

suant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

(c) Procedure

A contractor against whom a civil action or proceeding described in subsection (b) is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (b), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

(d) Actions covered

The provisions of this section shall apply to any action, within the provisions of subsection (b), which is pending on November 5, 1990, or commenced on or after such date. Notwithstanding section 2401(b) of title 28, if a civil action or proceeding to which this section applies is pending on November 5, 1990, and is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim, and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of title 28.

(e) "Contractor" defined

For purposes of this section, the term "contractor" includes a contractor or cost reimbursement subcontractor of any tier participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).

(Pub. L. 107-314, div. D, title XLVIII, § 4803, formerly Pub. L. 101-510, div. C, title XXXI, § 3141, Nov. 5, 1990, 104 Stat. 1837; renumbered Pub. L. 107-314, div. D, title XLVIII, § 4803, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(k)(4), Nov. 24, 2003, 117 Stat. 1783; Pub. L. 113-66, div. C, title XXXI, § 3146(i)(2), Dec. 26, 2013, 127 Stat. 1081.)

CODIFICATION

Section was formerly classified to section 2212 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2013—Subsec. (b)(1). Pub. L. 113-66 substituted "or by chapter 309 or 311 of title 46" for "by the Act of March 9, 1920 (46 U.S.C. App. 741-752), or by the Act of March 3, 1925 (46 U.S.C. App. 781-790)".

2003—Pub. L. 108-136, § 3141(k)(4)(D)(i), made technical amendment to section catchline.

Subsec. (d). Pub. L. 108-136, § 3141(k)(4)(D)(ii), substituted "November 5, 1990," for "the date of the enactment of this Act" in two places in the original, which for purposes of codification had been changed to "November 5, 1990," thus requiring no change in text.

§ 2784. Notice-and-wait requirement applicable to certain third-party financing arrangements

(a) Notice-and-wait requirement

The Secretary of Energy may not enter into an arrangement described in subsection (b) until 30 days after the date on which the Secretary notifies the congressional defense committees in writing of the proposed arrangement.

(b) Covered arrangements

(1) In general

Except as provided in paragraph (2), an arrangement referred to in subsection (a) is any alternative financing arrangement, third-party financing arrangement, public-private partnership, privatization arrangement, private capital arrangement, or other financing arrangement that—

(A) is entered into in connection with a project conducted using funds authorized to be appropriated to the Department of Energy to carry out programs necessary for national security; and

(B) involves a contractor or Federal agency obtaining and charging to the Department of Energy as an allowable cost under a contract the use of office space, facilities, or other real property assets with a value of at least \$5,000,000.

(2) Exception

An arrangement referred to in subsection (a) does not include an arrangement that—

(A) involves the Department of Energy or a contractor acquiring or entering into a capital lease for office space, facilities, or other real property assets; or

(B) is entered into in connection with a capital improvement project undertaken as part of an energy savings performance contract under section 8287 of title 42.

(Pub. L. 107-314, div. D, title XLVIII, § 4804, as added Pub. L. 109-364, div. C, title XXXI, § 3118, Oct. 17, 2006, 120 Stat. 2509.)

§ 2785. Publication of contractor performance evaluations leading to award fees

(a) In general

The Administrator shall take appropriate actions to make available to the public, to the maximum extent practicable, contractor performance evaluations conducted by the Administration of management and operating contractors of the nuclear security enterprise that results in the award of an award fee to the contractor concerned.

(b) Format

Performance evaluations shall be made public under this section in a common format that fa-

ilitates comparisons of performance evaluations between and among similar management and operating contracts.

(Pub. L. 107-314, div. D, title XLVIII, § 4805, as added Pub. L. 112-239, div. C, title XXXI, § 3117(a)(1), Jan. 2, 2013, 126 Stat. 2173.)

