SEC. 1049. CLARIFICATION OF AUTHORITY FOR PRESIDENT TO DELEGATE SPECIAL DISPOSAL AUTHORITY OF THE PRESIDENT FOR RELEASE OF MATERIALS FROM STRATEGIC AND CRITICAL MATERIALS STOCKPILE NEEDED FOR NATIONAL DEFENSE PURPOSES.

Section 7(a)(3) of the Strategic and Critical Materials Stock Piling Act Act (50 U.S.C. 98f(a)(3)) is amended—

(1) by striking "Under Secretary of Defense for Acquisition, Technology, and Logistics" and inserting "National Defense Stockpile Manager";

(2) by striking "Under Secretary to" and inserting "Stockpile Manager to"; and

(3) by striking "Under Secretary determines" and inserting "Secretary of Defense determines".

Section-by-Section Analysis

This proposal would simplify current law by clarifying to whom the President may delegate authority to release materials from the National Defense Stockpile (NDS). Current law states that the President may delegate to the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD AT&L) the authority to release materials from the Stockpile. However, under current law the President also designates the Secretary of Defense as the Stockpile Manager. The Secretary of Defense customarily delegates the role of Stockpile Manager to the USD AT&L. If this proposal were enacted, the President would simply delegate the role of Stockpile Manager to the Secretary of Defense, who would in turn delegate to the USD AT&L the authority to release material from the Stockpile.

Section 1413 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239) amended section 7 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98f) pertaining to release of materials from the stockpile. As amended, section 7 provides that the Under Secretary of Defense for Acquisition, Technology, and Logistics may release materials from the Stockpile subject to two conditions: (1) the President must have designated the Under Secretary to have that authority, and (2) in the case of any release order, the Under Secretary must determine that the release of stockpile materials is required for use, manufacture, or production for purposes of national defense.

This prosposal would allow the President to delegate authority to release materials to the National Defense Stockpile Manager instead of the Under Secretary of Defense for Acquisition, Technology, and Logistics. In practice, the functions of the Stockpile Manager are exercised by that Under Secretary, since the President has designated the Secretary of Defense as the Stockpile Manager and the Secretary has delegated those authorities to the Under Secretary. However, consistent with the rest of the Act, statutory functions relating to the administration of the materials in the stockpile should be vested in the Stockpile Manager.

The Department also recommends that the authority for determining that a specific release of materials is required "for purposes of national defense" be vested in the Secretary of Defense, not the Under Secretary, as the President's principal assistant on all matters relating to the Department. The Secretary is the President's principal assistant on all matters relating to the Department of Defense and has authority, direction, and control over the Department.

This proposal would provide for the statutory stockpile release functions under section 7(a)(3) to be vested in the Stockpile Manager, if the President so delegates, but subject to a case-by-case national security decision by the Secretary of Defense. In practice, the Stockpile Manager could redelegate functions, of course, as could the Secretary of Defense.

Budget Implications: None

Changes to Existing Law: The proposal would make the following changes to section 7(a)(3) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.):

THE STRATEGIC AND CRITICAL MATERIALS STOCK PILING ACT
(50 U.S.C. 98 et seq.)

SHORT TITLE

SECTION 1. This Act may be cited as the "Strategic and Critical Materials Stock Piling Act".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that the natural resources of the United States in certain strategic and critical materials are deficient or insufficiently developed to supply the military, industrial, and essential civilian needs of the United States for national defense.

(b) It is the purpose of this Act to provide for the acquisition and retention of stocks of certain strategic and critical materials and to encourage the conservation and development of sources of such materials within the United States and thereby to decrease and to preclude, when possible, a dangerous and costly dependence by the United States upon foreign sources for supplies of such materials in times of national emergency.

(c) The purpose of the National Defense Stockpile is to serve the interest of national defense only. The National Defense Stockpile is not to be used for economic or budgetary purposes.

MATERIALS TO BE ACQUIRED: PRESIDENTIAL AUTHORITY AND GUIDELINES

SEC. 3. (a) Subject to subsection (c) of this section, the President shall determine from time to time (1) which materials are strategic and critical materials for the purposes of this Act, and (2) the quality and quantity of each such material to be acquired for the purposes of this Act and the

form in which each such material shall be acquired and stored. Such materials when acquired, together with the other materials described in section 4 of this Act, shall constitute and be collectively known as the National Defense Stockpile (hereinafter in this Act referred to as the "stockpile").

(b) The President shall make the determinations required to be made under subsection (a) on the basis of the principles stated in section 2(c).

(c)(1) The quantity of any material to be stockpiled under this Act, as in effect on September 30, 1987, may be changed only as provided in this subsection or as otherwise provided by law enacted after December 4, 1987.

