

proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however*, That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 2153 of this title.

**(d) By Department of Energy**

(1) In addition to the cooperation authorized in subsections (a), (b), and (c), the President may, upon making a determination described in paragraph (2), authorize the Department of Energy, with the assistance of the Department of Defense, to cooperate with another nation to communicate to that nation such Restricted Data, and the President may, upon making such determination, authorize the Department of Defense, with the assistance of the Department of Energy, to cooperate with another nation to communicate to that nation such data removed from the Restricted Data category under section 2162 of this title, as is necessary for—

(A) the support of a program for the control of and accounting for fissile material and other weapons material;

(B) the support of the control of and accounting for atomic weapons;

(C) the verification of a treaty; and

(D) the establishment of international standards for the classification of data on atomic weapons, data on fissile material, and related data.

(2) A determination referred to in paragraph (1) is a determination that the proposed cooperation and proposed communication referred to in that paragraph—

(A) will promote the common defense and security interests of the United States and the nation concerned; and

(B) will not constitute an unreasonable risk to such common defense and security interests.

(3) Cooperation under this subsection shall be undertaken pursuant to an agreement for cooperation entered into in accordance with section 2153 of this title.

**(e) Communication of data by other Government agencies**

The President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection (a), (b), (c), or (d), such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.

(Aug. 1, 1946, ch. 724, title I, §144, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 942; amended Pub. L. 85-479, §§5-7, July 2, 1958, 72 Stat. 278; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103-337, div. C, title XXXI, §3155(a), (c)(4), Oct. 5, 1994, 108 Stat. 3091, 3092.)

**Editorial Notes**

AMENDMENTS

1994—Subsec. (d). Pub. L. 103-337, §3155(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103-337, §3155(c)(4), substituted “(c), or (d)” for “or (c)”.

Pub. L. 103-337, §3155(a)(1), redesignated subsec. (d) as (e).

1958—Subsec. (a). Pub. L. 85-479, §5, substituted “civilian reactor development” for “reactor development” in cl. (2).

Subsec. (b). Pub. L. 85-479, §6, authorized communication of design information, of data concerning other military applications of atomic energy necessary for the training of personnel or for the evaluation of the capabilities of potential enemies, and of data necessary to the development of compatible delivery systems for atomic weapons, and struck out provisions which prohibited communication of data which would reveal important information concerning the design or fabrication of the nuclear components of atomic weapons.

Subsecs. (c), (d). Pub. L. 85-479, §7, added subsecs. (c) and (d).

**Statutory Notes and Related Subsidiaries**

PROHIBITION ON INSPECTIONS

Pub. L. 104-106, div. C, title XXXI, §3154(a), Feb. 10, 1996, 110 Stat. 624, which was formerly set out as a note under this section, was renumbered section 4501(a) of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(2)(A)-(C), Nov. 24, 2003, 117 Stat. 1771, and is classified to section 2651(a) of Title 50, War and National Defense.

**Executive Documents**

DELEGATION OF FUNCTIONS

Authority vested in President by subsecs. (b) and (c) of this section delegated to Secretary of Defense and Secretary of Energy, see section 2(a)(2) and (3) of Ex. Ord. No. 10841, as amended, set out as a note under section 2153 of this title.

**§ 2165. Security restrictions**

**(a) On contractors and licensees**

No arrangement shall be made under section 2051 of this title, no contract shall be made or continued in effect under section 2061 of this title, and no license shall be issued under section 2133 or 2134 of this title, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Director of the Office of Personnel Management shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

**(b) Employment of personnel; access to Restricted Data**

Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Director of the Office of Personnel Management shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and

the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

**(c) Acceptance of investigation and clearance granted by other Government agencies**

In lieu of the investigation and report to be made by the Director of the Office of Personnel Management pursuant to subsection (b) of this section, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

**(d) Investigations by FBI**

In the event an investigation made pursuant to subsections (a) and (b) of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Director of the Office of Personnel Management shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Director of the Office of Personnel Management for his information and appropriate action.

**(e) Presidential investigation**

(1) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections (a), (b), and (c) of this section be made by the Federal Bureau of Investigation.

(2) In the case of an individual employed in a program known as a Special Access Program, any investigation required by subsections (a), (b), and (c) of this section shall be made by the Federal Bureau of Investigation.

**(f) Performance of personnel security investigations by FBI**

(1) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, but subject to subsection (e) of this section, a majority of the members of the Commission may direct that an investigation required by such provisions on an individual described in paragraph (2) be carried out by the Federal Bureau of Investigation rather than by the Civil Service Commission.

