

should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information.

(Aug. 1, 1946, ch. 724, title I, §141, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 940; 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(a) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

§ 2162. Classification and declassification of Restricted Data

(a) Periodic determination

The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

(b) Continuous review

The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.

(c) Joint determination on atomic weapons; Presidential determination on disagreement

In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

(d) Removal from Restricted Data category

(1) The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for co-operation entered into in accordance with subsection (b) or (d) of section 2164 of this title.

(2) The Commission may restore to the Restricted Data category any information related

to the design of nuclear weapons removed under paragraph (1) if the Commission and the Department of Defense jointly determine that—

(A) the programmatic requirements that caused the information to be removed from the Restricted Data category are no longer applicable or have diminished;

(B) the information would be more appropriately protected as Restricted Data; and

(C) restoring the information to the Restricted Data category is in the interest of national security.

(3) In carrying out paragraph (2), information related to the design of nuclear weapons shall be restored to the Restricted Data category in accordance with regulations prescribed for purposes of such paragraph.

(e) Joint determination on atomic energy programs

(1) The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of National Intelligence jointly determine to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended,¹ and can be adequately safeguarded as defense information.

(2) The Commission may restore to the Restricted Data category any information concerning atomic energy programs of other nations removed under paragraph (1) if the Commission and the Director of National Intelligence jointly determine that—

(A) the programmatic requirements that caused the information to be removed from the Restricted Data category are no longer applicable or have diminished;

(B) the information would be more appropriately protected as Restricted Data; and

(C) restoring the information to the Restricted Data category is in the interest of national security.

(3) In carrying out paragraph (2), information concerning atomic energy programs of other nations shall be restored to the Restricted Data category in accordance with regulations prescribed for purposes of such paragraph.

(Aug. 1, 1946, ch. 724, title I, §142, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 941; amended Pub. L. 102-484, div. C, title XXXI, §3152, Oct. 23, 1992, 106 Stat. 2644; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103-337, div. A, title XXXI, §3155(c)(2), (3), Oct. 5, 1994, 108 Stat. 3092; Pub. L. 112-239, div. C, title XXXI, §3163, Jan. 2, 2013, 126 Stat. 2205.)

Editorial Notes

REFERENCES IN TEXT

Section 102(d) of the National Security Act of 1947, as amended, referred to in subsec. (e)(1), was a reference to section 102(d) of act July 26, 1947, ch. 343, title I, 61 Stat. 497, which was classified to section 403(d) of Title 50, War and National Defense, prior to repeal by Pub. L. 104-293, title VIII, §805(a), Oct. 11, 1996, 110 Stat. 3477.

¹ See References in Text note below.

AMENDMENTS

2013—Subsec. (d). Pub. L. 112-239, § 3163(1), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (e). Pub. L. 112-239, § 3163(2), designated existing provisions as par. (1), substituted “National Intelligence” for “Central Intelligence”, and added pars. (2) and (3).

1994—Subsec. (d). Pub. L. 103-337, § 3155(c)(2), substituted “subsection (b) or (d) of section 2164 of this title” for “section 2164(b) of this title”.

Subsec. (f). Pub. L. 103-337, § 3155(c)(3), struck out subsec. (f) which read as follows: “Notwithstanding any other law, the President may publicly release Restricted Data regarding the nuclear weapons stockpile of the United States if the United States and member states of the Commonwealth of Independent States reach reciprocal agreement on the release of such data.”

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

Statutory Notes and Related Subsidiaries

REVIEW OF CERTAIN DOCUMENTS BEFORE
DECLASSIFICATION AND RELEASE

Pub. L. 104-106, div. C, title XXXI, § 3155, Feb. 10, 1996, 110 Stat. 625, which was formerly set out as a note under this section, was renumbered section 4521 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)(11), Nov. 24, 2003, 117 Stat. 1774, and is classified to section 2671 of Title 50, War and National Defense.

Executive Documents

EX. ORD. NO. 10899. COMMUNICATION OF RESTRICTED DATA
BY CENTRAL INTELLIGENCE AGENCY

Ex. Ord. No. 10899, eff. Dec. 9, 1960, 25 F.R. 12729, provided:

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 *et seq.*), and as President of the United States, it is ordered as follows:

The Central Intelligence Agency is hereby authorized to communicate for intelligence purposes, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsections 144a, b, or c of the act (42 U.S.C. 2162 (a), (b), or (c)), such restricted data and data removed from the restricted data category under subsection 142d of the Act (42 U.S.C. 2162(d)) as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841 [set out as a note under section 2153 of this title], to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Central Intelligence Agency in accordance with the terms and conditions of the agreement for cooperation involved: *Provided*, that no such communication shall be made by the Central Intelligence Agency until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures approved by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the Central Intelligence Agency.

DWIGHT D. EISENHOWER.

MODIFICATION OF EXECUTIVE ORDER NO. 10899

Ex. Ord. No. 10899, Dec. 9, 1960, 25 F.R. 12729, set out above, when referring to functions of the Atomic En-

ergy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

EX. ORD. NO. 11057. COMMUNICATION OF RESTRICTED DATA
BY DEPARTMENT OF STATE

Ex. Ord. No. 11057, eff. Oct. 18, 1962, 27 F.R. 10289, provided:

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 *et seq.*), and as President of the United States, it is ordered as follows:

The Department of State is hereby authorized to communicate, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsection 144b of the act (42 U.S.C. 2164(b)), such restricted data and data removed from the restricted data category under subsection 142d of the act (42 U.S.C. 2162(d)) as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841, as amended [set out as a note under section 2153 of this title], to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Department of State in accordance with the terms and conditions of the agreement for cooperation involved: *Provided*, that no such communication shall be made by the Department of State until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures approved by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the Department of State.

JOHN F. KENNEDY.

MODIFICATION OF EXECUTIVE ORDER NO. 11057

Ex. Ord. No. 11057, Oct. 18, 1962, 27 F.R. 10289, set out above, when referring to functions of the Atomic Energy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

§ 2163. Access to Restricted Data

The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under section 2165(b) and (c) of this title to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: *Provided, however*, That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: *And provided further*, That the Secretary of Defense finds that the established personnel and