

reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

- (i) illegal production of nuclear weapons, or
- (ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(b) Nothing in this section shall be construed to authorize the Secretary to withhold, or to authorize the withholding of, information from the appropriate committees of the Congress.

(c) Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5.

(d) The Secretary shall prepare on an annual basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall—

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order 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 illegal production of nuclear weapons or the theft, diversion, or sabotage of special nuclear materials, equipment, or facilities, as specified under subsection (a); and

(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

(Added Pub. L. 100–180, div. A, title XI, §1123(a), Dec. 4, 1987, 101 Stat. 1149; amended Pub. L. 101–510, div. A, title XIII, §1311(1), Nov. 5, 1990, 104 Stat. 1669.)

#### PRIOR PROVISIONS

A prior section 128 was renumbered section 421 of this title.

#### AMENDMENTS

1990—Subsec. (d). Pub. L. 101–510 substituted “on an annual basis” for “on a quarterly basis”.

### **§ 129. Prohibition of certain civilian personnel management constraints**

(a) The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the workload required to carry out the functions and activities of the department and (2) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any man-year constraint or limitation.

(b) The number of, and the amount of funds available to be paid to, indirectly funded Gov-

ernment employees of the Department of Defense may not be—

(1) subject to any constraint or limitation on the number of such personnel who may be employed on the last day of a fiscal year;

(2) managed on the basis of any end-strength; or

(3) controlled under any policy of the Secretary of a military department for control of civilian manpower resources.

(c) In this section, the term “indirectly funded Government employees” means civilian employees of the Department of Defense—

(1) who are employed by industrial-type activities or commercial-type activities described in section 2208 of this title; and

(2) whose salaries and benefits are funded from sources other than appropriated funds.

(Added Pub. L. 97–86, title IX, §904(a), Dec. 1, 1981, 95 Stat. 1114, §140b; renumbered §129, Pub. L. 99–433, title I, §101(a)(3), Oct. 1, 1986, 100 Stat. 994; amended Pub. L. 99–661, div. A, title V, §533, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 102–190, div. A, title III, §312(b), Dec. 5, 1991, 105 Stat. 1335.)

#### AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted “department and (2)” for “department, (2)” and struck out “, and (3) the authorized end strength for the civilian personnel of the department for such fiscal year” at end of first sentence.

1986—Pub. L. 99–661 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Pub. L. 99–433 renumbered section 140b of this title as this section.

### **§ 129a. General personnel policy**

The Secretary of Defense shall use the least costly form of personnel consistent with military requirements and other needs of the Department. In developing the annual personnel authorization requests to Congress and in carrying out personnel policies, the Secretary shall—

(1) consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job; and

(2) include in each manpower requirements report submitted under section 115a of this title a complete justification for converting from one form of personnel to another.

(Added Pub. L. 101–510, div. A, title XIV, §1483(b)(2), Nov. 5, 1990, 104 Stat. 1715.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(5) of this title, prior to repeal by Pub. L. 101–510, §1483(a).

### **PROHIBITION ON USE OF FUNDS TO ASSIGN SUPERVISOR'S TITLE OR GRADE BASED UPON NUMBER OF PEOPLE SUPERVISED**

Pub. L. 104–61, title VIII, §8031, Dec. 1, 1995, 109 Stat. 658, provided that: “None of the funds appropriated during the current fiscal year and hereafter, may be used by the Department of Defense to assign a supervisor's title or grade when the number of people he or she supervises is considered as a basis for this determination: *Provided*, That savings that result from this provision are represented as such in future budget proposals.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, § 8036, Sept. 30, 1994, 108 Stat. 2626.  
 Pub. L. 103–139, title VIII, § 8040, Nov. 11, 1993, 107 Stat. 1449.  
 Pub. L. 102–396, title IX, § 9053, Oct. 6, 1992, 106 Stat. 1914.  
 Pub. L. 102–172, title VIII, § 8055, Nov. 26, 1991, 105 Stat. 1184.  
 Pub. L. 101–511, title VIII, § 8063, Nov. 5, 1990, 104 Stat. 1888.  
 Pub. L. 101–165, title IX, § 9085, Nov. 21, 1989, 103 Stat. 1147.  
 Pub. L. 100–463, title VIII, § 8079, Oct. 1, 1988, 102 Stat. 2270–30.  
 Pub. L. 100–202, § 101(b) [title VIII, § 8105], Dec. 22, 1987, 101 Stat. 1329–43, 1329–81.