(2) An individual described in this paragraph is an individual who is employed—

(A) in a program certified by a majority of the members of the Commission to be of a high degree of importance or sensitivity; or

(B) in any other specific position certified by a majority of the members of the Commission to be of a high degree of importance or sensitivity.

**(g) Investigation standards**

The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this section, that permitting a person

access to restricted data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the restricted data to which access will be permitted.

**(h) War time clearance**

Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by subsection (b), to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

(Aug. 1, 1946, ch. 724, title I, § 145, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 942; amended Pub. L. 85-681, § 5, Aug. 19, 1958, 72 Stat. 633; Pub. L. 87-206, § 6, Sept. 6, 1961, 75 Stat. 476; Pub. L. 87-615, § 10, Aug. 29, 1962, 76 Stat. 411; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; renumbered title I, Pub. L. 102-486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 106-65, div. C, title XXXI, § 3144(a), Oct. 5, 1999, 113 Stat. 934; Pub. L. 108-136, div. C, title XXXI, § 3131, Nov. 24, 2003, 117 Stat. 1749.)

**Editorial Notes**

**PRIOR PROVISIONS**

Provisions similar to this section were contained in section 1810(b)(5) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

**AMENDMENTS**

2003—Subsec. (e)(2). Pub. L. 108-136, § 3131(b), struck out “or a Personnel Security and Assurance Program” after “Special Access Program”.

Subsec. (f). Pub. L. 108-136, § 3131(a), amended text of subsec. (f) generally. Prior to amendment, text read as follows: “Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation.”

1999—Subsec. (e). Pub. L. 106-65 designated existing provisions as par. (1) and added par. (2).

1962—Subsec. (f). Pub. L. 87-615 struck out the comma after “investigation”.

1961—Subsecs. (c), (d). Pub. L. 87-206 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (e). Pub. L. 87-206 redesignated former subsec. (d) as (e) and amended provisions by substituting “determine that” for “cause investigations”, inserting reference to subsection (c) of this section and striking out “instead of by the Civil Service Commission” after “Federal Bureau of Investigation”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 87-206 redesignated former subsec. (e) as (f) and amended provisions by inserting reference to subsection (c) of this section and striking out “instead of by the Civil Service Commission” after “Federal Bureau of Investigation”. Former subsec. (f) redesignated (g).

Subsecs. (g), (h). Pub. L. 87-206 redesignated former subsec. (f) as (g) and amended provisions by substituting “, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this section, that permitting a person access to restricted data will not endanger the common defense and security” for “to be made by the Civil Service Commission pursuant to subsections (a) and (b) of this section.” Former subsec. (g) redesignated (h).

1958—Subsec. (g). Pub. L. 85-681 added subsec. (g).

#### Statutory Notes and Related Subsidiaries

##### IMPLEMENTATION OF SUBSECTION (e)(2)

Pub. L. 106-65, div. C, title XXXI, §3144(b), (c), Oct. 5, 1999, 113 Stat. 934, provided that:

“(b) COMPLIANCE.—The Director of the Federal Bureau of Investigation shall have 18 months from the date of the enactment of this Act [Oct. 5, 1999] to meet the responsibilities of the Bureau under subsection e.(2) of section 145 of the Atomic Energy Act of 1954 [42 U.S.C. 2165(e)(2)], as added by subsection (a).

“(c) REPORT.—(1) Not later than six months after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the committees specified in paragraph (2) a report on the implementation of the responsibilities of the Bureau under subsection e.(2) of that section. That report shall include the following:

“(A) An assessment of the capability of the Bureau to execute the additional clearance requirements, to include additional post-initial investigations.

“(B) An estimate of the additional resources required, to include funding, to support the expanded use of the Bureau to conduct the additional investigations.

“(C) The extent to which contractor personnel are and would be used in the clearance process.

“(2) The committees referred to in paragraph (1) are the following:

“(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

“(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.”

#### Executive Documents

##### TRANSFER OF FUNCTIONS

“Director of the Office of Personnel Management” and “his” substituted for “Civil Service Commission” and “its”, respectively, in subsecs. (a) to (d), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

#### § 2166. Applicability of other laws

(a) Sections 2161 to 2165 of this title shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections.

(b) The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

(Aug. 1, 1946, ch. 724, title I, §146, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 943; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to this section were contained in section 1810(b)(6) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

#### § 2167. Safeguards information

(a) **Confidentiality of certain types of information; issuance of regulations and orders; considerations for exercise of Commission's authority; disclosure of routes and quantities of shipment; civil penalties; withholding of information from Congressional committees**

In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed—

(1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomsoever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or by-product material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2)<sup>1</sup>

if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

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