 3, 1989, 103 Stat. 826; Pub. L. 101-351, § 1, Aug. 9, 1990, 104 Stat. 404; Pub. L. 101-407, § 1, Oct. 4, 1990, 104 Stat. 882; Pub. L. 101-411, § 1, Oct. 6, 1990, 104 Stat. 893; Pub. L. 102-99, §§ 2, 8, Aug. 17, 1991, 105 Stat. 487, 490; Pub. L. 102-193, § 1, Dec. 6, 1991, 105 Stat. 1593; Pub. L. 102-558, title I, § 162, Oct. 28, 1992, 106 Stat. 4219; Pub. L. 104-64, § 2, Dec. 18, 1995, 109 Stat. 689; Pub. L. 105-261, div. A, title X, § 1072(a), Oct. 17, 1998, 112 Stat. 2137.)

## REFERENCES IN TEXT

Section 104 of this Act, referred to in subsec. (a), was classified to section 2074 of this Appendix and terminated June 30, 1953, by terms of subsec. (a) of this section. A new section 104 was added by act Oct. 28, 1992, Pub. L. 102-558, title I, § 112, 106 Stat. 4202, and is classified to section 2074 of this Appendix.

The Agricultural Marketing Agreement Act of 1937, referred to in subsec. (d), is act June 3, 1937, ch. 296, 50 Stat. 246, as amended, which is classified principally to chapter 26A (§ 671 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 674 of Title 7 and Tables.

## AMENDMENTS

1998—Subsec. (a). Pub. L. 105-261 substituted “September 30, 1999” for “September 30, 1998”.

1995—Subsec. (a). Pub. L. 104-64, which directed substitution in first sentence of “Title I (except section 104), title III, and title VII (except sections 708 and 721), and all authority conferred thereunder, shall terminate at the close of September 30, 1998” for “Title I (except section 104), title III, and title VII (except sections 708, 714, 719, and 721) of this Act, and all authority conferred thereunder shall terminate at the close of September 30, 1995” was executed by making the substitution for text which included comma after “thereunder”, to reflect the probable intent of Congress.

1992—Subsec. (a). Pub. L. 102-558 substituted “September 30, 1995” for “March 1, 1992”.

1991—Subsec. (a). Pub. L. 102-193 substituted “March 1, 1992” for “September 30, 1991”.

Pub. L. 102-99 substituted “September 30, 1991” for “October 20, 1990” and “sections 708, 714, 719, and 721” for “sections 708, 714, and 719”.

1990—Subsec. (a). Pub. L. 101-411 extended termination date from Oct. 5, 1990, to Oct. 20, 1990.

Pub. L. 101-407 extended termination date from Sept. 30, 1990, to Oct. 5, 1990.

Pub. L. 101-351 extended termination date from Aug. 10, 1990, to Sept. 30, 1990.

1989—Subsec. (a). Pub. L. 101-137 extended termination date from Sept. 30, 1989, to Aug. 10, 1990.

1986—Subsec. (a). Pub. L. 99-441 extended termination date from Sept. 30, 1986, to Sept. 30, 1989.

1984—Subsec. (a). Pub. L. 98-265 extended termination date from Mar. 30, 1984, to Sept. 30, 1986.

1983—Subsec. (a). Pub. L. 98-181 extended termination date from Sept. 30, 1983, to Mar. 30, 1984.

Pub. L. 98-12 extended termination date from Mar. 31, 1983, to Sept. 30, 1983.

1982—Pub. L. 97-336 extended termination date from Sept. 30, 1982, to Mar. 31, 1983.

1981—Subsec. (a). Pub. L. 97-47 extended termination date from Sept. 30, 1981, to Sept. 30, 1982.

1980—Subsec. (a). Pub. L. 96-294 extended termination date from Aug. 27, 1981, to Sept. 30, 1981.

Pub. L. 96-250 extended termination date from May 27, 1980, to Aug. 27, 1980.

Pub. L. 96-225 extended termination date from Mar. 28, 1980, to May 27, 1980.

Pub. L. 96-188 extended termination date from Jan. 28, 1980, to Mar. 28, 1980.

1979—Subsec. (a). Pub. L. 96-77 extended termination date from Sept. 30, 1979, to Jan. 28, 1980.

