

AMENDMENT TO RULES COMMITTEE PRINT 119-

33

OFFERED BY MS. JOHNSON OF TEXAS

At the end of subtitle B of title XVII, insert the following:

1 **SEC. 17___.** **DEFENSE EXPORTS CONTROL WHISTLE-**
2 **BLOWER INCENTIVE PROGRAM.**

3 (a) **ESTABLISHMENT.**—The State Department Basic
4 Authorities Act of 1956 (22 U.S.C. 2651a et seq.) is
5 amended by inserting after section 36A the following new
6 section:

7 **“SEC. 36B. DEFENSE EXPORTS CONTROL WHISTLEBLOWER**
8 **INCENTIVE PROGRAM.**

9 “(a) **ESTABLISHMENT.**—

10 “(1) **IN GENERAL.**—With respect to a whistle-
11 blower incentive program (hereinafter the ‘Pro-
12 gram’) to reward an individual who voluntarily pro-
13 vides original information that leads to the imposi-
14 tion of any civil penalty with respect to a covered
15 violation—

16 “(A) the Secretary shall issue an interim
17 rule establishing such Program not later than

1 120 days after the date of the enactment of this
2 section;

3 “(B) the Secretary shall issue a final rule
4 establishing such Program not later than 270
5 days after the date of the enactment of this sec-
6 tion.

7 “(2) PUBLIC NOTICE.—Not later than the date
8 on which the online portal is established under sub-
9 section (b)(2), the Secretary shall provide public no-
10 tice of the Program in the Federal Register.

11 “(b) SUBMISSION OF ORIGINAL INFORMATION.—

12 “(1) SUBMISSION PROCEDURES.—The Sec-
13 retary shall by regulation establish procedures for an
14 individual to submit original information.

15 “(2) ONLINE PORTAL.—Not later than 120
16 days after the date of the enactment of this section,
17 the Secretary shall develop, implement, and maintain
18 a secure online portal, on a website accessible to the
19 public, for the reporting of original information.

20 “(3) ANONYMOUS SUBMISSIONS.—

21 “(A) IN GENERAL.—In establishing the
22 procedures under paragraph (1), the Secretary
23 shall include a procedure for an individual to
24 anonymously submit original information, in-
25 cluding through counsel.

1 “(B) IDENTITY DISCLOSURE.—The Sec-
2 retary may require an individual to disclose
3 their identity, directly or through counsel, at
4 anytime prior to issuing an award under the
5 Program.

6 “(c) REVIEW OF ORIGINAL INFORMATION.—

7 “(1) IN GENERAL.—Not later than 60 days
8 after the date that original information is submitted
9 under subsection (b), the Secretary shall determine
10 whether the original information is credible.

11 “(2) INVESTIGATION.—Not later than 180 days
12 after the date on which the Secretary determines
13 under paragraph (1) that original information is
14 credible, the Secretary shall, unless the Secretary de-
15 termines impracticable, complete an investigation
16 into the allegations contained in the original infor-
17 mation.

18 “(3) DUTY TO UPDATE.—

19 “(A) IN GENERAL.—The Secretary shall
20 update the individual who submitted original in-
21 formation under subsection (b) not later than
22 30 days after the date on which the original
23 was submitted and not less than every 30 days
24 thereafter until the original information is de-
25 termined not credible under paragraph (1) or

1 an investigation is completed under paragraph
2 (2).

3 “(B) SENSITIVE INFORMATION.—The Sec-
4 retary may omit from the updates required by
5 subparagraph (A) any information that the Sec-
6 retary determines could compromise a review of
7 original information under this subsection.

8 “(4) FRIVOLOUS REPORTS.—The Secretary
9 may determine that review of original information
10 under this subsection is not warranted if the indi-
11 vidual who submitted the original information has
12 previously made not less than 2 submissions of origi-
13 nal information that the Secretary determined under
14 paragraph (1) were not credible.

15 “(d) AWARD AMOUNT.—

16 “(1) IN GENERAL.—An award issued under the
17 Program shall be in an amount equal to—

18 “(A) not less than 10 percent of the cov-
19 ered civil penalty; and

20 “(B) not more than 30 percent of the cov-
21 ered civil penalty.

