

(Pub. L. 107-314, div. D, title XLIV, §4453D, formerly Pub. L. 104-201, div. C, title XXXI, §3142(f), Sept. 23, 1996, 110 Stat. 2836; renumbered Pub. L. 107-314, div. D, title XLIV, §4453D, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(23)(E), Nov. 24, 2003, 117 Stat. 1770.)

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(23)(E)(iii), inserted section catchline, struck out former subsec. heading, inserted “of Energy” after “The Secretary”, and substituted “section 2632 of this title” for “subsection (e)”.

§ 2638. Limitation on use of funds for decommissioning F-canyon facility

No amounts authorized to be appropriated or otherwise made available for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398) or any other Act may be obligated or expended for purposes of commencing the decommissioning of the F-canyon facility at the Savannah River Site until the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and the Defense Nuclear Facilities Safety Board, a report setting forth—

(1) an assessment whether or not all materials present in the F-canyon facility as of the date of the report that required stabilization have been safely stabilized as of that date;

(2) an assessment whether or not the requirements applicable to the F-canyon facility to meet the future needs of the United States for fissile materials disposition can be met through full use of the H-canyon facility at the Savannah River Site; and

(3) if it appears that one or more of the requirements described in paragraph (2) cannot be met through full use of the H-canyon facility—

(A) an identification by the Secretary of each such requirement that cannot be met through full use of the H-canyon facility; and

(B) for each requirement so identified, the reasons why such requirement cannot be met through full use of the H-canyon facility and a description of the alternative capability for fissile materials disposition that is needed to meet such requirement.

(Pub. L. 107-314, div. D, title XLIV, §4454, formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3137(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-460; renumbered Pub. L. 107-314, div. D, title XLIV, §4454, and amended Pub. L. 108-136, div. C, title XXXI, §§3115(b), 3141(g)(24), Nov. 24, 2003, 117 Stat. 1745, 1770.)

REFERENCES IN TEXT

The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, referred to in text, is Pub. L. 106-398, §1 [H.R. 5408], Oct. 30, 2000, 114 Stat. 1654, 1654A-1, as amended. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(24)(C), inserted section catchline, struck out former subsec. heading, and, in

introductory provisions, substituted “the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398) or any other Act” for “this or any other Act” and “the Secretary of Energy” for “the Secretary”.

Pub. L. 108-136, §3115(b)(2), substituted “a report setting forth—” and pars. (1) to (3) for “the following:” and former pars. (1) to (3) which contained somewhat similar provisions.

Pub. L. 108-136, §3115(b)(1), in introductory provisions, substituted “submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and the Defense Nuclear Facilities Safety Board,” for “and the Defense Nuclear Facilities Safety Board jointly submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives”.

SUBCHAPTER V—SAFEGUARDS AND SECURITY MATTERS

PART A—SAFEGUARDS AND SECURITY

§ 2651. Prohibition on international inspections of Department of Energy facilities unless protection of restricted data is certified

(a) Prohibition on inspections

The Secretary of Energy may not allow an inspection of a nuclear weapons facility by the International Atomic Energy Agency until the Secretary certifies to Congress that no restricted data will be revealed during such inspection.

(b) Omitted

(Pub. L. 107-314, div. D, title XLV, §4501, formerly Pub. L. 104-106, div. C, title XXXI, §3154, Feb. 10, 1996, 110 Stat. 624; renumbered Pub. L. 107-314, div. D, title XLV, §4501, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(2), Nov. 24, 2003, 117 Stat. 1771; Pub. L. 112-239, div. C, title XXXI, §3131(j), Jan. 2, 2013, 126 Stat. 2182.)

CODIFICATION

Section is comprised of section 4501 of Pub. L. 107-314. Subsec. (b) of section 4501 of Pub. L. 107-314 amended provisions set out as a note under section 2153 of Title 42, The Public Health and Welfare.

Subsec. (a) of section 3154 of Pub. L. 104-106 was formerly set out as a note under section 2164 of Title 42, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2013—Subsec. (c). Pub. L. 112-239 struck out subsec. (c), which defined “restricted data”.

2003—Pub. L. 108-136, §3141(h)(2)(D), redesignated par. (1) of subsec. (a) as entire subsec. (a) and par. (2) of subsec. (a) as subsec. (c) and, in subsec. (c), inserted heading and substituted “In this section” for “For purposes of paragraph (1)”. Subsec. (c) was editorially transferred to follow subsec. (b), to reflect the probable intent of Congress.

§ 2652. Restrictions on access to national security laboratories by foreign visitors from sensitive countries

(a) Background review required

The Secretary of Energy may not admit to any facility of a national security laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive

countries list unless the Secretary first completes a background review with respect to that individual.

