

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; Pub. L. 113-66, div. C, title XXXI, § 3145(c), Dec. 26, 2013, 127 Stat. 1071.)

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. 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.

AMENDMENTS

2013—Subsec. (b). Pub. L. 113-66 inserted “(Public Law 99-508; 100 Stat. 1848)” after “of 1986”.

§ 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.

(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; Pub. L. 113-291, div. C, title XXXI, § 3143(b), Dec. 19, 2014, 128 Stat. 3902.)

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).

AMENDMENTS

2014—Subsec. (a)(2)(B)(iv). Pub. L. 113-291 substituted “program for—” for “program for” before subcl. (I) designation, “year;” for “year,” at end of subcl. (I), and “; and” for “, and” at end of subcl. (II) and realigned margins of subcls. (I) to (III).

SUBCHAPTER III—MATTERS RELATING TO PERSONNEL

§ 2441. Authority to establish certain contracting, program management, 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 600 contracting, program management, 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. To ensure that the positions established under this section are used, the Administrator, to the extent practicable, shall appoint an individual to such a position to replace the vacancy of a position not established under this section.

(Pub. L. 106-65, div. C, title XXXII, § 3241, Oct. 5, 1999, 113 Stat. 964; Pub. L. 112-239, div. C, title XXXI, § 3111(b)(1), (2), Jan. 2, 2013, 126 Stat. 2169; Pub. L. 113-66, div. C, title XXXI, § 3145(d), Dec. 26, 2013, 127 Stat. 1071.)

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.

AMENDMENTS

2013—Pub. L. 113-66, in last sentence, substituted “positions established” for “excepted positions established”, “a position” for “an excepted position”, and “position not established under this section” for “non-excepted position”.

Pub. L. 112-239, in section catchline, inserted “contracting, program management,” before “scientific” and, in text, substituted “600 contracting, program management, scientific” for “300 scientific” and in-

serted at end “To ensure that the excepted positions established under this section are used, the Administrator, to the extent practicable, shall appoint an individual to such an excepted position to replace the vacancy of a nonexcepted position.”

§ 2441a. Authorized personnel levels of the Office of the Administrator

(a) Full-time equivalent personnel levels

(1) Total number

By October 1, 2015, the total number of employees of the Office of the Administrator may not exceed 1,690.

(2) Excess

For fiscal year 2016 and each fiscal year thereafter, the Administrator may not exceed the total number of employees authorized under paragraph (1) unless, during each fiscal year in which such total number exceeds 1,690, the Administrator submits to the congressional defense committees a report justifying such excess.

(b) Counting rule

(1) A determination of the number of employees in the Office of the Administrator under subsection (a) shall be expressed on a full-time equivalent basis.

(2) Except as provided by paragraph (3), in determining the total number of employees in the Office of the Administrator under subsection (a), the Administrator shall count each employee of the Office without regard to whether the employee is located at the headquarters of the Administration, a site office of the Administration, a service or support center of the Administration, or any other location.

(3) The following employees may not be counted for purposes of determining the total number of employees in the Office of the Administrator under subsection (a):

(A) Employees of the Office of Naval Reactors.

(B) Employees of the Office of Secure Transportation.

(C) Members of the Armed Forces detailed to the Administration.

(D) Personnel supporting the Office of the Administrator pursuant to the mobility program under subchapter VI of chapter 33 of title 5 (commonly referred to as the “Intergovernmental Personnel Act Mobility Program”).

(c) Voluntary early retirement

In accordance with section 3523 of title 5, the Administrator may offer voluntary separation or retirement incentives to meet the total number of employees authorized under subsection (a).

(d) Use of IPA

The Administrator shall ensure that the expertise of the national security laboratories and the nuclear weapons production facilities is made available to the Administration, the Department of Energy, the Department of Defense, other Federal agencies, and Congress through the temporary assignment of personnel from such laboratories and facilities pursuant to the Intergovernmental Personnel Act Mobility Program and other similar programs.