§ 2081  TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE

(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 702(16) [section 2152(16) 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.

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 author-
ity 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, 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 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 or critical technology item shortfall; prevention of insolvency or bankruptcy

(1)(A) Except as provided in subparagraph (D), a guarantee may be made under this section only if the industrial resource or critical technology item 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 or critical technology item shortfall has been identified pursuant to subparagraph (A).

(C) If the making of any guarantee or guarantees to correct an industrial resource or critical technology item shortfall would cause the aggregate outstanding amount of all guarantees for such industrial resource or critical technology item 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 item 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 Financial Services of the House of Representatives at least ten days prior to the exercise of that authority for such use.


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 industrial resources 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 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)(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”.


Subsec. (e)(1). Pub. L. 98–285, §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 Department 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 “$320,000,000”, and added subpar. (B).


1975—Subsec. (a). Act June 30, 1973, 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 guarantee merely because an alternative source of supply exists for the item to be procured on the Government contract involved.

**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 2166 of this Appendix.

**Effective Date of 1980 Amendment**


**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.

**Deligation 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**


**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.


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’’.
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).
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.

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

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, 1973, 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 2907 of Title 10, Armed Forces.

EXECUTIVE ORDER NO. 10634

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
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(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 resource 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 item 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.
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 2071 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 any notes so canceled.

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.

Notes:
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.
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. 98–96h)” and “from funds appropriated for the purposes of such Act” for “from funds available under such Act June 7, 1939, as amended”.
Pub. L. 102–558, title I, § 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”.
Pub. L. 98–265, § 121(d), inserted before period at end “critical components, critical technology items, and other industrial resources”.
Pub. L. 102–558, § 121(c)(1), amended subsec. (f) 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”.
Pub. L. 98–265, § 121(d), inserted before period at end “critical components, critical technology items, and other industrial resources”.
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.
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. 98–96h)” and “from funds appropriated for the purposes of such Act” for “from funds available under such Act June 7, 1939, as amended”.
Pub. L. 102–558, set out as a note under section 2062 of this Appendix.
References in Text
For expiration of this section, referred to in subsec. (a)(7)(B), see section 2062(a) of this Appendix.
For expiration of this section, 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.
For expiration of this section, referred to in subsec. (f), is classified to section 2099(b) of this Appendix, and was repealed and a new subsec. (b) was enacted by Pub. L. 93–426, § 2, Sept. 9, 1974, 88 Stat. 1196, which does not relate to limiting aggregate amount of borrowing which may be outstanding.

See references in text note below.
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TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE

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

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(b) [section 2161(b) of this Appendix]; 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.


Amendments
2001—Subsec. (b)(1). Pub. L. 107–47 substituted “section 711(b)” for “section 711(c)”.
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) (1) 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.
“(2) Any cash balance remaining on June 30, 1974, in the borrowing authority previously authorized by this section, and any funds thereafter received on transactions 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 any 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 2163 of this Appendix.

Section Referred to in Other Sections
This section is referred to in section 2093 of this Appendix.

§ 2095. Synthetic fuel project

(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) 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 [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 [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.

1 See References in Text note below.
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(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 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)(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[2] (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[2] (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) [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.

(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.

(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 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. Guarantying 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) 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;

(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.)
§ 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 3071 [section 2097 of this Appendix] and the authorities under this section shall be effective only as provided under such section.

For purposes of section 3071 [section 2097 of this Appendix], any determination to invoke authorities under this section, notice of which is transmitted to the Congress under this sub-

1 See References in Text note below.
section, 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

(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(e) [section 2092(e) 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).
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) 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.

(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.

(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.

3See References in Text note below.
(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.

(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 unencumbered and available 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 prevailing rates. When a loan agreement has been approved, 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) 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

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*See References in Text note below.*
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.

(f) 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.


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, 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 2062 of this Appendix.

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


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].


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.


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.

**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 Financial Services 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 countertrade 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 interagency reports and analyses shall be considered by representatives of the United States during bilateral and multilateral negotiations to minimize the adverse effects of offsets.


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 designating 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).