(b) Moratorium pending certification

(1) During the period described in paragraph (2), the Secretary may not admit to any facility of a national security laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list.

(2) The period referred to in paragraph (1) is the period beginning on November 4, 1999, and ending on the later of the following:

(A) January 3, 2000.

(B) The date that is 45 days after the date on which the Secretary submits to Congress the certifications described in paragraph (3).

(3) The certifications referred to in paragraph (2) are one certification each by the Director of Counterintelligence of the Department of Energy, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence, of each of the following:

(A) That the foreign visitors program at that facility complies with applicable orders, regulations, and policies of the Department of Energy relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such orders, regulations, and policies.

(B) That the foreign visitors program at that facility complies with Presidential Decision Directives and similar requirements relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such Directives or requirements.

(C) That the foreign visitors program at that facility includes adequate protections against the inadvertent release of Restricted Data, information important to the national security of the United States, and any other sensitive information the disclosure of which might harm the interests of the United States.

(D) That the foreign visitors program at that facility does not pose an undue risk to the national security interests of the United States.

(c) Waiver of moratorium

(1) The Secretary of Energy may waive the prohibition in subsection (b) on a case-by-case basis with respect to any specific individual or any specific delegation of individuals whose admission to a national security laboratory is determined by the Secretary to be in the interest of the national security of the United States.

(2) Not later than the seventh day of the month following a month in which a waiver is made, the Secretary shall submit a report in writing providing notice of each waiver made in that month to 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.

(3) Each such report shall be in classified form and shall contain the identity of each individual or delegation for whom such a waiver was made

and, with respect to each such individual or delegation, the following information:

(A) A detailed justification for the waiver.

(B) For each individual with respect to whom a background review was conducted, whether the background review determined that negative information exists with respect to that individual.

(C) The Secretary's certification that the admission of that individual or delegation to a national security laboratory is in the interest of the national security of the United States.

(4) The authority of the Secretary under paragraph (1) may be delegated only to the Director of Counterintelligence of the Department of Energy.

(d) Exception to moratorium for certain individuals

The moratorium under subsection (b) shall not apply to any person who—

(1) is, on October 5, 1999, an employee or assignee of the Department of Energy, or of a contractor of the Department; and

(2) has undergone a background review in accordance with subsection (a).

(e) Exception to moratorium for certain programs

The moratorium under subsection (b) shall not apply—

(1) to activities relating to cooperative threat reduction with states of the former Soviet Union; or

(2) to the materials protection control and accounting program of the Department.

(f) Sense of Congress regarding background reviews

It is the sense of Congress that the Secretary of Energy, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence should ensure that background reviews carried out under this section are completed in not more than 15 days.

(g) Definitions

For purposes of this section:

(1) The term "background review", commonly known as an indices check, means a review of information provided by the Director of National Intelligence and the Director of the Federal Bureau of Investigation regarding personal background, including information relating to any history of criminal activity or to any evidence of espionage.

(2) The term "sensitive countries list" means the list prescribed by the Secretary of Energy known as the Department of Energy List of Sensitive Countries as in effect on January 1, 1999.

(Pub. L. 107-314, div. D, title XLV, §4502, formerly Pub. L. 106-65, div. C, title XXXI, §3146, Oct. 5, 1999, 113 Stat. 935; renumbered Pub. L. 107-314, div. D, title XLV, §4502, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(3), Nov. 24, 2003, 117 Stat. 1771; Pub. L. 112-239, div. C, title XXXI, §3131(k)(1), (bb)(1)(D), Jan. 2, 2013, 126 Stat. 2182, 2185.)

CODIFICATION

Section was formerly classified to section 7383c of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2013—Pub. L. 112-239, §3131(k)(1)(A), substituted “national security laboratories” for “national laboratories” in section catchline.

Pub. L. 112-239, §3131(k)(1)(B), substituted “national security laboratory” for “national laboratory” wherever appearing.

Subsecs. (b)(3), (f), (g)(1). Pub. L. 112-239, §3131(bb)(1)(D), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

Subsec. (g)(3), (4). Pub. L. 112-239, §3131(k)(1)(C), struck out pars. (3) and (4), which defined “national laboratory” and “Restricted Data”, respectively.

2003—Subsec. (b)(2). Pub. L. 108-136, §3141(h)(3)(D)(i)(I), substituted “on November 4, 1999,” for “30 days after October 5, 1999,” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 108-136, §3141(h)(3)(D)(i)(II), substituted “January 3, 2000” for “The date that is 90 days after October 5, 1999”.