1977—Subsec. (a). Pub. L. 95-37 extended termination date from Sept. 30, 1977, to Sept. 30, 1979.

1975—Subsec. (a). Pub. L. 94-152 extended termination date from Nov. 30, 1975, to Sept. 30, 1977, and inserted proviso that all authority now or subsequently extended under Title III of this Act [sections 2091 to 2094 of this Appendix] shall be effective for any fiscal year only to such extent and amounts as are provided for in advance in appropriation Acts.

Pub. L. 94-100 extended termination date from Sept. 30, 1975, to Nov. 30, 1975.

Pub. L. 94-42 extended termination date from June 30, 1975, to Sept. 30, 1975.

1974—Subsec. (a). Pub. L. 93-426 extended termination date from June 30, 1974, to June 30, 1975.

Pub. L. 93-367 extended termination date from July 30, 1974, to Sept. 30, 1974.

Pub. L. 93-323 extended termination date from June 30, 1974, to July 30, 1974.

1972—Subsec. (a). Pub. L. 92-325 substituted “June 30, 1972” for “June 30, 1972”.

1971—Subsec. (a). Pub. L. 92-15 inserted parenthetical reference to section “708”.

1970—Subsec. (a). Pub. L. 91-379 substituted “June 30, 1972” for “August 15, 1970” and “sections 714 and 719” for “section 714”.

Pub. L. 91-371 extended termination date from July 30, 1970, to Aug. 15, 1970.

Pub. L. 91-300 extended termination date from June 30, 1970, to July 30, 1970.

1968—Subsec. (a). Pub. L. 90-370 extended termination date from June 30, 1968, to June 30, 1970.

1966—Subsec. (a). Pub. L. 89-482 extended termination date from June 30, 1966, to June 30, 1968.

1964—Subsec. (a). Pub. L. 88-343 extended termination date from June 30, 1964, to June 30, 1966.

1962—Subsec. (a). Pub. L. 87-505 extended termination date from June 30, 1962, to June 30, 1964.

1960—Subsec. (a). Pub. L. 86-560 extended termination date from June 30, 1960, to June 30, 1962.

1958—Subsec. (a). Pub. L. 85-471 extended termination date from June 30, 1958, to June 30, 1960.

1956—Subsec. (a). Act June 29, 1956, extended termination date from June 30, 1956, to June 30, 1958.

1955—Subsec. (a). Act Aug. 9, 1955, extended termination date from July 31, 1955, to June 30, 1956.

Act June 30, 1955, extended termination date from June 30, 1955, to July 31, 1955.

1953—Subsec. (a). Act June 30, 1953, ch. 171, § 11, changed termination dates as follows: (1) Title I except section 2074 of this Appendix, from June 30, 1953, to June 30, 1955; (2) Title III, from June 30, 1953, to June 30, 1955; Title VII (except section 2163a of this Appendix), from June 30, 1953 to June 30, 1955.

Subsec. (c). Act June 30, 1953, ch. 171, § 12, inserted “or the taking of any action (including the making of new guarantees) deemed by a guaranteeing agency to be necessary to accomplish the orderly liquidation, adjustment or settlement of any loans guaranteed under this Act, including actions deemed necessary to avoid undue hardship to borrowers in reconverting to normal civilian production; and all of the authority granted to the President, guaranteeing agencies, and fiscal agents, under section 301 of this Act shall be applicable to actions taken pursuant to the authority contained in this subsection”.

Act June 30, 1953, ch. 170, added second par.

1952—Subsec. (a). Act June 30, 1952, § 121(b), extended termination dates from Apr. 30, 1952, to Apr. 30, 1953, and from June 30, 1952, to June 30, 1953.

Subsec. (d). Act June 30, 1952, § 120, added subsec. (d).

1951—Subsec. (a). Acts July 31, 1951, § 111, and June 30, 1951, Act July 31, 1951, struck out subsec. (a) relating to termination of certain titles of act Sept. 8, 1950, and substituted present subsec. (a). Act June 30, 1951, extended termination date from June 30, 1951, to July 31, 1951.

Subsec. (b). Act July 31, 1951, redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to termination date of certain titles of act Sept. 8, 1950. Former subsec. (b) was amended by act June 30, 1951, to extend termination date from June 30, 1951, to July 31, 1951.

