

TERMINATION OF SECTION

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

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), was in the original “this Act”, meaning act Sept. 8, 1950, ch. 932, 64 Stat. 798, known as the Defense Production Act of 1950, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 4501 of this title and Tables.

CODIFICATION

Section was formerly classified to section 2078 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

Statutory Notes and Related Subsidiaries

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 4502 of this title.

Executive Documents

DELEGATION OF FUNCTIONS

Functions of the President under this chapter 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.

SUBCHAPTER II—EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

Editorial Notes

CODIFICATION

Title III of the Defense Production Act of 1950, comprising this subchapter, was originally enacted as part of act Sept. 8, 1950, ch. 932, 64 Stat. 798, and amended by acts June 2, 1951, ch. 121, 65 Stat. 52; July 31, 1951, ch. 275, 65 Stat. 131; June 30, 1952, ch. 530, 66 Stat. 296; June 30, 1953, ch. 171, 67 Stat. 129; Aug. 9, 1955, ch. 655, 69 Stat. 580; June 29, 1956, ch. 474, 70 Stat. 408; Pub. L. 86-560, June 30, 1960, 74 Stat. 282; Pub. L. 88-343, June 30, 1964, 78 Stat. 235; Pub. L. 91-379, Aug. 15, 1970, 84 Stat. 796; Pub. L. 92-325, June 30, 1972, 86 Stat. 390; Pub. L. 93-155, Nov. 16, 1973, 87 Stat. 605; Pub. L. 93-426, Sept. 30, 1974, 88 Stat. 1166; Pub. L. 94-273, Apr. 21, 1976, 90 Stat. 375; Pub. L. 96-41, July 30, 1979, 93 Stat. 319; Pub. L. 96-294, June 30, 1980, 94 Stat. 611; Pub. L. 98-265, Apr. 17, 1984, 98 Stat. 149; Pub. L. 99-441, Oct. 3, 1986, 100 Stat. 1117; Pub. L. 102-558, Oct. 28, 1992, 106 Stat. 4198; Pub. L. 107-47, Oct. 5, 2001, 115 Stat. 260; Pub. L. 107-314, Dec. 2, 2002, 116 Stat. 2458. Title III is shown here, however, as having been added by Pub. L. 111-67, §7, Sept. 30, 2009, 123 Stat. 2010, without reference to the intervening amendments because of the extensive revision of the title’s provisions by Pub. L. 111-67.

§ 4531. Presidential authorization for the national defense**(a) Expediting production and deliveries or services****(1) Authorized activities**

To reduce current or projected shortfalls of industrial resources, critical technology items, or essential materials needed for na-

tional defense purposes, subject to such regulations as the President may prescribe, the President may authorize a guaranteeing agency to provide guarantees of loans by private institutions for the purpose of financing any contractor, subcontractor, provider of critical infrastructure, or other person in support of production capabilities or supplies that are deemed by the guaranteeing agency to be necessary to create, maintain, expedite, expand, protect, or restore production and deliveries or services essential to the national defense.

(2) Presidential determinations required

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

(A) the loan guarantee is for an activity that supports the production or supply of an industrial resource, critical technology item, or material that is essential for national defense purposes;

(B) without a loan guarantee, credit is not available to the loan applicant under reasonable terms or conditions sufficient to finance the activity;

(C) the loan guarantee is the most cost effective, expedient, and practical alternative for meeting the needs of the Federal Government;

(D) the prospective earning power of the loan applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed;

(E) the loan to be guaranteed bears interest at a rate determined by the Secretary of the Treasury to be reasonable, taking into account the then-current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan;

(F) the loan agreement for the loan to be guaranteed provides that no provision of the loan agreement may be amended or waived without the consent of the fiscal agent of the United States for the guarantee; and

(G) the loan applicant has provided or will provide—

(i) an assurance of repayment, as determined by the President; and

(ii) security—

(I) in the form of a performance bond, insurance, collateral, or other means acceptable to the fiscal agent of the United States; and

(II) in an amount equal to not less than 20 percent of the amount of the loan.

(3) Limitations on loans

Loans under this section may be—

(A) made or guaranteed under the authority of this section only to the extent that an appropriations Act—

(i) provides, in advance, budget authority for the cost of such guarantees, as defined in section 661a of title 2; and

(ii) establishes a limitation on the total loan principal that may be guaranteed; and

(B) made without regard to the limitations of existing law, other than section 1341 of title 31.

(b) Fiscal agents of the United States

(1) In general

Any Federal agency or any Federal reserve bank, when designated by the President, is hereby 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.

(2) Funds

All such funds as may be necessary to enable any fiscal agent described in paragraph (1) 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.

(3) Limit on liability

No fiscal agent described in paragraph (1) shall have any responsibility or accountability, except as agent in taking any action pursuant to or under authority of this section.

(4) Reimbursements

Each fiscal agent described in paragraph (1) 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, notwithstanding any other provision of law, attorneys' fees and expenses of litigation.

(c) Oversight

(1) In general

All actions and operations of fiscal agents under authority of or pursuant to this section shall be subject to the supervision of the President, and to such regulations as the President may prescribe.

(2) Other authority

The President is authorized to prescribe—

(A) 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 fiscal agents under this section; and

(B) regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

(d) Aggregate guarantee amounts

(1) Industrial resource and critical technology shortfalls

(A) In general

If the making of any guarantee or obligation of the Federal Government under this subchapter relating to a domestic industrial base shortfall would cause the aggregate outstanding amount of all guarantees for such shortfall to exceed \$50,000,000, any such guarantee may be made only—

(i) if the President has notified the Committee on Banking, Housing, and Urban

Affairs of the Senate and the Committee on Financial Services of the House of Representatives in writing of the proposed guarantee; and

(ii) after the 30-day period following the date on which notice under clause (i) is provided.

(B) Waivers authorized

The requirements of subparagraph (A) may be waived—

(i) during a period of national emergency declared by 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 item shortfall that would severely impair national defense capability.

(2) Other limitations

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 national defense production; and

(B) a copy of the certification under subparagraph (A), together with a detailed justification thereof, is transmitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 10 days prior to the exercise of that authority for such use.

(Sept. 8, 1950, ch. 932, title III, §301, as added Pub. L. 111-67, §7, Sept. 30, 2009, 123 Stat. 2010.)

TERMINATION OF SECTION

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

Editorial Notes

CODIFICATION

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

PRIOR PROVISIONS

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

Statutory Notes and Related Subsidiaries

LEGISLATIVE WAIVER OF LOAN LIMITATIONS

Pub. L. 116-136, div. B, title III, Mar. 27, 2020, 134 Stat. 520, provided in part: "That for the two-year period beginning with the date of enactment of this Act [Mar. 27, 2020], the requirements described in Section [sic]

301(a)(3)(A) and 302(c)(1) of Public Law 81-774 [50 U.S.C. 4531(a)(3)(A), 4532(c)(1)], shall be waived”.

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

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

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

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

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

Pub. L. 115-91, div. A, title II, §226, Dec. 12, 2017, 131 Stat. 1335, as amended by Pub. L. 117-263, div. A, title II, §214, Dec. 23, 2022, 136 Stat. 2471, provided that:

“(a) LIMITATION ON CANCELLATION OF DESIGNATION.—The Secretary of Defense may not implement the decision, issued on July 1, 2017, to cancel the designation, under Department of Defense Directive 4400.1E, entitled ‘Defense Production Act Programs’ and dated October 12, 2001, of the currently assigned Department of Defense Executive Agent for the program carried out under title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq.) until the Secretary has—

“(1) completed the review and assessment required by subsection (b)(1); and

“(2) carried out the briefing required by subsection (c).

“(b) REVIEW AND ASSESSMENT REQUIRED.—

“(1) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of the Air Force, shall conduct a review and assessment of the program described in subsection (a).

“(2) ELEMENTS.—The review and assessment required by paragraph (1) shall include the following:

“(A) Assessment of the current management structure for the program, including analysis of the mechanisms for accountability, as well as cost and management controls currently in place.

“(B) Analysis of alternatives for proposals to modify that management structure to increase accountability, cost and management controls. Such analysis of alternatives should consider the relative merits of centralization and decentralization, roles of other military departments in program management and contracting, as well as the different roles the Office of the Secretary of Defense might play in management, oversight and execution.

“(C) Recommendations for improving the assessment and selection of projects in order to—

“(i) ensure that projects selected are appropriate for use of funds appropriated to carry out title III of the Defense Production Act of 1950;

“(ii) ensure that sufficient vetting and management controls are in place to ensure a reasonable degree of confidence that project ideas or the companies being supported will be viable; and

“(iii) increase overall successful execution for selected projects.

“(D) Such other matters as the Secretary considers appropriate.

“(c) BRIEFING REQUIRED.—The Secretary shall brief the appropriate Committees of Congress on the findings of the Secretary with respect to the review and assessment conducted under subsection (b).

“(d) NOTIFICATION REQUIRED.—In the event the Secretary of Defense decides to cancel the designation, under Department of Defense Directive 4400.1E, entitled ‘Defense Production Act Programs’ and dated October 12, 2001, of the currently assigned Department of Defense Executive Agent for the program described in subsection (a), the Secretary shall submit to the appropriate committees of Congress a written notification of such decision at least 60 days before the decision goes into effect.

“(e) DESIGNATION OF OTHER EXECUTIVE AGENTS.—Notwithstanding the requirements of this section or section 1792 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 [Pub. L. 115-232] (50 U.S.C. 4531 note), the Secretary of Defense may designate one or more Executive Agents within the Department of Defense (other than the Executive Agent described in subsection (a)) to implement Defense Production Act transactions entered into under the authority of sections 4021, 4022, and 4023 of title 10, United States Code.

“(f) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means the—

“(1) the [sic] Committee on Armed Services and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

“(2) the [sic] Committee on Armed Services and the Committee on Financial Services of the House of Representatives.”

Executive Documents

DELEGATION OF FUNCTIONS

Authority of President under this section with respect to responding to the spread of COVID-19 within the United States delegated to Secretary of Health and Human Services and the Secretary of Homeland Security, see section 2 of Ex. Ord. No. 13911, Mar. 27, 2020, 85 F.R. 18403, set out as a note under section 4511 of this title.

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

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

EXECUTIVE WAIVER OF LOAN LIMITATIONS

Requirements of subsecs. (a)(2) and (d)(1)(A) of this section waived during the national emergency declared by Proc. No. 9994, Mar. 13, 2020, 85 F.R. 15337, set out as a note under section 1621 of this title, see section 2(c) of Ex. Ord. No. 13911, Mar. 27, 2020, 85 F.R. 18404, set out as a note under section 4511 of this title.

§ 4532. Loans to private business enterprises

(a) Loan authority

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

(b) Conditions of loans

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