

Editorial Notes

AMENDMENTS

2023—Par. (3). Pub. L. 118-31 added par. (3) and struck out former par. (3) which read as follows: “The term ‘national technology and industrial base’ has the meaning given such term in section 2500 of title 10.”

2021—Par. (3). Pub. L. 117-81 added par. (3).

§ 98h-4. Importation of strategic and critical materials

The President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this subchapter, if such material is the product of any foreign country or area not listed in general note 3(b) of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of a country or area listed in such general note is not prohibited by any provision of law.

(June 7, 1939, ch. 190, § 13, formerly § 10, as added Pub. L. 92-156, title V, § 503(2), Nov. 17, 1971, 85 Stat. 427; renumbered § 13, Pub. L. 96-41, § 2(b)(1), July 30, 1979, 93 Stat. 324; amended Pub. L. 100-180, div. C, title II, § 3206(b), (c), Dec. 4, 1987, 101 Stat. 1247; Pub. L. 100-418, title I, § 1214(o), Aug. 23, 1988, 102 Stat. 1159; Pub. L. 104-201, div. C, title XXXIII, § 3313, Sept. 23, 1996, 110 Stat. 2857.)

Editorial Notes

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in text, is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

CODIFICATION

Section was formerly classified to section 98h-1 of this title.

AMENDMENTS

1996—Pub. L. 104-201 substituted “not listed in general note” for “not listed as a Communist-dominated country or area in general note” and “product of a country or area listed in such general note” for “product of such Communist-dominated countries or areas”.

1988—Pub. L. 100-418 substituted “general note 3(b) of the Harmonized Tariff Schedule of the United States” for “general headnote 3(d) of the Tariff Schedules of the United States”.

1987—Pub. L. 100-180 inserted section catchline and, in text, substituted “The President” for “Notwithstanding any other provision of law, on and after January 1, 1972, the President”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

§ 98h-5. Biennial report on stockpile requirements**(a) In general**

Not later than January 15 of every other year, the Secretary of Defense shall submit to Con-

gress a report on stockpile requirements. Each such report shall include—

- (1) the Secretary’s recommendations with respect to stockpile requirements; and
- (2) the matters required under subsection (b).

(b) National emergency planning assumptions

Each report under this section shall set forth the national emergency planning assumptions used by the Secretary in making the Secretary’s recommendations under subsection (a)(1) with respect to stockpile requirements. The Secretary shall base the national emergency planning assumptions on a military conflict scenario consistent with the scenario used by the Secretary in budgeting and defense planning purposes. The assumptions to be set forth include assumptions relating to each of the following:

- (1) The length and intensity of the assumed military conflict.
- (2) The military force structure to be mobilized.
- (3) The losses anticipated from enemy action.
- (4) The military, industrial, and essential civilian requirements to support the national emergency.

(5) The availability of supplies of strategic and critical materials from foreign sources during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.

(6) The domestic production of strategic and critical materials during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.

(7) Civilian austerity measures required during the mobilization period and military conflict.

(c) Period within which to replace or replenish materials

The stockpile requirements shall be based on those strategic and critical materials necessary for the United States to replenish or replace, within three years of the end of the military conflict scenario required under subsection (b), all munitions, combat support items, and weapons systems that would be required after such a military conflict.

(d) Effect of alternative mobilization periods

The Secretary shall also include in each report under this section an examination of the effect that alternative mobilization periods under the military conflict scenario required under subsection (b), as well as a range of other military conflict scenarios addressing potentially more serious threats to national security, would have on the Secretary’s recommendations under subsection (a)(1) with respect to stockpile requirements.

(e) Plans of President

The President shall submit with each report under this section a statement of the plans of the President for meeting the recommendations of the Secretary set forth in the report.

(f) Briefings on shortfalls in stockpile

(1) Not later than March 1 each year, the National Defense Stockpile Manager shall provide

to the congressional defense committees a briefing on strategic and critical materials that—

(A) are determined to be in shortfall in the most recent report on stockpile requirements submitted under subsection (a); and

(B) the acquisition or disposal of which is included in the Annual Materials and Operations Plan for the operation of the stockpile during the next fiscal year submitted under section 98h-2(b) of this title.

(2) Each briefing required by paragraph (1) shall include—

(A) a description of each material described in that paragraph, including the objective to be achieved if funding is provided, in whole or in part, for the acquisition of the material to remedy the shortfall;

(B) an estimate of additional amounts required to provide such funding, if any; and

(C) an assessment of the supply chain for each such material, including any assessment of any relevant risk in any such supply chain.

