

(7) The time limits listed in paragraphs (c)(1) through (c)(6) of this section shall be appropriately adjusted where DOE requests another Federal agency to act on the complaint. DOE is to monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, DOE is to institute appropriate proceedings as required by this part.

(d) *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 laws implemented in this part or because the complainant has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants is to be kept confidential except as determined by the Director, FAPD, to be necessary to carry out the purpose of this subpart, including investigations, hearings, or judicial proceedings arising thereunder.

Subpart H—Enforcement

MEANS OF EFFECTING COMPLIANCE

§ 1040.111 Means available.

If there appears to be a failure or threatened failure to comply with any of the provisions of this part, and if the noncompliance or threatened noncompliance cannot be corrected by voluntary means, compliance with this part may be effected by the suspension, 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) Referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law including the Civil Rights Act of 1964, other statutes to which this part applies, or any assurance or other contractual undertaking; and

(b) Any applicable proceeding under State or local law.

§ 1040.112 Noncompliance with assurances.

If an applicant fails or refuses to furnish an assurance required under § 1040.4 of subpart A of this part, or otherwise fails or refuses to comply with a requirement imposed by this part, such as § 1040.102(c), subpart G of this part, action to refuse Federal financial assistance shall be taken in accordance with procedures of § 1040.114 of this subpart.

§ 1040.113 Deferral.

DOE may defer action on pending applications for assistance in such a case during pendency of administrative proceedings under § 1040.114 of this subpart.

§ 1040.114 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 is to become effective until:

(a) Informational notice of the proposed order is given to the Executive Assistant to the Secretary, if the action is contemplated against a State or local government;

(b) The Director has advised the applicant or recipient of his/her failure to comply and has determined that compliance cannot be secured by voluntary means. (It will be determined by the Director that compliance cannot be secured by voluntary means if it has not been secured within the time periods specifically set forth by this part.)

(c) 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 under this part;

(d) The FERC has notified the Secretary of its finding of noncompliance; and

(e) The expiration of 30 days after the Secretary or a designee has filed with the committee of the House of Representatives 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, terminate, or to refuse to grant or to continue Federal financial

assistance is to be limited to the particular political entity or part of that entity or other applicant or recipient to whom the finding has been made and shall be limited in its effect to the particular program or part of the program in which the noncompliance has been found.

§ 1040.115 Other means authorized by law.

No action to effect compliance by any other means authorized by law is to be taken until—

(a) The Director has determined that compliance cannot be secured by voluntary means;

(b) The recipient or other person has been notified by the Director, in writing, that it has been found in formal noncompliance and that it has 10 days before formal enforcement proceedings begin in which to enter into a written voluntary compliance agreement.

(c) The expiration of at least ten (10) days from the mailing of the notice to the recipient or other person.

OPPORTUNITY FOR HEARING

§ 1040.121 Notice of opportunity for hearing.

(a) Whenever an opportunity for hearing is required by § 1040.113, the Director, OEO, or his/her designee shall serve on the applicant or recipient, by registered, certified mail, or return receipt requested, a notice of opportunity for hearing which will:

(1) Inform the applicant or recipient of the action proposed to be taken and of his/her right within twenty (20) days of the date of the notice of opportunity for hearing, or another period which may be specified in the notice, to request a hearing;

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

(3) Specify the issues;

(4) State that compliance with this part 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 with the Director, OEO, to the notice of opportunity for hearing under oath or af-

firmation within twenty (20) days of its date, or another period which may be specified in the notice.

(b) 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 review by the FERC in accordance with the provisions established by the FERC. At the time an answer is filed, the applicant or recipient may also submit written information or argument for the record if he/she does not request a hearing.

(c) 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. The order may be entered by the General Counsel or his/her designee. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him/her of a right to:

(1) A hearing under Sec. 902 of title IX of the Education Amendments of 1972, Section 602 of title VI of the Civil Rights Act of 1964, Section 16, Section 401 and § 1040.113;

(2) Findings of fact and conclusions of law; and

(3) Seek review by the FERC.

(d) The failure of an applicant or recipient to file an answer within the period prescribed or, if the applicant or recipient requests a hearing, his failure to appear at the hearing shall constitute a waiver by him/her of a right to:

(1) A hearing under Section 902 of title IX of the Education Amendments of 1972, Section 602 of title VI of the Civil Rights Act of 1964, Section 16, Section 401, and § 1040.113;

(2) Conclusions of law; and

(3) Seek review by the FERC.

In the event of such a waiver, the Secretary or a designee 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.

(e) An order entered in accordance with paragraph (c) or (d) of this section shall constitute the final decision of DOE unless the FERC, within forty-five (45) days after entry of the order, issues a subsequent decision which

shall then constitute the final decision of DOE.

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

§ 1040.122 Request for hearing or review.

