

(e) Status of intelligence and counterintelligence personnel

Notwithstanding the restrictions of subsections (a) and (b), each officer or employee of the Administration, or of a contractor of the Administration, who is carrying out activities related to intelligence or counterintelligence shall, in carrying out those activities, be subject to the authority, direction, and control of the Secretary of Energy or the Secretary's delegate.

(Pub. L. 106-65, div. C, title XXXII, § 3220, formerly § 3213, Oct. 5, 1999, 113 Stat. 958; Pub. L. 106-398, § 1 [div. C, title XXXI, § 3157], Oct. 30, 2000, 114 Stat. 1654, 1654A-468; renumbered § 3220, Pub. L. 107-107, div. C, title XXXI, § 3141(a)(1), Dec. 28, 2001, 115 Stat. 1370; Pub. L. 109-364, div. C, title XXXI, § 3117(a)(2)(B), (d), Oct. 17, 2006, 120 Stat. 2507, 2508; Pub. L. 111-84, div. C, title XXXI, § 3121, Oct. 28, 2009, 123 Stat. 2710.)

CODIFICATION

Section was formerly classified to section 2403 of this title.

AMENDMENTS

2009—Subsec. (e). Pub. L. 111-84 amended Pub. L. 109-364, § 3117(a). See 2006 Amendment note below.

2006—Subsec. (e). Pub. L. 109-364, § 3117(a), which, in par. (2), directed repeal of subsec. (e) effective Sept. 30, 2010, was amended generally by Pub. L. 111-84, and as so amended, no longer contains a par. (2) or amends this section.

Pub. L. 109-364, § 3117(d), added subsec. (e).

2000—Subsec. (a). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3157(1)], struck out “Administration, in carrying out any function of the” after “employee of the” in introductory provisions.

Subsec. (b). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3157(2)], struck out “, in carrying out any function of the Administration,” after “contractor of the Administration”.

Subsec. (d). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3157(3)], added subsec. (d).

SUBCHAPTER II—MATTERS RELATING TO SECURITY

§ 2421. Protection of national security information**(a) Policies and procedures required**

The Administrator shall establish procedures to ensure the maximum protection of classified information in the possession of the Administration.

(b) Prompt reporting

The Administrator shall establish procedures to ensure prompt reporting to the Administrator of any significant problem, abuse, violation of law or Executive order, or deficiency relating to the management of classified information by personnel of the Administration.

(Pub. L. 106-65, div. C, title XXXII, § 3231, Oct. 5, 1999, 113 Stat. 960.)

§ 2422. Office of Defense Nuclear Security**(a) Establishment**

There is within the Administration an Office of Defense Nuclear Security, headed by a Chief appointed by the Secretary of Energy. The Administrator shall recommend to the Secretary suitable candidates for such position.

(b) Chief of Defense Nuclear Security

(1) The head of the Office of Defense Nuclear Security is the Chief of Defense Nuclear Security, who shall report to the Administrator and shall implement the security policies directed by the Secretary and Administrator.

(2) The Chief shall have direct access to the Secretary and all other officials of the Department and the contractors of the Department concerning security matters.

(3) The Chief shall be responsible for the development and implementation of security programs for the Administration, including the protection, control and accounting of materials, and for the physical and cyber security for all facilities of the Administration.

(Pub. L. 106-65, div. C, title XXXII, § 3232, Oct. 5, 1999, 113 Stat. 960; Pub. L. 109-364, div. C, title XXXI, § 3117(b)(1), Oct. 17, 2006, 120 Stat. 2507.)

AMENDMENTS

2006—Pub. L. 109-364, § 3117(b)(1)(A), struck out “Office of Defense Nuclear Counterintelligence and” before “Office of Defense Nuclear Security” in section catchline.

Subsec. (a). Pub. L. 109-364, § 3117(b)(1)(B), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows:

“(1) There are within the Administration—

“(A) an Office of Defense Nuclear Counterintelligence; and

“(B) an Office of Defense Nuclear Security.

“(2) Each office established under paragraph (1) shall be headed by a Chief appointed by the Secretary of Energy. The Administrator shall recommend to the Secretary suitable candidates for each such position.”

Subsecs. (b), (c). Pub. L. 109-364, § 3117(b)(1)(C), (D), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to the Chief of Defense Nuclear Counterintelligence.

§ 2423. Counterintelligence programs**(a) National security laboratories and nuclear weapons production facilities**

The Secretary of Energy shall, at each national security laboratory and nuclear weapons production facility, establish and maintain a counterintelligence program adequate to protect national security information at that laboratory or production facility.