Subsecs. (c), (d). Act July 31, 1951, § 111, redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### EFFECTIVE DATE OF 1991 AMENDMENTS

Section 2 of Pub. L. 102-193 provided that: “This Act [amending this section] shall take effect on September 30, 1991.”

Amendment by Pub. L. 102-99 effective Oct. 20, 1990, see section 7 of Pub. L. 102-99, set out as a note under section 2071 of this Appendix.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-294 effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as a note under section 2062 of this Appendix.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-152 effective at close of Nov. 30, 1975, see section 9 of Pub. L. 94-152, as amended, set out as a note under section 2158 of this Appendix.

#### EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 9, 1955, effective as of close of July 31, 1955, see section 11 of act Aug. 9, 1955, set out as a note under section 2062 of this Appendix.

#### CROSS REFERENCES

Effect of termination of act on actions or prosecutions based on rights or liabilities arising prior to termination, see section 2156 of this Appendix.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2095, 2096 of this Appendix.

#### § 2167. Repealed. Pub. L. 102-558, title I, § 155, Oct. 28, 1992, 106 Stat. 4219

Section, act Sept. 8, 1950, ch. 932, title VII, § 718, as added July 1, 1968, Pub. L. 90-370, § 3, 82 Stat. 279, authorized a feasibility study of application of uniform cost accounting standards to defense procurement contracts.

#### EFFECTIVE DATE OF REPEAL

Repeal deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

#### § 2168. Repealed. Pub. L. 100-679, § 5(b), Nov. 17, 1988, 102 Stat. 4063

Section, act Sept. 8, 1950, ch. 932, title VII, § 719, as added Aug. 15, 1970, Pub. L. 91-379, title I, § 103, 84 Stat. 796; amended Dec. 16, 1975, Pub. L. 94-152, § 7, 89 Stat. 820; Nov. 8, 1985, Pub. L. 99-145, title IX, § 934(b), 99 Stat. 700; Nov. 14, 1986, Pub. L. 99-661, div. A, title XIII, § 1342(f), 100 Stat. 3991, related to formation, functions, appointment and compensation of staff, etc., of Cost Accounting Standards Board. See section 422 of Title 41, Public Contracts.

#### § 2169. Repealed. Pub. L. 102-558, title I, § 156, Oct. 28, 1992, 106 Stat. 4219

Section, act Sept. 8, 1950, ch. 932, title VII, § 720, as added Sept. 30, 1974, Pub. L. 93-426, § 5, 88 Stat. 1167; amended Mar. 21, 1975, Pub. L. 94-9, 89 Stat. 15; Aug. 5, 1975, Pub. L. 94-72, 89 Stat. 399; Dec. 16, 1975, Pub. L. 94-152, § 8, 89 Stat. 820, established a National Commission on Supplies and Shortages.

#### EFFECTIVE DATE OF REPEAL

Repeal deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

#### § 2170. Authority to review certain mergers, acquisitions, and takeovers

##### (a) Investigations

The President or the President's designee may make an investigation to determine the effects

on national security of mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of this section [Aug. 23, 1988] by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. If it is determined that an investigation should be undertaken, it shall commence no later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover as prescribed by regulations promulgated pursuant to this section. Such investigation shall be completed no later than 45 days after such determination.

**(b) Mandatory investigations**

The President or the President's designee shall make an investigation, as described in subsection (a), in any instance in which an entity controlled by or acting on behalf of a foreign government seeks to engage in any merger, acquisition, or takeover which could result in control of a person engaged in interstate commerce in the United States that could affect the national security of the United States. Such investigation shall—

(1) commence not later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover, as prescribed by regulations promulgated pursuant to this section; and

(2) shall be completed not later than 45 days after its commencement.

**(c) Confidentiality of information**

Any information or documentary material filed with the President or the President's designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

**(d) Action by the President**

Subject to subsection (d),<sup>1</sup> the President may take such action for such time as the President considers appropriate to suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce in the United States proposed or pending on or after the date of enactment of this section [Aug. 23, 1988] by or with foreign persons so that such control will not threaten to impair the national security. The President shall announce the decision to take action pursuant to this subsection not later than 15 days after the investigation described in subsection (a) is completed. The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this section.