### **§ 129b. Experts and consultants: authority to procure services of**

(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense and the Secretaries of the military departments may—

(1) procure the services of experts or consultants (or of organizations of experts or consultants) in accordance with section 3109 of title 5; and

(2) pay in connection with such services travel expenses of individuals, including transportation and per diem in lieu of subsistence while such individuals are traveling from their homes or places of business to official duty stations and return as may be authorized by law.

(b) CONDITIONS.—The services of experts or consultants (or organizations thereof) may be procured under subsection (a) only if the Secretary of Defense or the Secretary of the military department concerned, as the case may be, determines that—

(1) the procurement of such services is advantageous to the United States; and

(2) such services cannot adequately be provided by the Department of Defense.

(c) REGULATIONS.—Procurement of the services of experts and consultants (or organizations thereof) under subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(b)(1), Nov. 5, 1990, 104 Stat. 1704; amended Pub. L. 102–190, div. A, title X, § 1061(a)(2), Dec. 5, 1991, 105 Stat. 1472.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9002, Nov. 21, 1989, 103 Stat. 1129, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(b)(3).

#### AMENDMENTS

1991—Pub. L. 102–190 inserted “of” after “services” in section catchline.

### **§ 130. Authority to withhold from public disclosure certain technical data**

(a) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported law-

fully outside the United States without an approval, authorization, or license under the Export Administration Act of 1979 (50 U.S.C. App. 2401–2420) or the Arms Export Control Act (22 U.S.C. 2751 et seq.). However, technical data may not be withheld under this section if regulations promulgated under either such Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations.

(b) Regulations under this section shall be published in the Federal Register for a period of no less than 30 days for public comment before promulgation. Such regulations shall address, where appropriate, releases of technical data to allies of the United States and to qualified United States contractors, including United States contractors that are small business concerns, for use in performing United States Government contracts.

(c) In this section, the term “technical data with military or space application” means any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used, or be adapted for use, to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

(Added Pub. L. 98–94, title XII, § 1217(a), Sept. 24, 1983, 97 Stat. 690, § 140c; amended Pub. L. 99–145, title XIII, § 1303(a)(3), Nov. 8, 1985, 99 Stat. 738; renumbered § 130 and amended Pub. L. 99–433, title I, §§ 101(a)(3), 110(d)(6), Oct. 1, 1986, 100 Stat. 994, 1003; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIV, § 1484(b)(1), Nov. 5, 1990, 104 Stat. 1715.)

#### REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (a), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

The Arms Export Control Act, referred to in subsec. (a), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

#### AMENDMENTS

1990—Subsecs. (b), (c). Pub. L. 101–510 substituted “Regulations under this section” for “(1) Within 90 days after September 24, 1983, the Secretary of Defense shall propose regulations to implement this section. Such regulations” in subsec. (b) and redesignated former subsec. (b)(2) as subsec. (c).

1987—Subsec. (b)(2). Pub. L. 100–26 inserted “the term” after ‘In this section.’.

1986—Pub. L. 99–433 renumbered section 140c of this title as this section and substituted “Authority” for “Secretary of Defense: authority” in section catchline.

1985—Subsec. (b)(1). Pub. L. 99–145 substituted “September 24, 1983” for “enactment of this section”.

### **CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE**

Sec.

131. Office of the Secretary of Defense.