22 “(2) DETERMINATION OF AWARD AMOUNT.—To
23 determine the amount of an award issued under the
24 Program, the Secretary—

25 “(A) shall consider—

1 “(i) how significant the original infor-
2 mation provided by the individual was with
3 respect to a final determination that a cov-
4 ered violation occurred;

5 “(ii) the degree of assistance, other
6 than providing original information, pro-
7 vided by the individual, or any legal rep-
8 resentative of the individual; and

9 “(iii) any other additional factor the
10 Secretary determines relevant, including—

11 “(I) accuracy;

12 “(II) relevance;

13 “(III) timeliness; and

14 “(IV) usefulness; and

15 “(B) shall not consider the balance of the
16 account established under subsection (g) for the
17 Program in the Treasury of the United States.

18 “(3) JOINT SUBMISSIONS.—In the case of origi-
19 nal information submitted under subsection (b)
20 jointly by not less than 2 individuals, any award
21 issued under the Program shall be equally distrib-
22 uted among each individual.

23 “(e) DENIAL OF AWARD.—

24 “(1) IN GENERAL.—Notwithstanding subsection
25 (a), and except as provided in paragraph (2), the

1 Secretary may not issue an award to an individual
2 to whom an award otherwise would be issued, if such
3 individual acquired the original information sub-
4 mitted under the Program—

5 “(A) though such individual’s role as—

6 “(i) an officer, director, trustee, or
7 partner of an entity that handles internal
8 processes for legal violations for the person
9 or persons; or

10 “(ii) an employee of an entity that
11 conducts compliance or internal audits for
12 the person or persons; or

13 “(B) any means that violates Federal or
14 State criminal law.

15 “(2) EXCEPTION.—The prohibition on issuing
16 an award to certain individuals under paragraph
17 (1)(A) shall not apply if—

18 “(A) the individual had a reasonable basis
19 to believe that disclosing the original informa-
20 tion to the Secretary was necessary to stop con-
21 duct likely to cause significant harm to national
22 security;

23 “(B) the individual had a reasonable basis
24 to believe that the relevant entity was obstruct-
25 ing an investigation into the misconduct; or

1 “(C) not less than 120 days have passed
2 since the individual provided the information to
3 the audit committee, chief legal officer, chief
4 compliance officer of the relevant entity or the
5 supervisor of the individual, or their equivalent.

6 “(f) REPRESENTATION BY COUNSEL.—

7 “(1) IN GENERAL.—Subject to paragraph (2),
8 an individual may choose to be represented by coun-
9 sel at any time while cooperating with the Program.

10 “(2) REQUIRED REPRESENTATION FOR ANONY-
11 MOUS CLAIMS.—An individual who, under subsection
12 (b)(2)(A), anonymously provides original information
13 shall be represented by counsel while cooperating
14 with the Program.

15 “(g) DEFENSE EXPORT COMPLIANCE ACCOUNT-
16 ABILITY FUND.—

17 “(1) ESTABLISHMENT.—The Secretary shall es-
18 tablish in the Treasury of the United States an ac-
19 count with respect to the Program to be known as
20 the ‘Defense Export Compliance Accountability
21 Fund’.

22 “(2) DEPOSITS AND CREDITS.—There shall be
23 deposited into or credited to the fund an amount
24 equal to any fine collected by the Secretary on or
25 after the date of the enactment of this section in any

1 judicial or administrative action brought by the Sec-
2 retary that depends on or was initiated because of
3 original information submitted by an individual.

4 “(3) USE OF FUNDS.—The amounts deposited
5 in the fund—

6 “(A) shall be used to pay each award
7 issued under the Program; and

8 “(B) may be used for the administrative
9 costs of the Program.

10 “(4) INSUFFICIENT AMOUNTS.—If there are in-
11 sufficient amounts to pay an award issued under the
12 Program, the Secretary shall deposit into the ac-
13 count established under paragraph (1), or credit to
14 such account, an amount equal to the remaining bal-
15 ance of such award from any monetary sanctions
16 collected by the Secretary pursuant to the final de-
17 termination of a covered violation.