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
sec. 1243. DEFINITIONS.

harm the economy of the United States.

production of United States weapons systems does not

trade, and to ensure that foreign participation in the

national defense trade, to promote fairness in such

United States to monitor the use of offsets in inter-

Disclosure Act of 1999'.

"SEC. 1242. FINDINGS AND DECLARATION OF POL-

"(a) FINDINGS.—Congress makes the following find-

"(1) A fair business environment is necessary to ad-

vance international trade, economic stability, and
development worldwide, is beneficial for American

workers and businesses, and is in the United States

national interest.

"(2) In some cases, mandated offset requirements
can cause economic distortions in international de-

fense trade and undermine fairness and competitive-

ness, and may cause particular harm to small- and

medium-sized businesses.

"(3) The use of offsets may lead to increasing de-

pendence on foreign suppliers for the production of

United States weapons systems.

"(4) The offset demands required by some purchas-
ing countries, including some close allies of the

United States, equal or exceed the value of the base
contract they are intended to offset, mitigating much

of the potential economic benefit of the exports.

"(5) Offset demands often unduly distort the prices

of defense contracts.

"(6) In some cases, United States contractors are

required to provide indirect offsets which can nega-
tively impact nondefense industrial sectors.

"(7) Unilateral efforts by the United States to pro-
hibit offsets may be impractical in the current era of

globalization and would severely hinder the competi-
tiveness of the United States defense industry in the

global market.

"(8) The development of global standards to manage

and restrict demands for offsets would enhance

United States efforts to mitigate the negative impact

of offsets.

"(b) DECLARATION OF POLICY.—It is the policy of

the United States to monitor the use of offsets in in-
national defense trade, to promote fairness in such
trade, and to ensure that foreign participation in the

production of United States weapons systems does not

harm the economy of the United States.

"SEC. 1243. DEFINITIONS.

"In this subtitle:

"(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The
term 'appropriate congressional committees' means—

"(A) the Committee on Foreign Relations of the

Senate; and

"(B) the Committee on International Relations of

the House of Representatives.

"(2) G–8.—The term 'G–8' means the group consist-
ing of France, Germany, Japan, the United Kingdom,
the United States, Canada, Italy, and Russia estab-
lished to facilitate economic cooperation among the
eight major economic powers.

"(3) OFFSET.—The term 'offset' means the entire
range of industrial and commercial benefits provided
to foreign governments as an inducement or condi-
tion to purchase military goods or services, including
benefits such as coproduction, licensed production,
subcontracting, technology transfer, in-country pro-
curement, marketing and financial assistance, and
joint ventures.

"(4) TRANSatlantic ECONOMIC PARTNERSHIP.—The
term 'Transatlantic Economic Partnership' means
the joint commitment made by the United States and
the European Union to reinforce their close relation-

ship through an initiative involving the intensifica-
tion and extension of multilateral and bilateral co-
operation and common actions in the areas of trade
and investment.

"(5) WassenAar Arrangement.—The term 'WassenAar
Arrangement' means the multilateral export
control regime in which the United States par-
ticipates that seeks to maintain transparency and re-

sponsibility with regard to transfers of conventional
armaments and sensitive dual-use items.

"(6) World TRADE ORGANIZATION.—The term 'World
Trade Organization' means the organization estab-
lished pursuant to the WTO Agreement.

"(7) WTO AGREEMENT.—The term 'WTO Agreement'
means the Agreement Establishing the World Trade
Organization entered into on April 15, 1994.

"SEC. 1244. SENSE OF CONGRESS.

"It is the sense of Congress that—

"(1) the executive branch should pursue efforts to

address trade fairness by establishing reasonable,
business-friendly standards for the use of offsets in
international business transactions between the

United States and its trading partners and competi-

tors;

"(2) the Secretary of Defense, the Secretary of
State, the Secretary of Commerce, and the United
States Trade Representative, or their designees,
should raise with other industrialized nations at
every suitable venue the need for transparency and
reasonable standards to govern the role of offsets in
international defense trade;

"(3) the United States Government should enter

into discussions regarding the establishment of
multilateral standards for the use of offsets in in-
national defense trade through the appropriate multi-
lateral fora, including such organizations as the

Transatlantic Economic Partnership, the WassenAar
Arrangement, the G–8, and the World Trade Organi-

zation;

"(4) the United States Government, in entering into

the discussions described in paragraph (3), should
take into account the distortions produced by the

provision of other benefits and subsidies, such as ex-
port financing, by various countries to support de-

fense trade.

