

Nuclear Regulatory Commission

§4.336

(2) As part of the initial investigation, NRC will use informal fact-finding methods, including joint or separate discussions with the complainant and recipient to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. NRC may seek the assistance of any involved State program agency.

(3) NRC will put any agreement in writing and have it signed by the parties and an authorized official at NRC.

(4) The settlement shall not affect the operation of any other enforcement effort of NRC, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) Settlement of a complaint under this section will not constitute a finding of discrimination by the NRC against a recipient or an admission of discrimination by the recipient.

(b) *Formal investigation.* If NRC cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, NRC will attempt to obtain voluntary compliance. If NRC cannot obtain voluntary compliance, it will begin enforcement as described in §4.336.

§4.335 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who—

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of NRC's investigation, conciliation, and enforcement process.

§4.336 Compliance procedure.

(a) NRC may enforce the Act and these regulations through—

(1) Termination of a recipient's Federal financial assistance from NRC under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has

had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases that are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from NRC.

(2) Any other means authorized by law including but not limited to—

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipients created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) NRC will limit any termination under §4.336(a)(1) to the particular recipient and particular program or activity NRC finds in violation of Act or these regulations. NRC will not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from NRC.

(c) NRC will take no action under paragraph (a) until—

(1) The Commission, or designee, has advised the recipient of its failure to comply with the Act or these regulations and has determined that voluntary compliance cannot be obtained.

(2) 30 days have elapsed after the Commission, or designee, has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. A report will be filed whenever any action is taken under paragraph (a) of this section.

(d) NRC also may defer granting new Federal financial assistance to a recipient when termination proceedings under §4.336(a)(1) are initiated.

(1) New Federal financial assistance includes all assistance for which NRC requires an application or approval, including renewal or continuation of existing activities or authorization of new activities, during the deferral period. New Federal financial assistance does not include increases in funding as a result of change computation of formula awards or assistance approved

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prior to the beginning of termination proceedings under § 4.336(a)(1).

(2) NRC will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 4.336(a)(1). NRC will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearings has been extended by mutual consent of the recipient and NRC. NRC will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 4.337 Hearings, decisions, post-termination proceedings.

Certain NRC procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to NRC enforcement of these regulations. They are §§ 4.61 through 4.64 and §§ 4.71 through 4.75.

§ 4.338 Remedial and affirmative action by recipients.

(a) Where NRC finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that NRC may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, NRC may require both recipients to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient, operating a program that serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 4.339 Alternate funds disbursement procedure.

(a) When NRC withholds funds from a recipient under these regulations, the Commission, or designee, may disburse the withheld funds directly to an alter-

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nate recipient, any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) Any alternative recipient will be required to demonstrate—

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 4.340 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if—

(1) 180 days have elapsed since the complainant filed the complaint and NRC has made no finding with regard to the complaint; or

(2) NRC issues any finding in favor of the recipient.

(b) If NRC fails to make a finding within 180 days or issues a finding in favor of the recipient, NRC will—

(1) Promptly advise the complainant; and

(2) Advise the complainant of his or her right to bring a civil action under section 305(e) of the Act of injunctive relief that will effect the purposes of the Act; and

(3) Inform the complainant that—

(i) The complainant may bring a civil action only in a United States District Court for the district in which the recipient is found or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action, the complainant shall give 30 days notice by registered mail to the Commission, the Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) The notice must state the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and