Whenever an applicant or recipient requests a hearing or review in accordance with § 1040.121(a)(1) or (b), the DOE General Counsel or his/her designee shall submit such request along with other appropriate documents to the FERC.

§ 1040.123 Consolidated or joint hearings.

In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued to implement the requirements of the laws cited in this part, the Secretary or a designee, in coordination with FERC may, by agreement with other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules of procedure not inconsistent with this part. Final decision in such cases, insofar as programs subject to this part are concerned, shall be made in accordance with procedures established by the FERC.

§ 1040.124 Responsibility of the Federal Energy Regulatory Commission.

The FERC has authority under section 402(b) of the DOE Organization Act, Pub. L. 95–91, to promulgate regulations regarding the conduct of hearings to deny or terminate Federal financial assistance. Rules for conduct of hearings will be published by the FERC and will be placed in title 18 CFR.

JUDICIAL REVIEW

§ 1040.131 Judicial review.

Final DOE actions taken under this part to withhold or terminate Federal

financial assistance are subject to judicial review under the following laws:

(a) Title VI—Section 603 of the Civil Rights Act of 1964;

(b) Title IX—Section 903 of the Education Amendments of 1972;

(c) Section 16, Section 401, Section 504—Pub. L. 89–554, 5 U.S.C. 702;

(d) Section 419 and Section 420 of the Energy Conservation and Production Act of 1976, as amended.

APPENDIX A TO PART 1040—FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF ENERGY TO WHICH THIS PART APPLIES

1. *Access permits.* Atomic Energy Act of 1954, as amended, Sections 1, 2, 3 and 161(i), Public Law 83–703; 68 Stat. 919; 42 U.S.C. 2011–13, 2201; and Title I Section 104(c) of the Energy Reorganization Act of 1974, Public Law 93–438; 88 Stat. 1237; 42 U.S.C. 5814; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95–91.

2. *Motion pictures film libraries.* Atomic Energy Act of 1954, as amended, Public Law 83–703, Sections 3 and 141(b), (68 Stat. 919), 42 U.S.C. 2013 and 2161; the Energy Reorganization Act of 1974, Public Law 93–438, Title I, Sections 103 and 107, (88 Stat. 1240), 42 U.S.C. 5817; Department of Energy Organization Act, Public Law 95–91, Title I, Section 102, and Title III, Section 301, (19 Stat. 565), 42 U.S.C. 7101; the National Energy Extension Service Act, Title V, Public Law 95–39, (91 Stat. 191), 42 U.S.C. 7001.

3. *Granting of patent licenses.* Atomic Energy Act of 1954, as amended, Sections 156 and 161(g); Public Law 83–703; 68 Stat. 919, 42 U.S.C. 2186 and 2201; Federal Nonnuclear Energy Research and Development Act of 1974; Section 9(f)(g)(h); Public Law 93–577; 88 Stat. 1887; 42 U.S.C. 5908(f)(g)(h); Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95–91.

4. *University Laboratory Cooperative Program.* Atomic Energy Act of 1954, as amended, Section 31 (a) and (b); Public Law 83–703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93–438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95–91.

5. *Facility training institutes, short courses, and workshops on energy and environmental subjects.* Atomic Energy Act of 1954, as amended, Section 31 (a) and (b); Public Law 83–703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; 42 U.S.C. 7101; Public Law 93–438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95–91.

6. *Reactor sharing and fuel assistance.* Atomic Energy Act of 1954, as amended, Section 31 (a) and (b), Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438, 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

7. *Traineeships for graduate students in energy related fields.* Atomic Energy Act of 1954, as amended, Sections 31 (a) (b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Public Law 93-409, Section 12(a); Public Law 94-163, Section 337; Public Law 93-577, Section 4(d); Public Law 93-275, Section 5; Public Law 95-39, Title V, Section 502(7); Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

8. *Energy related laboratory equipment grants.* Atomic Energy Act of 1954, as amended, Section 31 (a) and (b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

9. *Information services exhibits, public speakers publications, reference and analysis.* Atomic Energy Act of 1954, as amended, Section 3 and 141b; Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2013 and 2161; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

10. *Payments in lieu of property taxes.* Atomic Energy Act of 1954, as amended, Section 168; Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2208; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act; 42 U.S.C. 7101; Public Law 95-91.

