

(3) If the Administrator determines that because of exceptional circumstances the requirement of paragraph (2) cannot be met with respect to a proposed change or public announcement concerning a special access program of the Administration, the Administrator may submit the report required by paragraph (1) regarding the proposed change or public announcement at any time before the proposed change or public announcement is made and shall include in the report an explanation of the exceptional circumstances.

**(d) Notice of change in SAP designation criteria**

Whenever there is a modification or termination of the policy and criteria used for designating a program of the Administration as a special access program, the Administrator shall promptly notify the congressional defense committees of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy as modified.

**(e) Waiver authority**

(1) The Administrator may waive any requirement under subsection (a), (b), or (c) of this section that certain information be included in a report under that subsection if the Administrator determines that inclusion of that information in the report would adversely affect the national security. The Administrator may waive the report-and-wait requirement in subsection (f) of this section if the Administrator determines that compliance with such requirement would adversely affect the national security. Any waiver under this paragraph shall be made on a case-by-case basis.

(2) If the Administrator exercises the authority provided under paragraph (1), the Administrator shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, jointly to the chairman and ranking minority member of each of the congressional defense committees.

**(f) Report and wait for initiating new programs**

A special access program may not be initiated until—

- (1) the congressional defense committees are notified of the program; and
- (2) a period of 30 days elapses after such notification is received.

(Pub. L. 106-65, div. C, title XXXII, § 3236, Oct. 5, 1999, 113 Stat. 962.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2122a of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 106-65, § 3294(e)(1)(A).

SUBCHAPTER III—MATTERS RELATING TO PERSONNEL

**§ 2441. Authority to establish certain scientific, engineering, and technical positions**

The Administrator may, for the purposes of carrying out the responsibilities of the Administrator under this chapter, establish not more

than 300 scientific, engineering, and technical positions in the Administration, appoint individuals to such positions, and fix the compensation of such individuals. Subject to the limitations in the preceding sentence, the authority of the Administrator to make appointments and fix compensation with respect to positions in the Administration under this section shall be equivalent to, and subject to the limitations of, the authority under section 2201(d) of title 42 to make appointments and fix compensation with respect to officers and employees described in such section.

(Pub. L. 106-65, div. C, title XXXII, § 3241, Oct. 5, 1999, 113 Stat. 964.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title XXXII of div. C of Pub. L. 106-65, Oct. 5, 1999, 113 Stat. 953, as amended, which is classified principally to this chapter. For complete classification of title XXXII to the Code, see Short Title note set out under section 2401 of this title and Tables.

**§ 2442. Voluntary early retirement authority**

**(a) Authority**

An employee of the Department of Energy who is separated from the service under conditions described in subsection (b) of this section after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity in accordance with the provisions in chapter 83 or 84 of title 5, as applicable.

**(b) Conditions of separation**

Subsection (a) of this section applies to an employee who—

- (1) has been employed continuously by the Department of Energy for more than 30 days before the date on which the Secretary of Energy makes the determination required under paragraph (4)(A);
- (2) is serving under an appointment that is not limited by time;
- (3) has not received a decision notice of involuntary separation for misconduct or unacceptable performance that is pending decision; and
- (4) is separated from the service voluntarily during a period with respect to which—

(A) the Secretary of Energy determines that the Department of Energy is undergoing a major reorganization as a result of the establishment of the National Nuclear Security Administration; and

(B) the employee is within the scope of an offer of voluntary early retirement (as defined by organizational unit, occupational series or level, geographical location, any other similar factor that the Office of Personnel Management determines appropriate, or any combination of such definitions of scope), as determined by the Secretary under regulations prescribed by the Office.

**(c) Treatment of employees**

For purposes of chapters 83 and 84 of title 5 (including for purposes of computation of an annuity under such chapters), an employee enti-