(b) Other facilities

The Secretary of Energy shall, at each Administration facility not described in subsection (a) of this section at which Restricted Data is located, assign an employee of the Office of Counterintelligence of the Department of Energy who shall be responsible for and assess counterintelligence matters at that facility.

(Pub. L. 106-65, div. C, title XXXII, § 3233, Oct. 5, 1999, 113 Stat. 961; Pub. L. 109-364, div. C, title XXXI, § 3117(a)(2)(C), (c), Oct. 17, 2006, 120 Stat. 2507, 2508; Pub. L. 111-84, div. C, title XXXI, § 3121, Oct. 28, 2009, 123 Stat. 2710.)

AMENDMENTS

2009—Pub. L. 111-84 amended Pub. L. 109-364, § 3117(a), see 2006 Amendment note below.

2006—Pub. L. 109-364, § 3117(a), which, in par. (2), directed amendment of this section by substituting “Administrator” for “Secretary of Energy” in subsecs. (a) and (b) and “Administration” for “Office of Counter-

intelligence of the Department of Energy” in subsec. (b), effective Sept. 30, 2010, was amended generally by Pub. L. 111-84, and as so amended, no longer contains a par. (2) or amends this section.

Pub. L. 109-364, §3117(c), substituted “Secretary of Energy” for “Administrator” in subssecs. (a) and (b) and “Office of Counterintelligence of the Department of Energy” for “Office of Defense Nuclear Counterintelligence” in subsec. (b).

§ 2424. Procedures relating to access by individuals to classified areas and information of Administration

The Administrator shall establish appropriate procedures to ensure that any individual is not permitted unescorted access to any classified area, or access to classified information, of the Administration until that individual has been verified to hold the appropriate security clearances.

(Pub. L. 106-65, div. C, title XXXII, §3234, Oct. 5, 1999, 113 Stat. 961.)

§ 2425. Government access to information on Administration computers

(a) Procedures required

The Administrator shall establish procedures to govern access to information on Administration computers. Those procedures shall, at a minimum, provide that any individual who has access to information on an Administration computer shall be required as a condition of such access to provide to the Administrator written consent which permits access by an authorized investigative agency to any Administration computer used in the performance of the duties of such employee during the period of that individual's access to information on an Administration computer and for a period of three years thereafter.

(b) Expectation of privacy in Administration computers

Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no user of an Administration computer shall have any expectation of privacy in the use of that computer.

(c) Definition

For purposes of this section, the term “authorized investigative agency” means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigations of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(Pub. L. 106-65, div. C, title XXXII, §3235, Oct. 5, 1999, 113 Stat. 961.)

REFERENCES IN TEXT

The Electronic Communications Privacy Act of 1986, referred to in subsec. (b), is Pub. L. 99-508, Oct. 21, 1986, 100 Stat. 1848, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 2510 of Title 18, Crimes and Criminal Procedure, and Tables.

§ 2426. Congressional oversight of special access programs

(a) Annual report on special access programs

(1) Not later than February 1 of each year, the Administrator shall submit to the congressional defense committees a report on special access programs of the Administration.

(2) Each such report shall set forth—

(A) the total amount requested for such programs in the President's budget for the next fiscal year submitted under section 1105 of title 31; and

(B) for each such program in that budget, the following:

(i) A brief description of the program.

(ii) A brief discussion of the major milestones established for the program.

(iii) The actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted.

(iv) The estimated total cost of the program and the estimated cost of the program for (I) the current fiscal year, (II) the fiscal year for which the budget is submitted, and (III) each of the four succeeding fiscal years during which the program is expected to be conducted.

(b) Annual report on new special access programs

(1) Not later than February 1 of each year, the Administrator shall submit to the congressional defense committees a report that, with respect to each new special access program, provides—

(A) notice of the designation of the program as a special access program; and

(B) justification for such designation.

(2) A report under paragraph (1) with respect to a program shall include—

(A) the current estimate of the total program cost for the program; and

(B) an identification of existing programs or technologies that are similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the notice.

(3) In this subsection, the term “new special access program” means a special access program that has not previously been covered in a notice and justification under this subsection.

(c) Reports on changes in classification of special access programs

(1) Whenever a change in the classification of a special access program of the Administration is planned to be made or whenever classified information concerning a special access program of the Administration is to be declassified and made public, the Administrator shall submit to the congressional defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.

(2) Except as provided in paragraph (3), any report referred to in paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change or public announcement is to occur.