(June 7, 1939, ch. 190, §14, as added Pub. L. 100-180, div. C, title II, §3202(c), Dec. 4, 1987, 101 Stat. 1246; amended Pub. L. 102-190, div. C, title XXXIII, §3313(b)(1), (2), Dec. 5, 1991, 105 Stat. 1585; Pub. L. 103-160, div. C, title XXXIII, §3314, Nov. 30, 1993, 107 Stat. 1962; Pub. L. 104-201, div. C, title XXXIII, §3311(a), Sept. 23, 1996, 110 Stat. 2856; Pub. L. 117-263, div. A, title XIV, §1413, Dec. 23, 2022, 136 Stat. 2872.)

Editorial Notes

REFERENCES IN TEXT

The congressional defense committees, referred to in subsec. (f)(1), are not defined for this subchapter. However, elsewhere in this subchapter, they are defined as the committees listed in section 101(a) of Title 10, Armed Forces.

AMENDMENTS

2022—Subsec. (f). Pub. L. 117-263 added subsec. (f).

1996—Subsecs. (b) to (e). Pub. L. 104-201 added subsecs. (b) to (d), redesignated former subsec. (c) as (e), and struck out former subsec. (b) which related to national emergency planning assumptions set forth in reports required under this section.

1993—Subsec. (b). Pub. L. 103-160 struck out before period at end of first sentence “, based upon total mobilization of the economy of the United States for a sustained conventional global war for a period of not less than three years” and inserted after first sentence “Before October 1, 1994, such assumptions shall be based upon the total mobilization of the economy of the United States for a sustained conventional global war for a period of not less than three years. On and after October 1, 1994, such assumptions shall be based on an assumed national emergency involving military conflict that necessitates an expansion of the Armed Forces together with a significant mobilization of the economy of the United States.”

1991—Pub. L. 102-190, §3313(b)(2), substituted “Biennial” for “Annual” in section catchline.

Subsec. (a). Pub. L. 102-190, §3313(b)(1), in introductory provisions, substituted “Not later than January 15 of every other year, the Secretary” for “The Secretary” and “a report” for “an annual report” and struck out “shall be submitted with the annual report submitted under section 98h-2(b) of this title and” before “shall include”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 3311(c) of Pub. L. 104-201, set out as a note under section 98a of this title.

INITIAL REPORT DUE DATE

Pub. L. 102-190, div. C, title XXXIII, §3313(b)(3), Dec. 5, 1991, 105 Stat. 1585, provided that: “The first report required by section 14(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h-5(a)), as amended by paragraph (1) shall be submitted not later than January 15, 1993.”

§ 98h-6. Development and conservation of reliable sources

(a) Duties

Subject to subsection (d), the National Defense Stockpile Manager shall encourage the development and appropriate conservation of reliable sources of strategic and critical materials—

(1) by purchasing, or making a commitment to purchase, strategic and critical materials from reliable sources when such materials are needed for the stockpile;

(2) by contracting with facilities located in and owned and controlled by reliable sources, or making a commitment to contract with such facilities, for the processing or refining of strategic and critical materials in the stockpile when processing or refining is necessary to convert such materials into a form more suitable for storage or disposition or meeting stockpile requirements;

(3) by qualifying facilities located in and owned and controlled by reliable sources, or qualifying strategic and critical materials produced by such facilities, to meet stockpile requirements;

(4) by contracting with facilities located in and owned and controlled by reliable sources to recycle strategic and critical materials to meet stockpile requirements or increase the balance of the National Defense Stockpile Transaction Fund under section 98h of this title; and

(5) by entering into an agreement to co-fund a bankable feasibility study for a project for the development of strategic and critical materials located in and owned and controlled by a reliable source, if the agreement—

(A) limits the liability of the stockpile to not more than the total funding provided by the Federal Government;

(B) limits the funding contribution of the Federal Government to not more than 50 percent of the cost of the bankable feasibility study; and

(C) does not obligate the Federal Government to purchase strategic and critical materials from the reliable source.

(b) Additional authorities

(1) Extended contracting authority

(A) In general

The term of a contract or commitment made under subsection (a) may not exceed ten years.

(B) Preexisting contracts

A contract entered into before December 22, 2023, for a term of more than ten years