

## Nuclear Regulatory Commission

## § 4.48

ninety (90) days from the date of the alleged discrimination, unless the time for filing is extended by the responsible NRC official. A complaint shall be signed by the complainant or his representative.

### § 4.43 Investigations.

The responsible NRC official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this subpart. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this subpart.

### § 4.44 Resolution of matters.

(a) If an investigation pursuant to § 4.43 indicates a failure to comply with this subpart, the responsible NRC official will so inform the recipient and the matter will be resolved by voluntary means whenever possible. If it has been determined that the matter cannot be resolved by voluntary means, action will be taken as provided for in §§ 4.46 through 4.49.

(b) If an investigation does not warrant action pursuant to paragraph (a) of this section, the responsible NRC official will so inform the recipient and the complainant, if any, in writing.

### § 4.45 Intimidatory or retaliatory acts prohibited.

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Act or this subpart, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants shall be kept confidential, except to the extent necessary to carry out the purposes of this subpart including the conduct of any investigation, hearing,

or judicial proceeding arising thereunder.

[29 FR 19277, Dec. 31, 1964, as amended at 40 FR 8778, Mar. 3, 1975]

### MEANS OF EFFECTING COMPLIANCE

### § 4.46 Means available.

If there appears to be a failure or threatened failure to comply with any of the provisions of this subpart, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this subpart may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to: (a) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (b) any applicable proceeding under State or local law.

### § 4.47 Noncompliance with § 4.21.

If an applicant fails or refuses to furnish an assurance required under § 4.21 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of § 4.48.

[45 FR 14535, Mar. 6, 1980]

### § 4.48 Termination of or refusal to grant or to continue Federal financial assistance.

No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until: (a) The responsible NRC official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (b) there 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

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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 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; 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 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.