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

**(e) Findings of the President**

The President may exercise the authority conferred by subsection (c)<sup>1</sup> only if the President finds that—

(1) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security, and

(2) provisions of law, other than this section and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The provisions of subsection (d)<sup>1</sup> of this section shall not be subject to judicial review.

**(f) Factors to be considered**

For purposes of this section, the President or the President's designee may, taking into account the requirements of national security, consider among other factors—

(1) domestic production needed for projected national defense requirements,

(2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services,

(3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security,

(4) the potential effects of the proposed or pending transaction on sales of military goods, equipment, or technology to any country—

(A) identified by the Secretary of State—

(i) under section 6(j) of the Export Administration Act of 1979 [section 2405(j) of this Appendix], as a country that supports terrorism;

(ii) under section 6(l) of the Export Administration Act of 1979 [section 2405(l) of this Appendix], as a country of concern regarding missile proliferation; or

(iii) under section 6(m) of the Export Administration Act of 1979 [section 2405(m) of this Appendix], as a country of concern regarding the proliferation of chemical and biological weapons; or

(B) listed under section 309(c) of the Nuclear Non-Proliferation Act of 1978 [42 U.S.C. 2139a(c)] on the "Nuclear Non-Proliferation-Special Country List" (15 C.F.R. Part 778, Supplement No. 4) or any successor list; and

(5) the potential effects of the proposed or pending transaction on United States international technological leadership in areas affecting United States national security.

**(g) Report to the Congress**

The President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the President's determination of whether or not to take action under subsection (d), including a detailed explanation of the findings made under

subsection (e) and the factors considered under subsection (f). Such report shall be consistent with the requirements of subsection (c) of this Act.<sup>2</sup>

#### (h) Regulations

The President shall direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

#### (i) Effect on other law

Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.

#### (j) Technology risk assessments

In any case in which an assessment of the risk of diversion of defense critical technology is performed by a designee of the President, a copy of such assessment shall be provided to any other designee of the President responsible for reviewing or investigating a merger, acquisition, or takeover under this section.

#### (k) Quadrennial report

##### (1) In general

In order to assist the Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall complete and furnish to the Congress, not later than 1 year after the date of enactment of this section<sup>3</sup> and upon the expiration of every 4 years thereafter, a report which—

(A) evaluates whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer; and

(B) evaluates whether there are industrial espionage activities directed or directly assisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies.

##### (2) “Critical technologies” defined

For the purposes of this subsection, the term “critical technologies” means technologies identified under title VI of the National Science and Technology Policy, Organization, and Priorities Act of 1976 [42 U.S.C. 6681 *et seq.*] or other critical technology, critical components, or critical technology items essential to national defense identified pursuant to this section.

##### (3) Release of unclassified study

The report required by this subsection may be classified. An unclassified version of the report shall be made available to the public.

(Sept. 8, 1950, ch. 932, title VII, § 721, as added Pub. L. 100-418, title V, § 5021, Aug. 23, 1988, 102

Stat. 1425; amended Pub. L. 102-484, div. A, title VIII, § 837(a)-(c), (e), Oct. 23, 1992, 106 Stat. 2463-2465; Pub. L. 102-558, title I, § 163, Oct. 28, 1992, 106 Stat. 4219; Pub. L. 103-359, title VIII, § 809(d), Oct. 14, 1994, 108 Stat. 3454.)

#### REFERENCES IN TEXT

Subsections (c) and (d), referred to in subssecs. (d) and (e), were redesignated subssecs. (d) and (e), respectively, by Pub. L. 102-484. See 1992 Amendment note below.

The International Emergency Economic Powers Act, referred to in subsec. (e)(2), is title II of Pub. L. 95-223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 *et seq.*) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The date of enactment of this section, referred to in subsec. (k)(1), probably means the date of enactment of Pub. L. 102-558, which enacted subsec. (k) of this section and was approved Oct. 28, 1992.

The National Science and Technology Policy, Organization, and Priorities Act of 1976, referred to in subsec. (k)(2), is Pub. L. 94-282, May 11, 1976, 90 Stat. 459, as amended. Title VI of the Act is classified generally to subchapter VI (§6681 *et seq.*) of chapter 79 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6601 of Title 42 and Tables.

#### AMENDMENTS

1994—Subsec. (k)(1)(B), Pub. L. 103-359 inserted “or directly assisted” after “directed”.