Subsec. (d)(1). Pub. L. 108-136, §3141(h)(3)(D)(ii), substituted “October 5, 1999,” for “the date of the enactment of this Act,” in the original, which for purposes of codification had been changed to “October 5, 1999,” thus requiring no change in text.

Subsec. (g)(3), (4). Pub. L. 108-136, §3141(h)(3)(D)(iii), added pars. (3) and (4).

§ 2653. Background investigations of certain personnel at Department of Energy facilities

The Secretary of Energy shall ensure that an investigation meeting the requirements of section 2165 of title 42 is made for each Department of Energy employee, or contractor employee, at a national security laboratory or nuclear weapons production facility who—

(1) carries out duties or responsibilities in or around a location where Restricted Data is present; or

(2) has or may have regular access to a location where Restricted Data is present.

(Pub. L. 107-314, div. D, title XLV, §4503, formerly Pub. L. 106-65, div. C, title XXXI, §3143, Oct. 5, 1999, 113 Stat. 934; renumbered Pub. L. 107-314, div. D, title XLV, §4503, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(4), Nov. 24, 2003, 117 Stat. 1772; Pub. L. 112-239, div. C, title XXXI, §3131(l), Jan. 2, 2013, 126 Stat. 2182.)

CODIFICATION

Section was formerly classified to section 7383a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2013—Pub. L. 112-239 struck out subsec. (a) designation and heading “In general”, substituted “national security laboratory” for “national laboratory” in introductory provisions of text, and struck out subsecs. (b) and (c), which, respectively, required compliance by Secretary with former subsec. (a) and defined “national laboratory” and “Restricted Data”.

2003—Subsec. (b). Pub. L. 108-136, §3141(h)(4)(D)(i), substituted “October 5, 1999,” for “the date of the enactment of this Act” in the original, which for purposes of codification had been changed to “October 5, 1999,” thus requiring no change in text.

Subsec. (c). Pub. L. 108-136, §3141(h)(4)(D)(ii), added subsec. (c).

§ 2654. Department of Energy counterintelligence polygraph program

(a) New counterintelligence polygraph program required

The Secretary of Energy shall carry out, under regulations prescribed under this section, a new

counterintelligence polygraph program for the Department of Energy. The purpose of the new program is to minimize the potential for release or disclosure of classified data, materials, or information.

(b) Authorities and limitations

(1) The Secretary shall prescribe regulations for the new counterintelligence polygraph program required by subsection (a) in accordance with the provisions of subchapter II of chapter 5 of title 5 (commonly referred to as the Administrative Procedures Act).

(2) In prescribing regulations for the new program, the Secretary shall take into account the results of the Polygraph Review.

(3) Not later than six months after obtaining the results of the Polygraph Review, the Secretary shall issue a notice of proposed rulemaking for the new program.

(c) Omitted

(d) Report on further enhancement of personnel security program

(1) Not later than January 1, 2003, the Administrator for Nuclear Security shall submit to Congress a report setting forth the recommendations of the Administrator for any legislative action that the Administrator considers appropriate in order to enhance the personnel security program of the Department of Energy.

(2) Any recommendations under paragraph (1) regarding the use of polygraphs shall take into account the results of the Polygraph Review.

(e) Polygraph Review defined

In this section, the term “Polygraph Review” means the review of the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences.

(Pub. L. 107-314, div. D, title XLV, §4504, formerly Pub. L. 107-107, div. C, title XXXI, §3152, Dec. 28, 2001, 115 Stat. 1376; renumbered Pub. L. 107-314, div. D, title XLV, §4504, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(5)(A), Nov. 24, 2003, 117 Stat. 1772.)

CODIFICATION

Section is comprised of section 4504 of Pub. L. 107-314. Subsec. (c) of section 4504 of Pub. L. 107-314 repealed section 2655 of this title.

Section was formerly classified to section 7383h-1 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-136, §3141(h)(5)(A)(iv), made technical amendment. See Codification note above.

§ 2655. Repealed. Pub. L. 107-314, div. D, title XLV, § 4504(c), formerly Pub. L. 107-107, div. C, title XXXI, § 3152(c), Dec. 28, 2001, 115 Stat. 1377; renumbered Pub. L. 107-314, div. D, title XLV, § 4504(c), and amended Pub. L. 108-136, div. C, title XXXI, § 3141(h)(5)(A), Nov. 24, 2003, 117 Stat. 1772

Section, Pub. L. 107-314, div. D, title XLV, §4504A, formerly Pub. L. 106-65, div. C, title XXXI, §3154, Oct. 5, 1999, 113 Stat. 941; Pub. L. 106-398, §1 [div. C, title XXXI, §3135], Oct. 30, 2000, 114 Stat. 1654, 1654A-456; renumbered Pub. L. 107-314, div. D, title XLV, §4504A, and