18 “(h) REPORTS TO CONGRESS.—Not later than Octo-
19 ber 31st, and annually thereafter, the Commission shall
20 submit to the appropriate congressional committees a re-
21 port on the Program, including a description of the num-
22 ber of awards made under the Program and the types of
23 cases in which such awards were made with respect to the
24 fiscal year preceding submission of such report.

25 “(i) PROHIBITION AGAINST RETALIATION.—

1 “(1) IN GENERAL.—With respect to an indi-
2 vidual who submits original information under sub-
3 section (b) or otherwise participates in the Program,
4 and except as provided in paragraph (2), no em-
5 ployer may, directly or indirectly, discharge, demote,
6 suspend, threaten, harass, such individual, or dis-
7 criminate against such individual in any other man-
8 ner in the terms and conditions of employment, be-
9 cause such individual submitted original information
10 or otherwise participated in the Program.

11 “(2) EXCEPTION.—The protection against re-
12 taliation established by paragraph (1) shall not
13 apply to any individual who reports information
14 under this section knowing that such information is
15 false.

16 “(3) ENFORCEMENT.—

17 “(A) CAUSE OF ACTION.—An individual
18 who alleges a violation of paragraph (1) may
19 bring an action under this subparagraph in the
20 appropriate district court of the United States
21 for the relief provided for in paragraph (4).

22 “(B) SUBPOENAS.—A subpoena requiring
23 the attendance of a witness at a trial or hearing
24 conducted under this clause may be served at
25 any place in the United States.

1 “(C) STATUTE OF LIMITATIONS.—

2 “ (i) IN GENERAL.—Subject to clause
3 (ii), an action under paragraph (1) shall
4 not be entertained if commenced more
5 than 6 years after the date on which the
6 violation occurred or 3 years after the date
7 on which facts material to the right of ac-
8 tion are known or reasonably should have
9 been known by the employee alleging such
10 a violation.

11 “(ii) REQUIRED ACTION WITHIN 10
12 YEARS.—An action may not in any cir-
13 cumstance be brought more than 10 years
14 after the date on which the violation oc-
15 curs.

16 “(4) RELIEF.—The relief provided for under
17 this paragraph shall be the following:

18 “(A) Reinstatement with the same senior-
19 ity status that the individual would have had,
20 but for the discrimination.

21 “(B) Back pay in an amount equal to
22 twice the amount otherwise owed to the indi-
23 vidual, with interest.

1 “(C) Compensation for litigation costs, ex-
2 pert witness fees, and reasonable fees for attor-
3 neys.

4 “(j) CONFIDENTIALITY.—

5 “(1) IN GENERAL.—Except as provided in
6 clauses (ii) and (iii), the Secretary and any officer
7 or employee of the Department of Commerce may
8 not disclose any information, including original in-
9 formation submitted under subsection (b), that could
10 reasonably be expected to reveal the identity of any
11 individual who provides original information to the
12 Program, except in accordance with the provisions of
13 section 552a of title 5, United States Code, unless
14 and until required to be disclosed to a defendant or
15 respondent in connection with a public proceeding
16 instituted by the Secretary or any entity described in
17 paragraph (4).

18 “(2) PUBLIC DISCLOSURE EXEMPTION.—For
19 purposes of section 552 of title 5, United States
20 Code, this subparagraph shall be considered a stat-
21 ute described in subsection (b)(3)(B) of such section.

22 “(3) RULE OF CONSTRUCTION.—Nothing in
23 this subsection shall be construed to limit the ability
24 of the Attorney General to present such evidence to
25 a grand jury or to share such evidence with potential

1 witnesses or defendants in the course of an ongoing
2 criminal investigation.

3 “(4) AVAILABILITY TO GOVERNMENT AGEN-
4 CIES.—

5 “(A) IN GENERAL.—When determined by
6 the Secretary to be necessary to accomplish the
7 purposes of the Program, or any regulation,
8 order, license, or other authorization issued
9 under a covered regulation, the Secretary may
10 make any information referred to paragraph (1)
11 available to—

12 “(i) a Federal law enforcement agen-
13 cy;

14 “(ii) a national security agency;

15 “(iii) a State law enforcement or reg-
16 ulatory agency;

17 “(iv) an appropriate regulatory au-
18 thority;

19 “(v) a self-regulatory organization;
20 and

21 “(vi) a foreign law enforcement au-
22 thority.

