(2) Coordination with the Inspector General

(A) In general

Except as provided in subparagraph (B), the senior official appointed under subsection (a) may investigate any matter relating to possible violations or abuse concerning the administration of any program or operation of the Department relevant to the purposes under this section.

(B) Coordination

(i) Referral

Before initiating any investigation described under subparagraph (A), the senior official shall refer the matter and all related complaints, allegations, and information to the Inspector General of the Department.

(ii) Determinations and notifications by the Inspector General

(I) In general

Not later than 30 days after the receipt of a matter referred under clause (i), the Inspector General shall—

(aa) make a determination regarding whether the Inspector General intends to initiate an audit or investigation of the matter referred under clause (i); and

(bb) notify the senior official of that determination.

(II) Investigation not initiated

If the Inspector General notifies the senior official under subclause (I)(bb) that the Inspector General intended to initiate an audit or investigation, but does not initiate that audit or investigation within 90 days after providing that notification, the Inspector General shall further notify the senior official that an audit or investigation was not initiated. The further notification under this subclause shall be made not later than 3 days after the end of that 90-day period.

(iii) Investigation by senior official

The senior official may investigate a matter referred under clause (i) if—

(I) the Inspector General notifies the senior official under clause (ii)(I)(bb) that the Inspector General does not intend to initiate an audit or investigation relating to that matter; or

(II) the Inspector General provides a further notification under clause (ii)(II) relating to that matter.

(iv) Privacy training

Any employee of the Office of Inspector General who audits or investigates any matter referred under clause (i) shall be required to receive adequate training on privacy laws, rules, and regulations, to be provided by an entity approved by the Inspector General in consultation with the senior official appointed under subsection (a).

(d) Notification to Congress on removal

If the Secretary removes the senior official appointed under subsection (a) or transfers that senior official to another position or location within the Department, the Secretary shall—

(1) promptly submit a written notification of the removal or transfer to Houses of Congress; and

(2) include in any such notification the reasons for the removal or transfer.

(e) Reports by senior official to Congress

The senior official appointed under subsection (a) shall—

(1) submit reports directly to the Congress regarding performance of the responsibilities of the senior official under this section, without any prior comment or amendment by the Secretary, Deputy Secretary, or any other officer or employee of the Department or the Office of Management and Budget; and

(2) inform the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives not later than—

(A) 30 days after the Secretary disapproves the senior official's request for a subpoena under subsection (b)(1)(C) or the Secretary substantively modifies the requested subpoena; or

(B) 45 days after the senior official's request for a subpoena under subsection (b)(1)(C), if that subpoena has not either been approved or disapproved by the Secretary.

(Pub. L. 107–296, title II, §222, Nov. 25, 2002, 116 Stat. 2155; Pub. L. 108–458, title VIII, §8305, Dec. 17, 2004, 118 Stat. 3868; Pub. L. 110–53, title VIII, §802, Aug. 3, 2007, 121 Stat. 358.)

REFERENCES IN TEXT

The Privacy Act of 1974, referred to in subsec. (a)(2), (6), is Pub. L. 93–579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 552a of Title 5 and Tables.

AMENDMENTS

2007—Pub. L. 110–53 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) to (e).

2004—Pub. L. 108–458, §8305(1), inserted ", who shall report directly to the Secretary," after "in the Department" in introductory provisions.

Pars. (5), (6). Pub. L. 108–458, §8305(2)–(4), added par. (5) and redesignated former par. (5) as (6).

§ 143. Enhancement of Federal and non-Federal cybersecurity

In carrying out the responsibilities under section 121 of this title, the Under Secretary appointed under section 113(a)(1)(H) of this title shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Re-

sponse, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems; and

(3) fulfill the responsibilities of the Secretary to protect Federal information systems under subchapter II of chapter 35 of title 44.

(Pub. L. 107–296, title II, § 223, Nov. 25, 2002, 116 Stat. 2156; Pub. L. 110–53, title V, § 531(b)(1)(A), Aug. 3, 2007, 121 Stat. 334; Pub. L. 113–283, § 2(e)(3)(A), Dec. 18, 2014, 128 Stat. 3086.)

AMENDMENTS

2014—Pub. L. 113–283, § 2(e)(3)(A)(i), (ii), inserted ''Federal and'' before ''non-Federal'' in section catchline and substituted ''the Under Secretary appointed under section 113(a)(1)(H) of this title'' for ''the Under Secretary for Intelligence and Analysis, in cooperation with the Assistant Secretary for Infrastructure Protection'' in introductory provisions.

Par. (3). Pub. L. 113–283, § 2(e)(3)(A)(iii), (iv), added par. (3).

2007—Pub. L. 110–53 substituted ''Under Secretary for Intelligence and Analysis, in cooperation with the Assistant Secretary for Infrastructure Protection'' for ''Under Secretary for Information Analysis and Infrastructure Protection'' in introductory provisions.

§ 144. NET Guard

The Assistant Secretary for Infrastructure Protection may establish a national technology guard, to be known as ''NET Guard'', comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

(Pub. L. 107–296, title II, § 224, Nov. 25, 2002, 116 Stat. 2156; Pub. L. 110–53, title V, § 531(b)(1)(B), Aug. 3, 2007, 121 Stat. 334.)

AMENDMENTS

2007—Pub. L. 110–53 substituted ''Assistant Secretary for Infrastructure Protection'' for ''Under Secretary for Information Analysis and Infrastructure Protection''.

§ 145. Cyber Security Enhancement Act of 2002

(a) Short title

This section may be cited as the ''Cyber Security Enhancement Act of 2002''.

(b) Amendment of sentencing guidelines relating to certain computer crimes

(1) Directive to the United States Sentencing Commission

Pursuant to its authority under section 994(p) of title 28 and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18.

(2) Requirements

In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18.

(c) Study and report on computer crimes

Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18.

(d) Emergency disclosure exception

(1) Omitted

(2) Reporting of disclosures

A government entity that receives a disclosure under section 2702(b) of title 18 shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained,