

to responsibility for Defense Programs Emergency Response Program, prior to repeal by Pub. L. 113-66, div. C, title XXXI, §3146(f)(5)(A), Dec. 26, 2013, 127 Stat. 1079.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-291 substituted “Executive Order No. 13526 (50 U.S.C. 3161 note)” for “Executive Order No. 12958 (50 U.S.C. 435 note)”.

2013—Subsec. (c). Pub. L. 113-66 struck out subsec. (c) which required submission of a report on automatic declassification of Department of Energy records.

2003—Subsec. (b). Pub. L. 108-136, §3141(h)(15)(D), substituted “October 5, 1999,” for “the date of the enactment of this Act”.

SUBCHAPTER VI—PERSONNEL MATTERS

PART A—PERSONNEL MANAGEMENT

§ 2701. Authority for appointment of certain scientific, engineering, and technical personnel

(a) Authority

(1) Notwithstanding any provision of title 5 governing appointments in the competitive service and General Schedule classification and pay rates, the Secretary of Energy may—

(A) establish and set the rates of pay for not more than 200 positions in the Department of Energy for scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department; and

(B) appoint persons to such positions.

(2) The rate of pay for a position established under paragraph (1) may not exceed the rate of pay payable for level III of the Executive Schedule under section 5314 of title 5.

(3) To the maximum extent practicable, the Secretary shall appoint persons under paragraph (1)(B) to the positions established under paragraph (1)(A) in accordance with the merit system principles set forth in section 2301 of such title.

(b) OPM review

(1) The Secretary shall enter into an agreement with the Director of the Office of Personnel Management under which agreement the Director shall periodically evaluate the use of the authority set forth in subsection (a)(1). The Secretary shall reimburse the Director for evaluations conducted by the Director pursuant to the agreement. Any such reimbursement shall be credited to the revolving fund referred to in section 1304(e) of title 5.

(2) If the Director determines as a result of such evaluation that the Secretary of Energy is not appointing persons to positions under such authority in a manner consistent with the merit system principles set forth in section 2301 of title 5 or is setting rates of pay at levels that are not appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved, the Director shall notify the Secretary and Congress of that determination.

(3) Upon receipt of a notification under paragraph (2), the Secretary shall—

(A) take appropriate actions to appoint persons to positions under such authority in a manner consistent with such principles or to set rates of pay at levels that are appropriate

for the qualifications and experience of the persons appointed and the duties of the positions involved; or

(B) cease appointment of persons under such authority.

(c) Termination

(1) The authority provided under subsection (a)(1) shall terminate on September 30, 2016.

(2) An employee may not be separated from employment with the Department of Energy or receive a reduction in pay by reason of the termination of authority under paragraph (1).

(Pub. L. 107-314, div. D, title XLVI, §4601, formerly Pub. L. 103-337, div. C, title XXXI, §3161, Oct. 5, 1994, 108 Stat. 3095; Pub. L. 105-85, div. C, title XXXI, §3139, Nov. 18, 1997, 111 Stat. 2040; Pub. L. 105-261, div. C, title XXXI, §§3152, 3155, Oct. 17, 1998, 112 Stat. 2253, 2257; Pub. L. 106-398, §1 [div. C, title XXXI, §3191], Oct. 30, 2000, 114 Stat. 1654, 1654A-480; Pub. L. 107-314, div. C, title XXXI, §3174, Dec. 2, 2002, 116 Stat. 2745; renumbered Pub. L. 107-314, div. D, title XLVI, §4601, by Pub. L. 108-136, div. C, title XXXI, §3141(i)(2), Nov. 24, 2003, 117 Stat. 1776; Pub. L. 108-375, div. C, title XXXI, §3112, Oct. 28, 2004, 118 Stat. 2160; Pub. L. 109-364, div. C, title XXXI, §3115, Oct. 17, 2006, 120 Stat. 2506; Pub. L. 111-32, title IV, §402, June 24, 2009, 123 Stat. 1877; Pub. L. 111-84, div. C, title XXXI, §3119, Oct. 28, 2009, 123 Stat. 2709; Pub. L. 111-383, div. C, title XXXI, §3117, Jan. 7, 2011, 124 Stat. 4513; Pub. L. 113-66, div. C, title XXXI, §3146(g)(1), Dec. 26, 2013, 127 Stat. 1079.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly set out as a note under section 7231 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2013—Subsec. (a)(4). Pub. L. 113-66 struck out par. (4) which read as follows: “The Secretary may not appoint more than 100 persons during fiscal year 1995 under the authority provided in this subsection.”

2011—Subsec. (c)(1). Pub. L. 111-383 substituted “September 30, 2016” for “September 30, 2011”.

2009—Subsec. (c)(1). Pub. L. 111-84 substituted “September 30, 2011” for “September 30, 2009”.

Pub. L. 111-32 substituted “September 30, 2009” for “September 30, 2008”.

2006—Subsec. (c)(1). Pub. L. 109-364 substituted “September 30, 2008” for “September 30, 2006”.

2004—Subsec. (c)(1). Pub. L. 108-375 substituted “September 30, 2006” for “September 30, 2004”.

2002—Subsec. (c)(1). Pub. L. 107-314, §3174, substituted “September 30, 2004” for “September 30, 2002”.

2000—Subsec. (c)(1). Pub. L. 106-398 substituted “September 30, 2002” for “September 30, 2000”.

1998—Subsec. (a)(2). Pub. L. 105-261, §3155, substituted “level III of the Executive Schedule under section 5314” for “level IV of the Executive Schedule under section 5315”.

Subsec. (c)(1). Pub. L. 105-261, §3152, substituted “September 30, 2000” for “September 30, 1999”.

1997—Subsec. (c). Pub. L. 105-85, §3139(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to a study to be conducted by the Environmental Protection Agency.

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 provide assistance and guidance to each covered individual who seeks to make a protected disclo-

sure 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 Sec-