11. *Radiological emergency assistance.* Atomic Energy Act of 1954, as amended, Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2011 et seq.; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

12. *Nuclear industry seminars.* Atomic Energy Act of 1954, as amended, Section 141(b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2161, and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438, 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

13. *Work experience.* Atomic Energy Act of 1954, as amended, Section 3, Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2013; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240;

42 U.S.C. 5817; Department of Energy Organization Act; 42 U.S.C. 7101; Public Law 95-91.

14. *Citizens: Workshops.* Atomic Energy Act of 1954, as amended, Public Law 83-703, Section 3 and 141(b), 68 Stat. 919; 42 U.S.C. 2013 and 2161; the Energy Reorganization Act of 1974; Public Law 93-438, Title I, Section 103 and 107, 88 Stat. 1240; 42 U.S.C. 5817, Department of Energy Organization Act, Public Law 95-91, Title I, Section 102, and Title III, Section 301, 91 Stat. 565; 42 U.S.C. 7101; the National Energy Extension Service Act, Title V, Public Law 95-39, 91 Stat. 191; 42 U.S.C. 7001.

15. *Research and development in energy conservation.* Atomic Energy Act of 1954, as amended, Section 31; Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

16. *Energy related inventions.* Section 14 of the Federal Non-Nuclear Energy Research and Development Act of 1974; Public Law 93-577; 68 Stat. 1894; 42 U.S.C. 5913; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

17. *Research and development fission, fossil, solar, geothermal, electric and storage systems, magnetic fusion.* Amendments to the Energy Reorganization Act of 1974 and the Atomic Energy Act of 1954; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

18. *Energy Information Administration Clearinghouse (EIAC).* Department of Energy Organization Act, Section 205; Public Law 95-91.

19. *National Energy Information Center (NEIC).* Federal Energy Administration Act of 1974, as amended, Section 20(a)(4); Public Law 93-175; 15 U.S.C. 779; Department of Energy Organization Act, Section 301; Public Law 95-91.

20. *Grants for Offices of Consumer Services.* Title II, Section 205 of the Energy Conservation and Production Act, Public Law 94-385; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

21. *State Energy Conservation Program.* Title III, Sections 361-366, Part C of the Energy Policy and Conservation Act, Public Law 94-163; 42 U.S.C. 6321-6326; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

22. *Weatherization Assistance Program for low income persons.* Title IV, Part A of the Energy Conservation and Production Act, Public Law 94-385; 42 U.S.C. 6861-6870; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

23. *Supplemental State Energy Conservation Program.* Title IV, Section 432(a), Part B of the Energy Conservation and Production Act of 1976, Public Law 94-385; 42 U.S.C. 6801 et seq.; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

24. *Public education in energy.* Atomic Energy Act of 1954, as amended, Sections 31(a) and 31(b); Public Law 83–703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107 of the Energy Reorganization Act of 1974; Public Law 93–458; 88 Stat. 1240; 42 U.S.C. 5817; Public Law 93–409, Section 12(a); Public Law 94–163, Section 337; Public Law 93–577, Section 4(d); Public Law 93–275, Section 5; Public Law 95–39, Title V, Section 502(7); Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95–91.

25. *Special studies and projects in energy education and training.* Atomic Energy Act of 1954, as amended, Sections 31(a) and 31(b); Public Law 83–703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107 of the Energy Reorganization Act of 1974; Public Law 93–458; 88 Stat. 1240; 42 U.S.C. 5817; Public Law 93–409, Section 12(a); Public Law 93–163, Section 337; Public Law 93–577, Section 4(d); Public Law 93–275, Section 5; Public Law 95–39, Title V, Section 502(7).

26. *Research and development in biomedical and environmental sciences.* Atomic Energy Act of 1954, as amended, Section 31; Public Law 83–703; 68 Stat. 919; 42 U.S.C. 2051; Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93–438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95–91.

27. *Preface (Pre-Freshman and Cooperative Education for Minorities In Engineering).* Atomic Energy Act of 1954, as amended, Sections 31(a) and 31(b); Public Law 83–703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107 of the Energy Reorganization Act of 1974; Public Law 93–458; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, Public Law 95–91, Sections 102 and 203; Public Law 93–409, Section 12(a); Public Law 94–163, Section 337; Public Law 93–577, Section 4(d); Public Law 93–275, Section 5; Public Law 95–39, Title V, Section 502(7).

28. *Materials allocation.* Section 104, Energy Policy and Conservation Act (EPCA), Section 101(c) Defense Production Act of 1950, as amended (DPA), 50 U.S.C. 2071(c), Section 7, Executive Order 11912, April 13, 1976. Defense Mobilization Order No. 13, September 22, 1976, 41 FR 43720; Department of Commerce, Bureau of Domestic Commerce, Delegation 4, 41 FR 52331, MA Regulations 10 CFR 216; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95–91.

29. *Basic energy sciences, high energy and nuclear physics, and advanced technology and assessment projects.* Atomic Energy Act of 1954, as amended, Section 31; Public Law 83–703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93–438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act; 42 U.S.C. 7101; Public Law 95–91.

30. *Energy Extension Service.* National Energy Extension Service Act; Title V, Public

Law 95–39; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95–91.

PART 1041—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF ENERGY

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§ 1041.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1041.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1041.103 Definitions.

For purposes of this part, the term—*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.