

## Department of Energy

## § 1044.05

### § 1044.01 What are the purpose and scope of this part?

(a) *Purpose.* This part prescribes the security requirements for making protected disclosures of classified or unclassified controlled nuclear information under the whistleblower protection provisions of section 3164 of the National Defense Authorization Act for Fiscal Year 2000.

(b) *Scope.* The security requirements for making protected disclosures in this part are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101-12) or any other law that may provide protection for disclosures of information by employees of DOE or of a DOE contractor.

[66 FR 54645, Oct. 30, 2001]

### § 1044.02 Who must follow the requirements contained in this part?

The requirements apply to you if you are:

(a) An employee of DOE, including the National Nuclear Security Administration, or one of its contractors;

(b) Engaged in DOE defense activities; and

(c) Wish to make a protected disclosure as described in § 1044.04 of this part.

### § 1044.03 What definitions apply to this part?

The following definitions apply to this subpart:

*Atomic Energy Act* means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

*Classified information* means:

(1) Information classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act; or

(2) Information that has been determined pursuant to Executive Order 12958 or prior Executive Orders to require protection against unauthorized disclosure and is marked to indicate its classification status when in document form (also referred to as “National Security Information” in 10 CFR Part 1045 or “defense information” in the Atomic Energy Act).

*Contractor* means any industrial, educational, commercial or other entity, grantee or licensee at any tier, includ-

ing an individual, that has executed an agreement with the Federal Government for the purpose of performing under a contract, license or other agreement.

*Defense activities* means activities of DOE engaged in support of:

(1) The production, testing, sampling, maintenance, repair, modification, assembly, disassembly, utilization, transportation, or retirement of nuclear weapons or components of nuclear weapons;

(2) The production, utilization, or transportation of nuclear material for military applications; or

(3) The safeguarding of activities, equipment, or facilities which support the production of nuclear weapons or nuclear material for nuclear weapons.

*DOE* means the Department of Energy, including the National Nuclear Security Administration.

*Unclassified controlled nuclear information* means unclassified government information prohibited from unauthorized dissemination under section 148 of the Atomic Energy Act and DOE implementing regulations in 10 CFR part 1017.

### § 1044.04 What is a protected disclosure?

A protected disclosure is:

(a) A disclosure of classified or unclassified controlled nuclear information that you reasonably believe provides direct and specific evidence of—

(1) A violation of law or Federal regulation;

(2) Gross mismanagement, a gross waste of funds, or an abuse of authority; or

(3) A false statement to Congress on pursuant to an issue of material fact; and

(b) Protected pursuant to the procedures in this part, including the security procedures referenced in § 1044.11; and

(c) Revealed only to a person or organization described in § 1044.06.

### § 1044.05 What is the effect of a disclosure qualifying as a “protected disclosure”?

If a DOE or DOE contractor employee follows the procedures of this part when making a disclosure of classified