EFFECTIVE DATE

Pub. L. 112-239, div. C, title XXXI, § 3117(b), Jan. 2, 2013, 126 Stat. 2173, provided that: “The amendments made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Jan. 2, 2013], and shall apply with respect to contractor performance evaluations conducted by the National Nuclear Security Administration on or after that date.”

§ 2786. Enhanced procurement authority to manage supply chain risk

(a) Authority

Subject to subsection (b), the Secretary of Energy may—

- (1) carry out a covered procurement action; and
- (2) notwithstanding any other provision of law, limit, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

(b) Requirements

The Secretary may exercise the authority under subsection (a) only after—

- (1) obtaining a risk assessment that demonstrates that there is a significant supply chain risk to a covered system;
- (2) making a determination in writing, in unclassified or classified form, that—
 - (A) the use of the authority under subsection (a) is necessary to protect national security by reducing supply chain risk;
 - (B) less restrictive measures are not reasonably available to reduce the supply chain risk; and
 - (C) in a case in which the Secretary plans to limit disclosure of information under subsection (a)(2), the risk to national security of the disclosure of the information outweighs the risk of not disclosing the information; and
- (3) submitting to the appropriate congressional committees, not later than seven days after the date on which the Secretary makes the determination under paragraph (2), a notice of such determination, in classified or unclassified form, that includes—
 - (A) the information required by section 3304(e)(2)(A) of title 41;
 - (B) a summary of the risk assessment required under paragraph (1); and
 - (C) a summary of the basis for the determination, including a discussion of less restrictive measures that were considered and why such measures were not reasonably available to reduce supply chain risk.

(3) submitting to the appropriate congressional committees, not later than seven days after the date on which the Secretary makes the determination under paragraph (2), a notice of such determination, in classified or unclassified form, that includes—

- (A) the information required by section 3304(e)(2)(A) of title 41;
- (B) a summary of the risk assessment required under paragraph (1); and
- (C) a summary of the basis for the determination, including a discussion of less restrictive measures that were considered and why such measures were not reasonably available to reduce supply chain risk.

(C) a summary of the basis for the determination, including a discussion of less restrictive measures that were considered and why such measures were not reasonably available to reduce supply chain risk.

(c) Notifications

If the Secretary has exercised the authority under subsection (a), the Secretary shall—

- (1) notify appropriate parties of the covered procurement action and the basis for the action only to the extent necessary to carry out the covered procurement action;

(2) notify other Federal agencies responsible for procurement that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(3) ensure the confidentiality of any notifications under paragraph (1) or (2).

(d) Limitation of review

No action taken by the Secretary under the authority under subsection (a) shall be subject to review in any Federal court.

(e) Review by Comptroller General of the United States

Not later than one year after the effective date specified in subsection (g)(1), and annually for four years thereafter, the Comptroller General of the United States shall—

(1) review the authority provided under subsection (a), including—

- (A) the adequacy of resources, such as trained personnel, to effectively exercise that authority during the four-year period beginning on that effective date; and
- (B) the sufficiency of determinations under subsection (b)(2);

(2) review the thoroughness of the process and systems utilized by the Office of the Chief Information Officer and the Office of Intelligence and Counterintelligence of the Department of Energy to reasonably detect supply chain threats to the national security functions of the Department; and

(3) submit to the appropriate congressional committees a report that includes—

- (A) the results of the reviews conducted under paragraphs (1) and (2);
- (B) any recommendations of the Comptroller General for improving the process and systems described in paragraph (2); and
- (C) a description of the status of the implementation of recommendations, if any, with respect to that process and such systems made by the Comptroller General in previous years.

(f) Definitions

In this section:

(1) Appropriate congressional committees

The term “appropriate congressional committees” means—

- (A) the congressional defense committees; and
- (B) the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(2) Covered item of supply

The term “covered item of supply” means an item—

- (A) that is purchased for inclusion in a covered system; and
- (B) the loss of integrity of which could result in a supply chain risk for a covered system.

(3) Covered procurement

The term “covered procurement” means the following:

- (A) A source selection for a covered system or a covered item of supply involving either