

**(c) Duties of the Board**

In addition to other matters assigned to it by the chairman, the Board shall conduct the following, without power of delegation:

- (1) Adopt by-laws that ensure sufficient oversight, governance, and effectiveness of the National Defense Stockpile program.
- (2) Elect or remove Board members.
- (3) Advise the National Defense Stockpile Manager.
- (4) Establish performance metrics and conduct an annual performance review of the management and operations of the National Defense Stockpile program.
- (5) Review and approve the annual budget of the National Defense Stockpile program and conduct appropriate reviews of annual financial statements.
- (6) Re-allocate budget resources within the annual budget of the National Defense Stockpile program.
- (7) Review and approve the Annual Materials and Operations Plan required by section 98h-2(a) of this title. The report required by section 98h-2(b)(2) of this title shall include the views and recommendations of the Board on the projected domestic and foreign economic effects of all acquisition of materials for and disposals of materials from the stockpile.
- (8) Complete and submit the annual Board Report, in accordance with section 98h-2(b)(2) of this title.
- (9) Recommend to the Secretary of Defense—

(A) a strategy to ensure a secure supply of materials designated as critical to national security; and

(B) such other strategies as the Board considers appropriate to strengthen the industrial base with respect to materials critical to national security.

**(d) Board meetings**

The Board shall meet as determined necessary by the chairman but not less frequently than once every year to fulfill the duties described in subsection (c).

**(e) Application of provisions relating to Federal advisory committees**

Section 1013(a) of title 5 shall not apply to the Board.

**(f) Definitions**

In this section:

**(1) Materials critical to national security**

The term “materials critical to national security” means materials—

- (A) upon which the production or sustainment of military equipment is dependent; and
- (B) the supply of which could be restricted by actions or events outside the control of the Government of the United States.

**(2) Military equipment**

The term “military equipment” means equipment used directly by the Armed Forces to carry out military operations.

**(3) Secure supply**

The term “secure supply”, with respect to a material, means the availability of a source or

sources for the material, including the full supply chain for the material and components containing the material.

(June 7, 1939, ch. 190, §10, as added Pub. L. 96-41, §2(a), July 30, 1979, 93 Stat. 323; amended Pub. L. 102-484, div. C, title XXXIII, §3314, Oct. 23, 1992, 106 Stat. 2654; Pub. L. 117-263, div. A, title XIV, §1411(b), Dec. 23, 2022, 136 Stat. 2869; Pub. L. 118-31, div. A, title XIV, §1411(c), Dec. 22, 2023, 137 Stat. 524.)

**Editorial Notes****PRIOR PROVISIONS**

A prior section 10 of act June 7, 1939, ch. 190, §10, was renumbered section 13 and is classified to section 98h-4 of this title.

Provisions similar to those in this section were contained in section 187 of Title 10, Armed Forces, prior to repeal by Pub. L. 117-263, §1411(a).

**AMENDMENTS**

2023—Subsec. (c)(4). Pub. L. 118-31, §1411(c)(1)(A), substituted “of the management and operations of the National Defense Stockpile program” for “of the National Defense Stockpile Manager”.

Subsec. (c)(5), (6). Pub. L. 118-31, §1411(c)(1)(B), redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out former par. (5) which read as follows: “Set compensation for the National Defense Stockpile Manager.”

Subsec. (c)(7). Pub. L. 118-31, §1411(c)(1)(B), (C), redesignated par. (8) as (7) and substituted “required by section 98h-2(a) of this title. The report required by section 98h-2(b)(2) of this title shall include the views and recommendations of the Board on” for “required by section 98h-2(a)(2) of this title, including a review of” and “all acquisition of materials for and disposals of materials from the stockpile” for “proposed actions to be taken under the Annual Materials and Operations Plan”. Former par. (7) redesignated (6).

Subsec. (c)(8) to (10). Pub. L. 118-31, §1411(c)(1)(B), redesignated pars. (9) and (10) as (8) and (9), respectively.

Subsec. (e). Pub. L. 118-31, §1411(c)(2), amended subsec. (e) generally. Prior to amendment, text read as follows: “Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.”

2022—Pub. L. 117-263 amended section generally. Prior to amendment, section related to appointment of advisory committees and a Market Impact Committee.

1992—Subsec. (c). Pub. L. 102-484 added subsec. (c).

**Statutory Notes and Related Subsidiaries****ADVISORY COMMITTEE REGARDING OPERATION AND MODERNIZATION OF STOCKPILE**

Pub. L. 102-484, div. C, title XXXIII, §3306, Oct. 23, 1992, 106 Stat. 2652, required the President to appoint, no later than Mar. 15, 1993, an advisory committee to make recommendations concerning the operation and modernization of the National Defense Stockpile.

**§ 98h-2. Reports****(a) Reports to the Board**

The National Defense Stockpile Manager shall submit to the Board an Annual Materials and Operations Plan for the forthcoming year.

**(b) Reports to Congress****(1) Report by National Defense Stockpile Manager**

Not later than February 15 of each fiscal year, the National Defense Stockpile Manager shall submit to the congressional defense com-

mittees (as defined in section 101(a) of title 10) an Annual Operations and Materials Plan that shall include—

(A) information with respect to foreign and domestic purchases of materials for the stockpile during the preceding fiscal year;

(B) information with respect to the acquisition and disposal of materials under this subchapter by barter, during such fiscal year;

(C) information with respect to the activities by the National Defense Stockpile Manager to encourage the conservation, substitution, and development of strategic and critical materials;

(D) information with respect to the research and development activities conducted under section 98g of this title;

(E) a statement and explanation of the financial status of the National Defense Stockpile Transaction Fund and anticipated appropriations to be made to the Fund, and obligations to be made from the fund, during the current fiscal year;

(F) other pertinent information on the administration of this subchapter as will enable the Congress to evaluate the effectiveness of the program;

(G) an annual materials plan for the operation of the stockpile during the next fiscal year and the succeeding four fiscal years and planned expenditures from the National Defense Stockpile Transaction Fund and anticipated receipts from disposal of stockpile materials, which shall include—

(i) details of all planned expenditures from the National Defense Stockpile Transaction Fund during such period and of anticipated receipts from the proposed disposals of stockpile materials during such period;

(ii) details regarding materials development and research projects to be conducted during the fiscal years covered by the report using moneys in the National Defense Stockpile Transaction Fund pursuant to section 98h(b)(2)(G) of this title; and

(iii) with respect to each development and research project described in clause (ii), the report shall specify the amount planned to be expended from the National Defense Stockpile Transaction Fund, the material intended to be developed, the potential military or defense industrial applications for that material, and the development and research methodologies to be used;

(H) any proposed expenditure or disposal detailed in the annual materials plan for any such fiscal year, and any expenditure or disposal proposed in connection with any transaction submitted for such fiscal year to the appropriate committees of Congress pursuant to section 98d(a)(2) of this title that is not obligated or executed in that fiscal year may not be obligated or executed until such proposed expenditure or disposal is resubmitted in a subsequent annual materials plan or is resubmitted to the appropriate committees of Congress in accordance with

section 98d(a)(2) of this title, as appropriate; and

(I) a summary of the implementation and findings of the pilot program established under section 98e(g)(1) of this title, including—

(i) the commercial best practices selected for use under the pilot program;

(ii) how the National Defense Stockpile Manager determined which commercial best practices to select;

(iii) how the National Defense Stockpile Manager has used commercial best practices under the pilot program during the year preceding the briefing;

(iv) the outcome of each use of such practices; and

(v) any savings achieved or lessons learned as a result of the use of such practices.

## (2) Report by the Board

The Board shall prepare a written report to accompany the report required by paragraph (1) which shall include the activities of the Board to carry out the duties listed in section 98h-1(c) of this title<sup>1</sup>

(June 7, 1939, ch. 190, §11, as added Pub. L. 96-41, §2(a), July 30, 1979, 93 Stat. 324; amended Pub. L. 97-35, title II, §203(e), Aug. 13, 1981, 95 Stat. 382; Pub. L. 99-661, div. C, title II, §3207(a)(3), Nov. 14, 1986, 100 Stat. 4069; Pub. L. 100-180, div. C, title II, §3205, Dec. 4, 1987, 101 Stat. 1247; Pub. L. 100-456, div. A, title XV, §1503, Sept. 29, 1988, 102 Stat. 2086; Pub. L. 101-189, div. C, title XXXIII, §3315, Nov. 29, 1989, 103 Stat. 1688; Pub. L. 102-190, div. C, title XXXIII, §§3311(b), 3313(a), Dec. 5, 1991, 105 Stat. 1584; Pub. L. 103-35, title II, §204(d), May 31, 1993, 107 Stat. 103; Pub. L. 113-291, div. A, title X, §1071(j), Dec. 19, 2014, 128 Stat. 3512; Pub. L. 115-232, div. A, title XIV, §1423, Aug. 13, 2018, 132 Stat. 2093; Pub. L. 117-263, div. A, title XIV, §1411(c), Dec. 23, 2022, 136 Stat. 2870; Pub. L. 118-31, div. A, title XIV, §1411(d), Dec. 22, 2023, 137 Stat. 524.)

## Editorial Notes

### PRIOR PROVISIONS

A prior section 11 of act June 7, 1939, ch. 190, formerly §10, as added July 23, 1946, ch. 590, 60 Stat. 596; renumbered §11, Pub. L. 92-156, title V, §503(1), Nov. 17, 1971, 85 Stat. 427, was set out as a Short Title note under section 98 of this title, prior to repeal by section 2(b)(2) of Pub. L. 96-41.

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

### AMENDMENTS

2023—Subsec. (a). Pub. L. 118-31, §1411(d)(1), substituted “an Annual Materials and Operations Plan for the forthcoming year.” for “the following:

“(1) Not later than 40 calendar days after the last day of each of the first three fiscal quarters in each fiscal year, unaudited financial statements and a Manager’s Discussion and Analysis for the immediately preceding fiscal quarter.

“(2) Not later than 60 calendar days after the conclusion of the fourth quarter of each fiscal year—

“(A) audited financial statements and a Manager’s Discussion and Analysis for the immediately preceding fiscal year; and

<sup>1</sup> So in original. Probably should be followed by a period.

“(B) an Annual Materials and Operations Plan for the forthcoming year.”

Subsec. (b)(1). Pub. L. 118-31, § 1411(d)(2)(A)(i), (ii), in heading, substituted “Report by National Defense Stockpile Manager” for “Reports by National Defense Stockpile Manager” and, in introductory provisions, substituted “February 15 of each fiscal year” for “90 days after the conclusion of the fourth quarter of each fiscal year” and “an Annual Operations and Materials Plan” for “a report”.

Subsec. (b)(1)(E). Pub. L. 118-31, § 1411(d)(2)(A)(iii), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: “audited annual financial statements for the Strategic and Critical Materials Fund.”

Subsec. (b)(1)(G) to (I). Pub. L. 118-31, § 1411(d)(2)(A)(iv), added subpars. (G) to (I) and struck out former subpars. (G) and (H) which read as follows:

“(G) details of all planned expenditures from the Strategic and Critical Materials Fund over the Future Years’ Defense Program and anticipated receipts from proposed disposals of stockpile materials; and  
“(H) the report required by paragraph (2).”

Subsec. (b)(2). Pub. L. 118-31, § 1411(d)(2)(B), substituted “paragraph (1) which shall include the activities of the Board to carry out the duties listed in section 98h-1(c) of this title” for “paragraph (1) which shall include—

“(A) the activities of the Board to carry out the duties listed in section 98h-1(c) of this title; and

“(B) the most recent Annual Materials and Operations Plan submitted under subsection (a)(2)(B).”

2022—Pub. L. 117-263 amended section generally. Prior to amendment, section related to annual reports to Congress, including materials plans for the operation of the stockpile.

2018—Subsec. (a). Pub. L. 115-232, § 1423(1), substituted “February 15” for “January 15” in introductory provisions.

Subsec. (b)(1). Pub. L. 115-232, § 1423(2)(A), substituted “Each report under subsection (a) shall also include” for “Not later than February 15 of each year, the President shall submit to the appropriate committees of the Congress a report containing”.

Subsec. (b)(2). Pub. L. 115-232, § 1423(2)(B), substituted “With respect to the plan described in paragraph (1), each such report shall include” for “Each such report shall include” and “With respect to such plan, each report shall also contain” for “Each such report shall also contain”.

2014—Subsec. (b)(2). Pub. L. 113-291 substituted “under section 98h(b)(2)(H)” for “under section 98h(b)(2)(G)”.

1993—Subsec. (a)(1). Pub. L. 103-35 substituted “fiscal year” for “six-month period”.

1991—Subsec. (a). Pub. L. 102-190, § 3313(a)(1), substituted “Not later than January 15 of each year, the President” for “The President” and “an annual” for “every six months a”.

Subsec. (a)(1). Pub. L. 102-190, § 3313(a)(2), which directed the substitution of “fiscal year” for “6-month period”, could not be executed because the words “6-month period” did not appear in text.

Subsec. (a)(2). Pub. L. 102-190, § 3313(a)(3), substituted “fiscal year” for “period”.

Subsec. (a)(5). Pub. L. 102-190, § 3313(a)(4), substituted “current fiscal year” for “next fiscal year”.

Subsec. (b)(1). Pub. L. 102-190, § 3311(b)(1), designated first sentence of subsec. (b) relating to submission of report as par. (1).

Subsec. (b)(2). Pub. L. 102-190, § 3311(b), designated second sentence of subsec. (b) relating to contents of report as par. (2) and inserted at end “Each such report shall also contain details regarding the materials development and research projects to be conducted under section 98h(b)(2)(G) of this title during the fiscal years covered by the report. With respect to each development and research project, the report shall specify the amount planned to be expended from the fund, the material intended to be developed, the potential military

or defense industrial applications for that material, and the development and research methodologies to be used.”

Subsec. (b)(3). Pub. L. 102-190, § 3311(b)(1), designated third sentence of subsec. (b) relating to resubmission of proposed expenditures and disposals not obligated or executed as par. (3).

1989—Subsec. (a)(5). Pub. L. 101-189 substituted “made to the fund, and obligations to be made from the fund,” for “made from the fund”.

1988—Subsec. (a)(3) to (6). Pub. L. 100-456, § 1503(a), added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

Subsec. (b). Pub. L. 100-456, § 1503(b), substituted “the next fiscal year” for “such fiscal year” and “all planned expenditures from the National Defense Stockpile Transaction Fund” for “planned expenditures for acquisition of strategic and critical materials” and inserted at end “Any proposed expenditure or disposal detailed in the annual materials plan for any such fiscal year, and any expenditure or disposal proposed in connection with any transaction submitted for such fiscal year to the appropriate committees of Congress pursuant to section 98d(a)(2) of this title, that is not obligated or executed in that fiscal year may not be obligated or executed until such proposed expenditure or disposal is resubmitted in a subsequent annual materials plan or is resubmitted to the appropriate committees of Congress in accordance with section 98d(a)(2) of this title, as appropriate.”

1987—Subsec. (b). Pub. L. 100-180 substituted “Not later than February 15 of each year, the President” for “The President” and struck out “each year, at the time that the Budget is submitted to Congress pursuant to section 1105 of title 31 for the next fiscal year,” after “Congress”.

1986—Subsec. (b). Pub. L. 99-661 substituted “each year, at the time that the Budget is submitted to Congress pursuant to section 1105 of title 31 for the next fiscal year,” for each year with the Budget submitted to Congress pursuant to section 201a of the Budget and Accounting Act, 1921 (31 U.S.C. 11(a)), for the next fiscal year”.

1981—Pub. L. 97-35 designated existing provisions as subsec. (a) and added subsec. (b).

### § 98h-3. Definitions

For the purposes of this subchapter:

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

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

(3) The term “reliable source” mean a citizen or business entity organized under the laws of—

(A) the United States or any territory or possession of the United States;

(B) a country of the national technology and industrial base, as such term is defined in section 4801 of title 10; or

(C) a qualifying country, as defined in section 225.003 of the Defense Federal Acquisition Regulation Supplement or any successor document.

(June 7, 1939, ch. 190, § 12, as added Pub. L. 96-41, § 2(a), July 30, 1979, 93 Stat. 324; amended Pub. L. 117-81, div. A, title XIV, § 1411(2), Dec. 27, 2021, 135 Stat. 2018; Pub. L. 118-31, div. A, title XIV, § 1411(e)(2)(C), Dec. 22, 2023, 137 Stat. 528.)