"SEC. 1245. REPORTING OF OFFSET AGREEMENTS.

"[Amended section 2776 of title 22.]

"SEC. 1246. EXPANDED PROHIBITION ON INCENTIVE
PAYMENTS.

"[Amended section 2779a of title 22.]

"SEC. 1247. ESTABLISHMENT OF REVIEW COMMISSION.

"(a) IN GENERAL.—There is established a National
Commission on the Use of Offsets in Defense Trade (in
this section referred to as the 'Commission') to address
all aspects of the use of offsets in international defense
trade.

"(b) COMMISSION MEMBERSHIP.—Not later than 120
days after the date of enactment of this Act (Nov. 29,
1999), the President, with the concurrence of the Major-
ity and Minority Leaders of the Senate and the Speak-
er and Minority Leader of the House of Representa-
tives, shall appoint 11 individuals to serve as members
of the Commission. Commission membership shall in-
clude—

"(1) representatives from the private sector, includ-
ing—

"(A) one each from—

"(i) a United States defense manufacturing
company dependent on foreign sales,

"(ii) a United States company dependent on
foreign sales that is not a defense manufacturer,

"(iii) a United States company that specializes
in international investment, and

"(B) two members from academia with widely
recognized expertise in international economics; and

"(2) representatives from international and inter-
governmental organizations, including—

"(A) representatives from the North Atlantic

Treaty Organization and the European Union,

"(B) the Secretary of Defense,

"(C) the Secretary of State,

"(D) the United States Trade Representative,
and

"(E) representatives responsible for offsets
in the United Kingdom, Canada, Germany, and
France.

"SEC. 1248. PARTICIPATION OF FOREIGN GOVERN-
MENTS.

"(a) IN GENERAL.—Each foreign government partici-

pating in the use of offsets shall agree to—

"(1) disclose the use of offsets in international defense
trade;

"(2) report the use of offsets in international defense
trade to the United States Government;

"(3) participate in the Commission on the Use of
Offsets in Defense Trade; and

"(4) provide such other information to the United
States Government as the United States Gover-

nment may require.
The date on which all members of the Commission have been appointed, the Commission shall hold its first meeting after the Commission is established, the Commission shall submit a report to the appropriate congressional committees. In addition to the items described under subsection (c), the report shall include—

"(1) an analysis of—

(A) the full range of current practices by foreign governments in requiring offsets in purchasing agreements and upon United States nondefense industrial contractors; and

(B) the impact of the use of offsets on defense subcontracts and nondefense industrial sectors affected by indirect offsets; and

"(3) the impact on United States national security of the use of coproduction, subcontracting, and technology transfer with foreign governments or companies that results from fulfilling offset requirements, with particular emphasis on the question of dependency upon foreign nations for the supply of critical components or technology; and

"(2) proposals for unilateral, bilateral, or multilateral measures aimed at reducing any detrimental effects of offsets; and

"(3) an identification of the appropriate executive branch agencies to be responsible for monitoring the use of offsets in international defense trade.

"(d) Commission Report.—Not later than 12 months after the Commission is established, the Commission shall submit a report to the appropriate congressional committees. In addition to the items described under subsection (c), the report shall include—

"(1) a description of the United States efforts to pursue multilateral negotiations on standards for the use of offsets in international defense trade, with a goal of limiting all offset transactions that are considered injurious to the economic measures of the United States;

"(2) proposals for unilateral, bilateral, or multilateral measures to be taken by the United States; and

"(3) an identification of the appropriate executive branch agencies to be responsible for monitoring the use of offsets in international defense trade.

"(e) Period of Appointment; Vacancies.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

"(f) Initial Meeting.—Not later than 30 days after the Commission is established, the Commission shall hold its first meeting.