(2) The President shall notify Congress in writing of any change proposed to be made in the quantity of any material to be stockpiled. The President may make the change after the end of the 45-day period beginning on the date of the notification. The President shall include a full explanation and justification for the proposed change with the notification.

MATERIALS CONSTITUTING THE NATIONAL DEFENSE STOCKPILE

SEC. 4. (a) The stockpile consists of the following materials:

(1) Materials acquired under this Act and contained in the national stockpile on July 29, 1979.
(2) Materials acquired under this Act after July 29, 1979.
(3) Materials in the supplemental stockpile established by section 1704(b) of the Agricultural Trade Development and Assistance Act of 1954 (as in effect from September 21, 1959, through December 31, 1966) on July 29, 1979.
(4) Materials acquired by the United States under the provisions of section 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2093) and transferred to the stockpile by the President pursuant to subsection (f) of such section.
(5) Materials transferred to the United States under section 663 of the Foreign Assistance Act of 1961 (22 U.S.C. 2423) that have been determined to be strategic and critical materials for the purposes of this Act and that are allocated by the President under subsection (b) of such section for stockpiling in the stockpile.
(6) Materials acquired by the Commodity Credit Corporation and transferred to the stockpile under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h)).
(7) Materials acquired by the Commodity Credit Corporation under paragraph (2) of section 103(a) of the Act entitled "An Act to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes," approved August 28, 1954 (7 U.S.C. 1743(a)), and transferred to the stockpile under the third sentence of such section.
(8) Materials transferred to the stockpile by the President under paragraph (4) of section 103(a) of such Act of August 28, 1954.
(9) Materials transferred to the stockpile under subsection (b).
(10) Materials transferred to the stockpile under subsection (c).

(b) Notwithstanding any other provision of law, any material that (1) is under the control of any department or agency of the United States, (2) is determined by the head of such department or agency to be excess to its needs and responsibilities, and (3) is required for the stockpile shall

be transferred to the stockpile. Any such transfer shall be made without reimbursement to such department or agency, but all costs required to effect such transfer shall be paid or reimbursed from funds appropriated to carry out this Act.

(c)(1) The Secretary of Energy, in consultation with the Secretary of Defense, shall transfer to the stockpile for disposal in accordance with this Act uncontaminated materials that are in the Department of Energy inventory of materials for the production of defense-related items, are excess to the requirements of the Department for that purpose, and are suitable for transfer to the stockpile and disposal through the stockpile.

(2) The Secretary of Defense shall determine whether materials are suitable for transfer to the stockpile under this subsection, are suitable for disposal through the stockpile, and are uncontaminated.

AUTHORITY FOR STOCKPILE OPERATIONS

SEC. 5. (a)(1) Except for acquisitions made under the authority of paragraph (3) or (4) of section 6(a) of this Act, no funds may be obligated or appropriated for acquisition of any material under this Act unless funds for such acquisition have been authorized by law. Funds appropriated for such acquisition (and for transportation and other incidental expenses related to such acquisition) shall remain available until expended, unless otherwise provided in appropriation Acts.

(2) If for any fiscal year the President proposes certain stockpile transactions in the annual materials plan submitted to Congress for that year under section 11(b) of this Act and after that plan is submitted the President proposes (or Congress requires) a significant change in any such transaction, or a significant transaction not included in such plan, no amount may be obligated or expended for such transaction during such year until the President has submitted a full statement of the proposed transaction to the appropriate committees of Congress and a period of 45 days has passed from the date of the receipt of such statement by such committees.

(b) Except for disposals made under the authority of paragraph (3), (4) or (5) of section 6(a) or under section 7(a) of this Act, no disposal may be made from the stockpile unless such disposal, including the quantity of the material to be disposed of, has been specifically authorized by law.

(c) There is authorized to be appropriated such sums as may be necessary to provide for the transportation, processing, refining, storage, security, maintenance, rotation, and disposal of materials contained in or acquired for the stockpile. Funds appropriated for such purposes shall remain available to carry out the purposes for which appropriated for a period of two fiscal years, if so provided in appropriation Acts.

STOCKPILE MANAGEMENT

SEC. 6. (a) The President shall —

(1) acquire the materials determined under section 3(a) to be strategic and critical materials;
(2) provide for the proper storage, security, and maintenance of materials in the stockpile;
(3) provide for the upgrading, refining or processing of any material in the stockpile (notwithstanding any intermediate stockpile quantity established for such material) when necessary to convert such material into a form more suitable for storage, subsequent disposition, and immediate use in a national emergency;
(4) provide for the rotation of any material in the stockpile when necessary to prevent

deterioration or technological obsolescence of such material by replacement of such material with an equivalent quantity of substantially the same material or better material;

(5) subject to the notification required by subsection (d)(2) of this section, provide for the timely disposal of materials in the stockpile that (A) are excess to stockpile requirements, and (B) may cause a loss to the Government if allowed to deteriorate; and

(6) subject to the provisions of section 5(b), dispose of materials in the stockpile the disposal of which is specifically authorized by law.

