

Subsec. (c)(1). Pub. L. 105-85, §3139(b), substituted “September 30, 1999” for “September 30, 1997”.

Subsec. (d). Pub. L. 105-85, §3139(a)(2), redesignated subsec. (d) as (c).

§ 2702. Whistleblower protection program

(a) Program required

The Secretary of Energy shall establish a program to ensure that covered individuals may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures.

(b) Covered individuals

For purposes of this section, a covered individual is an individual who is an employee of the Department of Energy, or of a contractor of the Department, who is engaged in the defense activities of the Department.

(c) Protected disclosures

For purposes of this section, a protected disclosure is a disclosure—

- (1) made by a covered individual who takes appropriate steps to protect the security of the information in accordance with guidance provided under this section;
- (2) made to a person or entity specified in subsection (d); and
- (3) of classified or other information that the covered individual reasonably believes to provide direct and specific evidence of any of the following:
 - (A) A violation of law or Federal regulation.
 - (B) Gross mismanagement, a gross waste of funds, or abuse of authority.
 - (C) A false statement to Congress on an issue of material fact.

(d) Persons and entities to which disclosures may be made

A person or entity specified in this subsection is any of the following:

- (1) A member of a committee of Congress having primary responsibility for oversight of the department, agency, or element of the Government to which the disclosed information relates.
- (2) An employee of Congress who is a staff member of such a committee and has an appropriate security clearance for access to information of the type disclosed.
- (3) The Inspector General of the Department of Energy.
- (4) The Federal Bureau of Investigation.
- (5) Any other element of the Government designated by the Secretary as authorized to receive information of the type disclosed.

(e) Official capacity of persons to whom information is disclosed

A member of, or an employee of Congress who is a staff member of, a committee of Congress specified in subsection (d) who receives a protected disclosure under this section does so in that member or employee's official capacity as such a member or employee.

(f) Assistance and guidance

The Secretary, acting through the Inspector General of the Department of Energy, shall pro-

vide assistance and guidance to each covered individual who seeks to make a protected disclosure under this section. Such assistance and guidance shall include the following:

- (1) Identifying the persons or entities under subsection (d) to which that disclosure may be made.
- (2) Advising that individual regarding the steps to be taken to protect the security of the information to be disclosed.
- (3) Taking appropriate actions to protect the identity of that individual throughout that disclosure.
- (4) Taking appropriate actions to coordinate that disclosure with any other Federal agency or agencies that originated the information.

(g) Regulations

The Secretary shall prescribe regulations to ensure the security of any information disclosed under this section.

(h) Notification to covered individuals

The Secretary shall notify each covered individual of the following:

- (1) The rights of that individual under this section.
- (2) The assistance and guidance provided under this section.
- (3) That the individual has a responsibility to obtain that assistance and guidance before seeking to make a protected disclosure.

(i) Complaint by covered individuals

If a covered individual believes that that individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the individual may submit a complaint relating to such matter to the Director of the Office of Hearings and Appeals of the Department of Energy.

(j) Investigation by Office of Hearings and Appeals

- (1) For each complaint submitted under subsection (i), the Director of the Office of Hearings and Appeals shall—
 - (A) determine whether or not the complaint is frivolous; and
 - (B) if the Director determines the complaint is not frivolous, conduct an investigation of the complaint.
- (2) The Director shall submit a report on each investigation undertaken under paragraph (1)(B) to—
 - (A) the individual who submitted the complaint on which the investigation is based;
 - (B) the contractor concerned, if any; and
 - (C) the Secretary of Energy.

(k) Remedial action

- (1) Whenever the Secretary determines that a covered individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the Secretary shall—
 - (A) in the case of a Department employee, take appropriate actions to abate the action; or
 - (B) in the case of a contractor employee, order the contractor concerned to take appropriate actions to abate the action.

(2)(A) If a contractor fails to comply with an order issued under paragraph (1)(B), the Secretary may file an action for enforcement of the order in the appropriate United States district court.

(B) In any action brought under subparagraph (A), the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(l) Relationship to other laws

The protections provided by this section are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101-12; 103 Stat. 16) or any other law that may provide protection for disclosures of information by employees of the Department of Energy or of a contractor of the Department.