23 “(B) PRESERVATION OF CONFIDEN-
24 TIALITY.—If the Secretary makes the informa-
25 tion referred to in paragraph (1) available

1 under subparagraph (A), such information shall
2 remain confidential.

3 “(k) DIRECTED RULEMAKING.—The Secretary shall
4 issue such rules and regulations as are necessary to carry
5 out this section.

6 “(l) DEFINITIONS.—In this section:

7 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
8 TEES.—The term ‘appropriate congressional com-
9 mittees’ means the Committee on Energy and Com-
10 merce of the House of Representatives and the Com-
11 mittee on Commerce, Science, and Transportation of
12 the Senate.

13 “(2) COVERED CIVIL PENALTY.—The term ‘cov-
14 ered civil penalty’ means a civil penalty imposed,
15 with respect to a covered violation, as result of the
16 original information submitted by an individual.

17 “(3) COVERED REGULATION.—The term ‘cov-
18 ered regulation’ means—

19 “(A) any regulation, license, or order
20 under the administrative jurisdiction of the Di-
21 rectorate of Defense Trade Controls of the De-
22 partment; or

23 “(B) the International Traffic in Arms
24 Regulations (parts 120–130 of title 22, Code of

1 Federal Regulations) (or any successor regula-
2 tion).

3 “(4) COVERED VIOLATION.—The term ‘covered
4 violation’—

5 “(A) means a violation, an attempted vio-
6 lation, or a conspiracy to violate a covered regu-
7 lation; and

8 “(B) includes each such violation, at-
9 tempted violation, or conspiracy to violate that
10 occurred before the date of the enactment of
11 this section.

12 “(5) ORIGINAL INFORMATION.—The term
13 ‘original information’—

14 “(A) means information—

15 “(i) derived from the independent
16 knowledge or analysis of an individual;

17 “(ii) not known to the Secretary from
18 any other source;

19 “(iii) not exclusively derived from an
20 allegation made in a judicial or administra-
21 tive proceeding, government report, hear-
22 ing, audit, or investigation, or from news
23 media, unless such individual is the source
24 of such allegation; and

1 “(iv) provided to the Secretary volun-
2 tarily without any request from the Sec-
3 retary or any other Government official;
4 and

5 “(B) includes information that meets the
6 qualifications described in subparagraph (A)
7 and is submitted to the Secretary by such indi-
8 vidual—

9 “(i) after the date of the enactment of
10 this section; and

11 “(ii) before the establishment of the
12 Program under subsection (a).

13 “(6) SECRETARY.—The term ‘Secretary’ means
14 the Secretary of State acting through the Deputy
15 Assistant Secretary for Defense Trade Controls.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) AUTHORIZATION TO MAKE AWARD.—Section
18 36(b) of the State Department Basic Authorities Act
19 of 1956 (22 U.S.C. 2708(b)) is amended—

20 (A) in paragraph (14), by striking “; or”
21 and inserting a semicolon;

22 (B) in paragraph (15), by striking the pe-
23 riod at the end and inserting “; or”; and

24 (C) by adding at the end the following new
25 paragraph:

1 “(16) the imposition of any civil penalty with
2 respect to a covered violation under section 36B.”.

3 (2) EXCLUSION OF FUNDS FROM CRIME VIC-
4 TIMS FUND.—Section 1402(b)(1)(B) of the Victims
5 of Crime Act of 1984 (34 U.S.C. 20101(b)(1)(B)) is
6 amended—

7 (A) in clause (iii), by striking “; and” and
8 inserting a semicolon;

9 (B) in clause (iv), by inserting “and” after
10 the semicolon at the end; and

11 (C) by adding at the end the following new
12 clause:

13 “(v) the defense export compliance ac-
14 countability fund established under section
15 36B State Department Basic Authorities
16 Act of 1956;”.

17 (c) AUTHORIZATION OF APPROPRIATION.—There is
18 authorized such sums as may be necessary for the Sec-
19 retary of State to carry out this section.