(b) Except as provided in subsections (c) and (d), acquisition of strategic and critical materials under this Act shall be made in accordance with established Federal procurement practices, and, except as provided in subsections (c) and (d) and in section 7(a), disposal of strategic and critical materials from the stockpile shall be made in accordance with the next sentence. To the maximum extent feasible—

(1) competitive procedures shall be used in the acquisition and disposal of such materials; and

(2) efforts shall be made in the acquisition and disposal of such materials to avoid undue disruption of the usual markets of producers, processors, and consumers of such materials and to protect the United States against avoidable loss.

(c)(1) The President shall encourage the use of barter in the acquisition under subsection (a)(1) of this section of strategic and critical materials for, and the disposal under subsection (a)(5) or (a)(6) of this section of materials from, the stockpile when acquisition or disposal by barter is authorized by law and is practical and in the best interest of the United States.

(2) Materials in the stockpile (the disposition of which is authorized by paragraph (3) to finance the upgrading, refining, or processing of a material in the stockpile, or is otherwise authorized by law) shall be available for transfer at fair market value as payment for expenses (including transportation and other incidental expenses) of acquisition of materials, or of upgrading, refining, processing, or rotating materials, under this Act.

(3) Notwithstanding section 3(c) of this Act or any other provision of law, whenever the President provides under subsection (a)(3) of this section for the upgrading, refining, or processing of a material in the stockpile to convert that material into a form more suitable for storage, subsequent disposition, and immediate use in a national emergency, the President may barter a portion of the same material (or any other material in the stockpile that is authorized for disposal) to finance that upgrading, refining, or processing.

(4) To the extent otherwise authorized by law, property owned by the United States may be bartered for materials needed for the stockpile.

(d)(1) The President may waive the applicability of any provision of the first sentence of subsection (b) to any acquisition of material for, or disposal of material from, the stockpile. Whenever the President waives any such provision with respect to any such acquisition or disposal, or whenever the President determines that the application of paragraph (1) or (2) of such subsection to a particular acquisition or disposal is not feasible, the President shall notify the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives in writing of the proposed acquisition or disposal at least 45 days before any obligation of the United States is incurred in connection with such acquisition or disposal and shall include in such notification the reasons for not complying with any provision

of such subsection.

(2) Materials in the stockpile may be disposed of under subsection (a)(5) of this section only if such congressional committees are notified in writing of the proposed disposal at least 45 days before any obligation of the United States is incurred in connection with such disposal.

(3) The President may acquire leasehold interests in property, for periods not in excess of twenty years, for storage, security, and maintenance of materials in the stockpile.

SPECIAL DISPOSAL AUTHORITY OF THE PRESIDENT

SEC. 7. (a) Materials in the stockpile may be released for use, sale, or other disposition —

(1) on the order of the President, at any time the President determines the release of such materials is required for purposes of the national defense;

(2) in time of war declared by the Congress or during a national emergency, on the order of any officer or employee of the United States designated by the President to have authority to issue disposal orders under this subsection, if such officer or employee determines that the release of such materials is required for purposes of the national defense; and

(3) on the order of the ~~Under Secretary of Defense for Acquisition, Technology, and Logistics~~ **National Defense Stockple Manager** if the President has designated the ~~Under Secretary~~ **Stockpile Manager** to have authority to issue release orders under this subsection and, in the case of any such order, if the ~~Under Secretary~~ **Secretary of Defense** determines that the release of such materials is required for use, manufacture, or production for purposes of national defense.

(b) Any order issued under subsection (a) shall be promptly reported by the President, or by the officer or employee issuing such order, in writing, to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives.

MATERIALS DEVELOPMENT AND RESEARCH

SEC. 8. (a)(1) The President shall make scientific, technologic, and economic investigations concerning the development, mining, preparation, treatment, and utilization of ores and other mineral substances that (A) are found in the United States, or in its territories or possessions, (B) are essential to the national defense, industrial, and essential civilian needs of the United States, and (C) are found in known domestic sources in inadequate quantities or grades.

(2) Such investigations shall be carried out in order to —

(A) determine and develop new domestic sources of supply of such ores and mineral substances;

(B) devise new methods for the treatment and utilization of lower grade reserves of such ores and mineral substances; and

(C) develop substitutes for such essential ores and mineral products.

(3) Investigations under paragraph (1) may be carried out on public lands and, with the consent of the owner, on privately owned lands for the purpose of exploring and determining the extent and quality of deposits of such minerals, the most suitable methods of mining and beneficiating such minerals, and the cost at which the minerals or metals may be produced.