1992—Subsecs. (b) to (e), Pub. L. 102-484, § 837(a), added subsec. (b) and redesignated former subssecs. (b) to (d) as (c) to (e), respectively. Former subsec. (e) redesignated (f).

Subsec. (f), Pub. L. 102-484, § 837(a)(1), (b), redesignated subsec. (e) as (f) and added pars. (4) and (5). Former subsec. (f) redesignated (g).

Subsec. (g), Pub. L. 102-484, § 837(c), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “If the President determines to take action under subsection (c), the President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the action which the President intends to take, including a detailed explanation of the findings made under subsection (d).”

Pub. L. 102-484, § 837(a)(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsecs. (h), (i), Pub. L. 102-484, § 837(a)(1), redesignated subssecs. (g) and (h) as (h) and (i), respectively.

Subsec. (j), Pub. L. 102-484, § 837(e), added subsec. (j).

Subsec. (k), Pub. L. 102-558 added subsec. (k).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### INTERIM DIRECTIVE REGARDING DISPOSITION OF CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

Memorandum of the President of the United States, Oct. 26, 1988, 53 F.R. 43999, provided:

Memorandum for the Secretary of the Treasury

By virtue of the authority vested in me by the Constitution and statutes of the United States, including without limitation Section 301 of Title 3 of the United States Code, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, August 23, 1988) (the “Act”) [see Tables for classification], it is ordered as follows:

Pending the issuance of an Executive order to implement the Act, the Secretary of the Treasury is hereby designated and empowered to perform the following-de-

<sup>2</sup> So in original. Probably should be “section.”

<sup>3</sup> See References in Text note below.

scribed functions of the President: The authority vested in the President by Section 721 of the Defense Production Act of 1950, as amended [this section], relative to mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of the Act [Aug. 23, 1988] by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States.

The Secretary of the Treasury shall consult with the Committee on Foreign Investment in the United States, established pursuant to Executive Order No. 11858 [15 U.S.C. 78b note] and chaired by the representative of the Secretary of the Treasury, to take such actions or make such recommendations as requested by the Secretary of the Treasury.

The delegation provided herein shall terminate, and this interim directive shall be without any further effect, except as may be provided in the Executive order implementing the Act, upon the effective date of such order.

This interim directive shall be published in the Federal Register.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2166, 2170a of this Appendix; title 10 section 2537; title 22 section 3103.

**§ 2170a. Prohibition on purchase of United States defense contractors by entities controlled by foreign governments**

**(a) In general**

No entity controlled by a foreign government may merge with, acquire, or take over a company engaged in interstate commerce in the United States that—

(1) is performing a Department of Defense contract, or a Department of Energy contract under a national security program, that cannot be performed satisfactorily unless that company is given access to information in a proscribed category of information; or

(2) during the previous fiscal year, was awarded—

(A) Department of Defense prime contracts in an aggregate amount in excess of \$500,000,000; or

(B) Department of Energy prime contracts under national security programs in an aggregate amount in excess of \$500,000,000.

**(b) Inapplicability to certain cases**

The limitation in subsection (a) shall not apply if a merger, acquisition, or takeover is not suspended or prohibited pursuant to section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170).

**(c) Definitions**

In this section:

(1) The term “entity controlled by a foreign government” includes—

(A) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and

(B) any individual acting on behalf of a foreign government,

as determined by the President.

(2) The term “proscribed category of information” means a category of information that—

(A) with respect to Department of Defense contracts—

(i) includes special access information;

(ii) is determined by the Secretary of Defense to include information the disclosure of which to an entity controlled by a foreign government is not in the national security interests of the United States; and

(iii) is defined in regulations prescribed by the Secretary of Defense for the purposes of this section; and

(B) with respect to Department of Energy contracts—

(i) is determined by the Secretary of Energy to include information described in subparagraph (A)(ii); and

(ii) is defined in regulations prescribed by the Secretary of Energy for the purposes of this section.

(Pub. L. 102-484, div. A, title VIII, §835, Oct. 23, 1992, 106 Stat. 2461.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1993, and not as part of the Defense Production Act of 1950 which comprises sections 2061 to 2171 of this Appendix.