(m) Annual report

(1) Not later than 30 days after the commencement of each fiscal year, the Director shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the investigations undertaken under subsection (j)(1)(B) during the preceding fiscal year, including a summary of the results of each such investigation.

(2) A report under paragraph (1) may not identify or otherwise provide any information about an individual submitting a complaint under this section without the consent of the individual.

(Pub. L. 107-314, div. D, title XLVI, §4602, formerly Pub. L. 106-65, div. C, title XXXI, §3164, Oct. 5, 1999, 113 Stat. 946; renumbered Pub. L. 107-314, div. D, title XLVI, §4602, and amended Pub. L. 108-136, div. C, title XXXI, §3141(i)(3), Nov. 24, 2003, 117 Stat. 1776; Pub. L. 113-66, div. C, title XXXI, §3146(g)(2), Dec. 26, 2013, 127 Stat. 1079.)

Editorial Notes

REFERENCES IN TEXT

The Whistleblower Protection Act of 1989, referred to in subsec. (l), is Pub. L. 101-12, Apr. 10, 1989, 103 Stat. 16, which enacted subchapters II (§1211 et seq.) and III (§1221 et seq.) of chapter 12 and section 3352 of Title 5, Government Organization and Employees, amended sections 1201 to 1206, 1209, 1211, 2302, 2303, 3393, 7502, 7512, 7521, 7542, 7701, and 7703 of Title 5 and section 4139 of Title 22, Foreign Relations and Intercourse, repealed sections 1207 and 1208 of Title 5, and enacted provisions set out as notes under sections 1201, 1211, and 5509 of Title 5. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1201 of Title 5 and Tables.

CODIFICATION

Section was formerly classified to section 7239 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2013—Subsec. (l). Pub. L. 113-66, §3146(g)(2)(A), substituted “Public Law 101-12; 103 Stat. 16” for “Public Law 101-512”.

Subsec. (n). Pub. L. 113-66, §3146(g)(2)(B), struck out subsec. (n). Text read as follows: “Not later than December 5, 1999, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representa-

tives a report describing the implementation of the program required by this section.”

2003—Subsec. (n). Pub. L. 108-136, §3141(i)(3)(D), substituted “December 5, 1999,” for “60 days after October 5, 1999.”

§ 2703. Repealed. Pub. L. 113-66, div. C, title XXXI, § 3146(g)(3)(A), Dec. 26, 2013, 127 Stat. 1079

Section, Pub. L. 107-314, div. D, title XLVI, §4603, formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3136], Oct. 30, 2000, 114 Stat. 1654, 1654A-458; renumbered Pub. L. 107-314, div. D, title XLVI, §4603, and amended Pub. L. 108-136, div. C, title XXXI, §3141(i)(4), Nov. 24, 2003, 117 Stat. 1777, related to employee incentives for employees at closure project facilities.

§ 2704. Department of Energy defense nuclear facilities workforce restructuring plan

(a) In general

Upon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy shall develop a plan for restructuring the workforce for the defense nuclear facility that takes into account—

(1) the reconfiguration of the defense nuclear facility; and

(2) the plan for the nuclear weapons stockpile that is the most recently prepared plan at the time of the development of the plan referred to in this subsection.

(b) Consultation

(1) In developing a plan referred to in subsection (a), the Secretary shall consult with the Secretary of Labor, appropriate representatives of local and national collective-bargaining units of individuals employed at Department of Energy defense nuclear facilities, appropriate representatives of departments and agencies of State and local governments, appropriate representatives of State and local institutions of higher education, and appropriate representatives of community groups in communities affected by the restructuring plan.

(2) The Secretary shall determine appropriate representatives of the units, governments, institutions, and groups referred to in paragraph (1).

(c) Objectives

In preparing the plan required under subsection (a), the Secretary shall be guided by the following objectives:

(1) Changes in the workforce at a Department of Energy defense nuclear facility—

(A) should be accomplished so as to minimize social and economic impacts;

(B) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and

(C) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.

(2) Employees whose employment in positions at such facilities is terminated shall, to the extent practicable, receive preference in any hiring of the Department of Energy (con-