(b) The President shall make scientific, technologic, and economic investigations of the

feasibility of developing domestic sources of supplies of any agricultural material or for using agricultural commodities for the manufacture of any material determined pursuant to section 3(a) of this Act to be a strategic and critical material or substitutes therefore.

(c) The President shall make scientific, technologic, and economic investigations concerning the feasibility of —

(1) developing domestic sources of supply of materials (other than materials referred to in subsections (a) and (b)) determined pursuant to section 3(a) to be strategic and critical materials; and

(2) developing or using alternative methods for the refining or processing of a material in the stockpile so as to convert such material into a form more suitable for use during an emergency or for storage.

(d) The President shall encourage the conservation of domestic sources of any material determined pursuant to section 3(a) to be a strategic and critical material by making grants or awarding contracts for research regarding the development of:

(1) substitutes for such material; or

(2) more efficient methods of production or use of such material.

NATIONAL DEFENSE STOCKPILE TRANSACTION FUND

SEC. 9. (a) There is established in the Treasury of the United States a separate fund to be known as the National Defense Stockpile Transaction Fund (hereinafter in this section referred to as the "fund").

(b)(1) All moneys received from the sale of materials in the stockpile under paragraphs (5) and (6) of section 6(a) shall be covered into the fund.

(2) Subject to section 5(a)(1), moneys covered into the fund under paragraph (1) are hereby made available (subject to such limitations as may be provided in appropriations Acts) for the following purposes:

(A) The acquisition, maintenance, and disposal of strategic and critical materials under section 6(a).

(B) Transportation, storage, and other incidental expenses related to such acquisition, maintenance, and disposal.

(C) Development of current specifications of stockpile materials and the upgrading of existing stockpile materials to meet current specifications (including transportation, when economical, related to such upgrading).

(D) Testing and quality studies of stockpile materials.

(E) Studying future material and mobilization requirements for the stockpile.

(F) Activities authorized under section 15 of this Act.

(G) Contracting under competitive procedures for materials development and research to—

(i) improve the quality and availability of materials stockpiled from time to time in the stockpile; and

(ii) develop new materials for the stockpile.

(H) Improvement or rehabilitation of facilities, structures, and infrastructure needed to maintain the integrity of stockpile materials.

(I) Disposal of hazardous materials that are stored in the stockpile and authorized for

disposal by law.

(J) Performance of environmental remediation, restoration, waste management, or compliance activities at locations of the stockpile that are required under a Federal law or are undertaken by the government under an administrative decision or negotiated agreement.

(K) Pay of employees of the National Defense Stockpile program.

(L) Other expenses of the National Defense Stockpile program.

(3) Moneys in the fund shall remain available until expended.

(c) All moneys received from the sale of materials being rotated under the provisions of section 6(a)(4) or disposed of under section 7(a) shall be covered into the fund and shall be available only for the acquisition of replacement materials.

(d) If, during a fiscal year, the National Defense Stockpile Manager barters materials in the stockpile for the purpose of acquiring, upgrading, refining, or processing other materials (or for services directly related to that purpose), the contract value of the materials so bartered shall —

(1) be applied toward the total value of materials that are authorized to be disposed of from the stockpile during that fiscal year;

(2) be treated as an acquisition for purposes of satisfying any requirement imposed on the National Defense Stockpile Manager to enter into obligations during that fiscal year under subsection (b)(2) of this section; and

(3) not increase or decrease the balance in the fund.

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DEFINITIONS

SEC. 12. For the purposes of this Act:

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

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

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NATIONAL DEFENSE STOCKPILE MANAGER

SEC. 16. (a) The President shall designate a single Federal office to have responsibility for performing the functions of the President under this Act, other than under sections 7(a)(1) and 13. The office designated shall be one to which appointment is made by the President, by and with the advice and consent of the Senate.

(b) The individual holding the office designated by the President under subsection (a) shall be known for purposes of functions under this Act as the “National Defense Stockpile Manager.”

(c) The President may delegate functions of the President under this Act (other than under sections 7(a)(1) and 13) only to the National Defense Stockpile Manager. Any such delegation made by the President shall remain in effect until specifically revoked by law or Executive order. The President may not delegate functions of the President under sections 7(a)(1) and 13.

United States Code Citations

Section 2—50 U.S.C. 98a
Section 3—50 U.S.C. 98b
Section 4—50 U.S.C. 98c
Section 5—50 U.S.C. 98d
Section 6—50 U.S.C. 98e
Section 7—50 U.S.C. 98f
Section 8—50 U.S.C. 98g
Section 9—50 U.S.C. 98h
Section 10—50 U.S.C. 98h-1
Section 11—50 U.S.C. 98h-2
Section 12—50 U.S.C. 98h-3
Section 13—50 U.S.C. 98h-4
Section 14—50 U.S.C. 98h-5
Section 15—50 U.S.C. 98h-6
Section 16—50 U.S.C. 98h-7