**§ 2170b. Reports on foreign industrial espionage**

**(a) In general**

**(1) Submission and contents**

In order to assist Congress in its oversight functions with respect to this Act and to improve the awareness of United States industry of foreign industrial espionage and the ability of such industry to protect against such espionage, the President shall submit to Congress a report that describes, as of the time of the report, the following:

(A) The respective policy functions and operational roles of the agencies of the executive branch of the Federal Government in identifying and countering threats to United States industry of foreign industrial espionage, including the manner in which such functions and roles are coordinated.

(B) The means by which the Federal Government communicates information on such threats, and on methods to protect against such threats, to United States industry in general and to United States companies known to be targets of foreign industrial espionage.

(C) The specific measures that are being or could be undertaken in order to improve the activities referred to in subparagraphs (A) and (B), including proposals for any modifications of law necessary to facilitate the undertaking of such activities.

(D) The threat to United States industry of foreign industrial espionage and any trends in that threat, including—

(i) the number and identity of the foreign governments conducting foreign industrial espionage;

(ii) the industrial sectors and types of information and technology targeted by such espionage; and

(iii) the methods used to conduct such espionage.

**(2) Date of submission**

The President shall submit the report required under this subsection not later than six

months after the date of the enactment of this Act [Oct. 14, 1994].

**(b) Annual update**

Not later than one year after the date referred to in paragraph (2) of subsection (a), and on the expiration of each year thereafter, the President shall submit to Congress a report updating the information referred to in paragraph (1)(D) of that subsection.

**(c) Form of reports**

To the maximum extent practicable, the reports referred to in subsections (a) and (b) shall be submitted in an unclassified form, but may be accompanied by a classified appendix.

**(d) Omitted**

**(e) Definition**

For the purposes of this section, “foreign industrial espionage” means industrial espionage conducted by a foreign government or by a foreign company with direct assistance of a foreign government against a private United States company and aimed at obtaining commercial secrets.

(Pub. L. 103-359, title VIII, § 809, Oct. 14, 1994, 108 Stat. 3454.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), is Pub. L. 103-359, Oct. 14, 1994, 108 Stat. 3423, known as the Intelligence Authorization Act for Fiscal Year 1995. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of section 809 of Pub. L. 103-359. Subsec. (d) of section 809 of Pub. L. 103-359 amended section 2170 of this Appendix.

Section was enacted as part of the Counterintelligence and Security Enhancements Act of 1994 and also as part of the Intelligence Authorization Act for Fiscal Year 1995, and not as part of the Defense Production Act of 1950 which comprises sections 2061 to 2171 of this Appendix.

**§ 2171. Defense industrial base information system**

**(a) Establishment required**

**(1) In general**

The President, acting through the Secretary of Defense and the heads of such other Federal agencies as the President may determine to be appropriate, shall provide for the establishment of an information system on the domestic defense industrial base which—

(A) meets the requirements of this section; and

(B) includes a systematic continuous procedure, to collect and analyze information necessary to evaluate—

(i) the adequacy of domestic industrial capacity to furnish critical components and critical technology items essential to the national security of the United States;

(ii) dependence on foreign sources for critical components and critical technology items essential to defense production; and

(iii) the reliability of foreign sources for critical components and critical technology items.

**(2) Incorporation of DINET**

The Defense Information Network (or DINET), as established and maintained by the Secretary of Defense on the date of enactment of the Defense Production Act Amendments of 1992 [Oct. 28, 1992], shall be incorporated into the system established pursuant to paragraph (1).

**(3) Use of information**

Information collected and analyzed under the procedure established pursuant to paragraph (1) shall constitute a basis for making any determination to exercise any authority under this Act [sections 2061 to 2171 of this Appendix] and a procedure for using such information shall be integrated into the decision-making process with regard to the exercise of any such authority.

**(b) Sources of information**

**(1) Foreign dependence**

**(A) Scope of information review**

The procedure established to meet the requirement of subsection (a)(1)(B)(ii) shall address defense production with respect to the operations of prime contractors and at least the first 2 tiers of subcontractors, or at lower tiers if a critical component is identified at such lower tier.

**(B) Use of existing data collection and review capabilities**

To the extent feasible and appropriate, the President shall build upon existing methods of data collection and analysis and shall integrate information available from intelligence agencies with respect to industrial and technological conditions in foreign countries.

