

§ 4.49

has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with the requirement imposed by or pursuant to this subpart, (c) the action has been approved by the Commission pursuant to § 4.72, and (d) the expiration of thirty (30) days after the Commission has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found.

§ 4.49 Other means authorized by law.

No action to effect compliance by any other means authorized by law shall be taken until: (a) The responsible NRC official has determined that compliance cannot be secured by voluntary means, (b) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (c) the expiration of at least ten (10) days from the mailing of such notice to the recipient or other person. During this period of at least ten (10) days, additional efforts shall be made to persuade the recipient or other person to comply with this subpart and to take such corrective action as may be appropriate.

[38 FR 17928, July 5, 1973]

OPPORTUNITY FOR HEARING

§ 4.51 Notice of opportunity for hearing.

(a) Whenever an opportunity for hearing is required by § 4.48, the responsible NRC official shall serve on the applicant or recipient, by registered or certified mail, return receipt requested, a notice of opportunity for hearing which will:

(1) Inform the applicant or recipient of his right within twenty (20) days of the date of the notice of opportunity

10 CFR Ch. I (1-1-03 Edition)

for hearing, or such other period as may be specified in the notice, to request a hearing;

(2) Set forth the alleged item or items of noncompliance with this subpart;

(3) Specify the issues;

(4) State that compliance with this subpart may be effected by an order providing for the termination of or refusal to grant or to continue assistance, as appropriate, under the program involved; and

(5) Provide that the applicant or recipient may file a written answer to the notice of opportunity for hearing under oath or affirmation within twenty (20) days of its date, or such other period as may be specified in the notice.

(b) The applicant or recipient may respond to a notice of opportunity for hearing by filing a written answer under oath or affirmation. The answer shall specifically admit or deny each allegation, or, where the applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statements shall have the effect of a denial. Allegations of fact not denied shall be deemed to be admitted. The answer shall separately state and identify matters alleged as affirmative defenses and may also set forth the matters of fact and law on which the applicant or recipient relies. The answer may request a hearing.

(c) If the answer requests a hearing, the Commission will issue a notice of hearing specifying:

(1) The time, place, and nature thereof;

(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) The matters of fact and law asserted or to be considered. The time and place of hearing will be fixed with due regard for the convenience and necessity of the parties or their representatives and for the public interest. An answer to a notice of hearing is not required.

(d) An applicant or recipient may file an answer, and waive or fail to request

Nuclear Regulatory Commission

§ 4.63

a hearing, without waiving the requirement for findings of fact and conclusions of law or the right to seek Commission review in accordance with the provisions of §§ 4.71 through 4.74. At the time an answer is filed the applicant or recipient may also submit written information or argument for the record if he does not request a hearing.

(e) An answer or stipulation may consent to the entry of an order in substantially the form set forth in the notice of opportunity for hearing; such order may be entered by the responsible Commission official. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him of a right to: (1) A hearing under the Act and § 4.48, (2) findings of fact and conclusions of law, and (3) seek Commission review.

(f) The failure of an applicant or recipient to file an answer within the period prescribed, or, if he requests a hearing, his failure to appear therefor, shall constitute a waiver by him of a right to: (1) A hearing under the Act and § 4.48, (2) conclusions of law, and (3) seek Commission review. In the event of such waiver, the responsible NRC official may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

(g) An order entered in accordance with paragraph (e) or (f) of this section shall constitute the final decision of the Commission, unless the Commission, on its own motion, within forty-five (45) days after entry of the order, issues its own decision, which shall then constitute the final decision of the Commission.

(h) A copy of an order entered by the responsible NRC official shall be mailed to the applicant or recipient and to the complainant, if any.

(i) Nothing in this section shall be deemed to place the burden of proof on the applicant or recipient.

[29 FR 19277, Dec. 31, 1964, as amended at 38 FR 17928, July 5, 1973; 40 FR 8778, Mar. 3, 1975]

HEARINGS AND FINDINGS

§ 4.61 Presiding officer.

One or more members of the Commission or one or more administrative law judges appointed pursuant to section

3105 of title 5 of the United States Code shall: (a) Preside at a hearing and (b) make findings of fact and conclusions of law if an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 4.51(d).

[35 FR 11459, July 17, 1970]

§ 4.62 Right to counsel.

In all proceedings under §§ 4.51–4.81, the applicant or recipient and the responsible NRC official shall have the right to be represented by counsel. A notice of appearance shall be filed by counsel prior to participation in any such proceedings.

§ 4.63 Procedures, evidence, and record.

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such procedures as are proper (and not inconsistent with §§ 4.61 through 4.64) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 4.51, taking of testimony, exhibits, arguments and briefs, requests for finding, and other related matters. Both the responsible NRC official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice of hearing or as determined by the presiding officer at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.