"(g) Meetings.—The Commission shall meet at the call of the Chairman.

"(h) Commission Personnel Matters.—

"(1) Compensation of Members.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation, and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

"(2) Travel Expenses.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

"(3) Staff.—

"(A) In General.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

"(B) Compensation.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

"(4) Detail of Government Employees.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

"(5) Procurement of Temporary and Intermittent Services.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

"(i) Termination.—The Commission shall terminate 30 days after the transmission of the report from the President as mandated in section 1248(b).

"(a) In General.—The President shall initiate a review to determine the feasibility of establishing, and the most effective means of negotiating, a multilateral treaty on standards for the use of offsets in international defense trade, with a goal of limiting all offset transactions that are considered injurious to the economic measures of the United States.

"(b) Report Required.—Not later than 90 days after the date on which the President submits the report required under section 1247(d), the President shall submit to the appropriate congressional committees a report containing the President's determination pursuant to subsection (a), and, if the President determines a multilateral treaty is feasible or desirable, a strategy for United States negotiation of such a treaty. One year after the date the report is submitted under the preceding sentence, and annually thereafter for 5 years, the President shall submit to the appropriate congressional committees a report detailing the progress toward reaching such a treaty.

"(c) Required Information.—The report required by subsection (b) shall include—

"(1) a description of the United States efforts to pursue multilateral negotiations on standards for the use of offsets in international defense trade;

"(2) an evaluation of existing multilateral fora as appropriate venues for establishing such negotiations;

"(3) a description on a country-by-country basis of any United States efforts to engage in negotiations to establish bilateral treaties or agreements with respect to the use of offsets in international defense trade; and

"(4) an evaluation on a country-by-country basis of any foreign government efforts to address the use of offsets in international defense trade.
out in a note above] and to create a parallel "Presi-
ation 1247 of Public Law 106–113 (113 Stat. 1501A–502) [set
section] and the Federal Advisory Committee Act, as
Trade,'' it is hereby ordered as follows:

"(d) COMPTROLLER GENERAL REVIEW.—The Comptrol-
er General of the United States shall monitor and per-
dically report to Congress on the progress in reaching
a multilateral treaty."

DECLARATION OF OFFSET POLICY
Section 123 of Pub. L. 102–558 provided that:

"(a) In GENERAL.—Recognizing that certain offsets for
payments 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 con-
nection 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 trans-
actions, except in accordance with policies and proce-
dures that were in existence on March 1, 1992;

"(3) nothing in the section shall prevent agencies of
the United States Government from fulfilling obliga-
tions 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 in-
volved.

"(b) PRESIDENTIAL APPROVAL OF EXCEPTIONS.—It is
the policy of the Congress that the President may ap-
prove 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 De-
fense to lead, in coordination with the Secretary of
State, an interagency team to consult with foreign na-
tions on limiting the adverse effects of offsets in de-
fense 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))."

EX. ORD. No. 13177. NATIONAL COMMISSION ON THE USE OF
OFFSETS IN DEFENSE TRADE AND PRESIDENT'S COUNCIL
ON THE USE OF OFFSETS IN COMMERCIAL TRADE
Ex. Ord. No. 13177, Dec. 4, 2000, 65 F.R. 76558, provided:

By the authority vested in the President by the Con-
stitution and the laws of the United States of America,
including Public Law 106–113 [see Tables for classifica-
tion] and the Federal Advisory Committee Act, as
amended (5 U.S.C. App.), and in order to implement sec-
tion 1247 of Public Law 106–113 (113 Stat. 1501A–502) [set
out in a note above] and to create a parallel "Presi-
dent's Council on the Use of Offsets in Commercial Trade:
" it is hereby ordered as follows:

SECTION 1. Membership. Pursuant to Public Law
106–113, the "National Commission on the Use of Offsets in
Defense Trade" (Commission) comprises 11 members
appointed by the President with the concurrence of the
Majority and Minority Leaders of the Senate and the
Speaker and the Minority Leader of the House of Rep-
resentatives. The Commission membership includes: (a)
representatives from the private sector, including one
each from (i) a labor organization, (ii) a United States
defense manufacturing company dependent on foreign
sales, (iii) a United States company dependent on for-
gain sales that is not a defense manufacturer, and (iv)
a United States company that specializes in inter-
national investment; (b) two members from academia with
widely recognized expertise in international eco-
nomics; and (c) five members from the executive branch
including a member from the: (i) Office of Manage-
ment and Budget, (ii) Department of Commerce,
(iii) Department of Defense, (iv) Department of State,
and (v) Department of Labor. The member from the
Office of Management and Budget will serve as Chair-
person of the Commission and will appoint, and fix the
compensation of, the Executive Director of the Com-
mision.

SIC. 2. Duties. The Commission will be responsible for
reviewing and reporting on: (a) current practices by
foreign governments in requiring offsets in preparing
offset agreements and the extent and nature of offsets offered
by United States and foreign defense industry contrac-
tors; (b) the impact of the use of offsets on defense sub-
contractors and nondefense industrial sectors affected
by indirect offsets; and (c) the role of offsets, both di-
rect and indirect, on domestic industry stability,
United States trade competitiveness, and national se-
curity.

SIC. 3. Commission Report. Not later than 12 months
after the Commission is established, it will report to the
appropriate congressional committees. In addition
to the items described in section 2 of this order, the
report will include: (a) an analysis of (i) the collateral
impact of offsets on industry sectors that may be dif-
ferent than those of the contractor paying offsets; (ii) the
role of offsets with respect to competitiveness of the
United States defense industry in international trade
and the potential damage to the ability of United
States contractors to compete if offsets were prohib-
ited or limited; and (iii) the impact on United States
national security, and upon United States nonprolifera-
tion objectives, of the use of co-production, sub-
contracting, and technology transfer with foreign gov-
ernments or companies, that results from fullfilling off-
set requirements, with particular emphasis on the
question of dependency upon foreign nations for the
supply of critical components or technology; (b) pro-
posals for unilateral, bilateral, or multilateral meas-
ures aimed at reducing any detrimental effects of off-
sets; and (c) an identification of the appropriate execu-
tive branch agencies to be responsible for monitoring
the use of offsets in international defense trade.

SIC. 4. Administration, Compensation, and Termina-
tion. (a) The Department of Defense will provide administra-
tive support and funding for the Commission and Fed-
eral Government employees may be detailed to the
Commission without reimbursement.

(b) Members of the Commission who are not officers
or employees of the Federal Government will be com-
penated at a rate of basic pay prescribed for level IV
of the Executive Schedule under section 5315 of title 5,
United States Code, for each day (including travel
time) during which such member is engaged in per-
formance of the duties of the Commission. Members of
the Commission who are officers or employees of the Fed-
eral Government will serve without compensation in
addition to that received for their services as officers
or employees of the Federal Government.

(c) Members of the Commission will be allowed travel
expenses, including per diem in lieu of subsistence,
under subchapter 1 of chapter 57 of title 5, United
States Code, while on business in the performance of
services for the Commission.

(d) The Commission will terminate 30 days after
transmitting the report required in section 1248(b) of
Public Law 106–113 (113 Stat. 1501A–506) [set out in a
note above].

SIC. 5. Establishment and Membership. (a) There is es-
ablished, pursuant to the Federal Advisory Committee
Act, as amended (5 U.S.C. App.), the "President's Coun-
cil on the Use of Offsets in Commercial Trade" (Coun-
cil).

(b) The Council shall be composed of the appointed
members of the Commission or their designees.

shall review and report to the President, through the
Director of the Office of Management and Budget, on
the use of offsets in commercial trade, including their
impact on the University of the United States defense and commercial
industrial base. The Council shall consult with and, as
appropriate, provide information to the Commission.
§ 2099a

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE

§ 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.


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 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 to 407, 64 Stat. 807; July 31, 1951, ch. 275, title I, §§ 104(1), 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 2106 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. 10494. Suspension of Wage and Price Controls

Ex. Ord. No. 10494, 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 herebefore 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