**(C) Initial emphasis on priority lists**

In establishing the procedure referred to in subparagraph (A), the Secretary may place initial emphasis on the production of critical components and critical technology items.

**(2) Production base analysis**

**(A) Comprehensive review**

The analysis of the production base for any major system acquisition included in the information system maintained pursuant to subsection (a) shall, in addition to any information and analyses the President may require—

(i) include a review of all subcontractors and suppliers, beginning with any raw material, special alloy, or composite material involved in the production of a completed system;

(ii) identify each contractor and subcontractor (or supplier) at each level of production for such major system acquisition which represents a potential for delaying or preventing the system’s production and acquisition, including the identity of each contractor or subcontractor whose contract qualifies as a foreign source or sole source contract and any supplier which is a foreign source or sole

source for any item required in the production, including critical components; and

(iii) include information to permit appropriate management of accelerated or surge production.

**(B) Initial requirement for study of production bases for not more than 6 major weapon systems**

In establishing the information system under subsection (a), the President, acting through the Secretary of Defense, shall require an analysis of the production base for not more than 2 weapons of each military department which are major systems (as defined in section 2302(5) of title 10, United States Code). Each such analysis shall identify the critical components of each system.

**(3) Consultation regarding the census of manufacturers**

**(A) In general**

The Secretary of Commerce, acting through the Bureau of the Census, shall consult with the Secretary of Defense and the Director of the Federal Emergency Management Agency to improve the usefulness of information derived from the Census of Manufacturers in carrying out this section.

**(B) Issues to be addressed**

The consultation required under subparagraph (A) shall address improvements in the level of detail, timeliness, and availability of input and output analyses derived from the Census of Manufacturers necessary to carry out this section.

**(c) Strategic plan for developing comprehensive system**

**(1) Plan required**

Not later than December 31, 1993, the President shall provide for the establishment of and report to the Congress on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components and critical technology items.

**(2) Assessment of certain procedures**

In establishing the plan pursuant to paragraph (1), the President shall assess the performance and cost-effectiveness of procedures implemented under subsection (b), and shall seek to build upon such procedures, as appropriate.

**(d) Capabilities of system**

**(1) In general**

In connection with the establishment of the information system under subsection (a), the President shall direct the Secretary of Defense, the Secretary of Commerce, and the heads of such other Federal agencies as the President may determine to be appropriate—

(A) to consult with each other and provide such information, assistance, and cooperation as may be necessary to establish and maintain the information system required by this section in a manner which allows the coordinated and efficient entry of information on the domestic defense industrial base

into, and the withdrawal, subject to the protection of proprietary data, of information on the domestic defense industrial base from the system on an on-line interactive basis by the Department of Defense;

(B) to assure access to the information on the system, as appropriate, for all participating Federal agencies, including each military department;

(C) to coordinate standards, definitions, and specifications for information on defense production, which is collected by the Department of Defense and the military departments so that such information can be used by any Federal agency or department, as the President determines to be appropriate; and

(D) to assure that the information in the system is updated, as appropriate, with the active assistance of the private sector.

**(2) Task force on military-civilian participation**

Upon the establishment of the information system under subsection (a), the President shall convene a task force consisting of the Secretary of Defense, the Secretary of Commerce, the Secretary of each military department, and the heads of such other Federal agencies and departments as the President may determine to be appropriate to establish guidelines and procedures to ensure that all Federal agencies and departments which acquire information with respect to the domestic defense industrial base are fully participating in the system, unless the President determines that all appropriate Federal agencies and departments, including each military department, are voluntarily providing information which is necessary for the system to carry out the purposes of this Act [sections 2061 to 2171 of this Appendix] and chapter 148 of title 10, United States Code.

**(e) Report on subcontractor and supplier base**

**(1) Report required**

The President shall issue a report (in accordance with paragraph (4))<sup>1</sup> which includes—

(A) a list of critical components, technologies, and technology items for which there is found to be inadequate domestic industrial capacity or capability; and

(B) an assessment of those subsectors of the economy of the United States which—

(i) support production of any component, technology, or technology item listed pursuant to subparagraph (A); or

(ii) have been identified as being critical to the development and production of components required for the production of weapons, weapon systems, and other military equipment essential to the national defense.

**(2) Matters to be considered**

The assessment made under paragraph (1)(B) shall include consideration of—

(A) the capacity of domestic sources, especially commercial firms, to fulfill peacetime requirements and graduated mobilization re-

<sup>1</sup>So in original. Probably should be followed by a closing parenthesis.



quirements for various items of supply and services;

(B) any trend relating to the capabilities of domestic sources to meet such peacetime and mobilization requirements;

(C) the extent to which the production or acquisition of various items of military material is dependent on foreign sources; and

(D) any reason for the decline of the capabilities of selected sectors of the United States economy necessary to meet peacetime and mobilization requirements, including—

- (i) stability of defense requirements;
- (ii) acquisition policies;
- (iii) vertical integration of various segments of the industrial base;
- (iv) superiority of foreign technology and production efficiencies;
- (v) foreign government support of non-domestic sources; and
- (vi) offset arrangements.

### (3) Policy recommendations

The report required by paragraph (1) may provide specific policy recommendations to correct deficiencies identified in the assessment, which would help to strengthen domestic sources.

### (4) Time for issuance

The report required by paragraph (1) shall be issued not later than July 1 of each even-numbered year which begins after 1992.

### (5) Release of unclassified report

The report required by this subsection may be classified. An unclassified version of the report shall be made available to the public.

(Sept. 8, 1950, ch. 932, title VII, § 722, as added Pub. L. 102-558, title I, § 135, Oct. 28, 1992, 106 Stat. 4212.)

#### EFFECTIVE DATE

Section deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

#### TERMINATION DATE

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

## DOMESTIC MINERALS PROGRAM EXTENSION

ACT AUG. 7, 1953, CH. 339, 67 STAT. 417

Sec.

- 2181. Congressional declaration of policy.
- 2182. Extension of termination dates of mineral purchase programs.
- 2183. Quarterly ore reports to purchase program producers.

### § 2181. Congressional declaration of policy

It is recognized that the continued dependence on overseas sources of supply for strategic or critical minerals and metals during periods of threatening world conflict or of political instability within those nations controlling the sources of supply of such materials gravely endangers the present and future economy and security of the United States. It is therefore de-

clared to be the policy of the Congress that each department and agency of the Federal Government charged with responsibilities concerning the discovery, development, production, and acquisition of strategic or critical minerals and metals shall undertake to decrease further and to eliminate where possible the dependency of the United States on overseas sources of supply of each such material.

(Aug. 7, 1953, ch. 339, § 2, 67 Stat. 417.)

#### SHORT TITLE

Section 1 of act Aug. 7, 1953, provided: "That this Act [enacting sections 2181 to 2183 of this Appendix] may be cited as the 'Domestic Minerals Program Extension Act of 1953'."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2182 of this Appendix.

### § 2182. Extension of termination dates of mineral purchase programs

In accordance with the declaration of policy set forth in section 2 of this Act [section 2181 of this Appendix], the termination dates of all purchase programs designed to stimulate the domestic production of tungsten, manganese, chromite, mica, asbestos, beryl, and columbium-tantalum-bearing ores and concentrates and established by regulations issued pursuant to the Defense Production Act of 1950, as amended [sections 2061 to 2171 of this Appendix], shall be extended an additional two years: *Provided*, That this section is not intended and shall not be construed to limit or restrict the regulatory agencies from extending the termination dates of these programs beyond the two-year extension periods provided by this section or from increasing the quantity of materials that may be delivered and accepted under these programs as permitted by existing statutory authority: *Provided further*, That the extended termination date provided by this section for the columbium-tantalum purchase program shall not apply to the purchase of columbium-tantalum-bearing ores and concentrates of foreign origin.

(Aug. 7, 1953, ch. 339, § 3, 67 Stat. 417.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2183 of this Appendix.

### § 2183. Quarterly ore reports to purchase program producers

In order that those persons who produce or who plan to produce under purchase programs established pursuant to Public Law 774 (Eighty-first Congress) [section 2061 to 2171 of this Appendix] and Public Law 96 (Eighty-second Congress) may be in position to plan their investment and production with due regard to requirements, the responsible agencies controlling such purchase programs are directed to publish at the end of each calendar quarter the amounts of each of the ores and concentrates referred to in section 3 [section 2182 of this Appendix] purchased in that quarter and the total amounts of each which have been purchased under the program.