

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

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To: NRC Management Directives Custodians

Subject: Transmittal of Management Directive 10.161, "NRC Equal Employment Opportunity Program"

Purpose: Directive and Handook 10.161 replace Manual Chapter and Appendix 4140. Information was added to identify and describe responsibilities of the seven EEO Advisory Committees.

Office of Origin: Office of Small Business and Civil Rights

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NRC Equal Employment Opportunity Program

Directive

*(Formerly
MC 4140)*

10.161

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U. S. Nuclear Regulatory Commission

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Provisions

SBCR

NRC Equal Employment Opportunity Program

Directive 10.161

Policy

(10.161-01)

It is the policy of the U.S. Nuclear Regulatory Commission to provide a workplace that is free from discrimination by complying with the Federal laws applicable to equal employment opportunity (**EEO**) and actively monitoring their implementation.

Objectives

(10.161-02)

- To provide **EEO** for all persons, and to prohibit discrimination in employment because of race, color, religion, sex (including sexual harassment), age, national origin, physical or mental disability, or retaliation for participating in the EEO process. (021)
- To provide **EEO** through a continuing affirmative employment program. (022)
- To ensure that **EEO** is an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of employees and applicants for employment at NRC. (023)
- To provide for the prompt, fair, and impartial consideration and disposition of complaints of discrimination and allegations of reprisals associated with **EEO** complaints filed by NRC employees and applicants for employment (see Handbook 10.161). (024)

Organizational Responsibilities and Delegations of Authority

(10.161-03)

Chairman

(031)

- o Provides the leadership and personal commitment to ensure that NRC maintains a positive and active program of EEO. (a)
- o Approves the final NRC Affirmative Employment Plan, annual accomplishment reports, and annual plan updates submitted to the U.S. Equal Employment Opportunity Commission. (b)
- o Or his or her designee, issues the final agency decision on EEO complaints arising in offices reporting to the Chairman or Commission or in the Office of the Inspector General. (c)

The Commission

(032)

Provides the leadership and personal commitment to ensure that the agency maintains a positive and active EEO program.

Executive Director for Operations (EDO)

(033)

- o Is responsible for implementing the agency's EEO program. (a)
- o Provides for the establishment and maintenance of an affirmative employment program for EEO. (b)
- o Ensures that sufficient resources are provided to administer and implement the EEO program in a positive and effective manner. (c)
- o Issues the final agency decision on EEO complaints arising in agency offices other than offices of the Inspector General and offices reporting to the Chairman or the Commission. This authority may be delegated to other senior officials. (d)
- o Charters or authorizes the operation of EEO advisory groups or committees to provide advice and support to the overall EEO program. (e)

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**Director, Office of Small Business
and Civil Rights (SBCR)**

(034)

- o Advises and assists the Chairman and the EDO on EEO matters. (a)
- o Provides overall direction for the development and implementation of the NRC EEO program. (b)
- o Develops the **NRC** Affirmative Employment Plan and reports. (c)
- o Evaluates management's efforts to comply with the Affirmative Employment Plan and equal employment opportunity laws and regulations. (d)
- o In coordination with the Office of Personnel (**OP**), biannually briefs the Commission on the status of the agency's EEO program. (e)
- o In coordination with **OP**, ensures that EEO training is provided. (**f**)
- o Dismisses complaints in accordance with the provisions of Title 29, *Code of Federal Regulations*, Part 1614 (29 CFR 1614), Section 1614.107. (g)
- o Ensures that the investigatory record for EEO complaints is complete before a final agency decision is issued, and takes appropriate action if the records are not complete. (h)
- o Appoints NRC headquarters and regional EEO counselors in coordination with office directors and regional administrators. (i)

Director, Office of Personnel (OP)

(035)

- o In coordination with the Director, SBCR, develops and implements policies, procedures, and standards for the Federal Equal Opportunity Recruiting Plan (FEORP). (a)
- o Takes action to ensure that the policies and standards of the NRC's Affirmative Employment Plan are incorporated in all pertinent management directives of the NRC personnel program. (b)
- o In conjunction with the Director, SBCR, ensures that printed employment information distributed to applicants and sources of applicants contains a statement of NRC's EEO policy. (c)

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Director, Office of Personnel (OP)
(035) (continued)

- Through the maintenance of the automated personnel system, provides statistical employment information to the Director, SBCR, to be used in assessing the status of the NRC EEO program and in developing the Affirmative Employment Plan. (d)
- Takes positive action to recruit minorities and women in coordination with the Director, SBCR. (e)

**Office Directors and
Regional Administrators**
(036)

- Provide the necessary directives and instructions for implementation of the NRC Affirmative Employment Plan for EEO. (a)
- Take action to ensure that all personnel actions are in compliance with the policies and procedures in this directive, which are incorporated from the NRC affirmative employment plan. (b)
- Carry out the affirmative employment plan within their respective areas of responsibility, and submit annual EEO initiatives and reports to the Director, SBCR. (c)
- Support the training of supervisors to ensure their understanding of EEO concepts and practices. (d)
- Take action to ensure that evaluation of supervisory performance reflects adherence to NRC EEO policies. (e)
- Fully cooperate with employees assigned to collateral EEO duties and arrange for allocation of a reasonable amount of time for them to perform their functions. (f)
- Take positive action to recruit minorities, women, and people with disabilities. (g)
- In coordination with the AA/FWP Manager, regional administrators consult with and provide guidance and training for the regional FWP coordinators to ensure proper performance of their collateral duties. (h)

Definitions

(10.161-04)

Affirmative employment. Outreach actions that are designed to encourage protected groups to apply for positions and to remove any improper, artificial barriers to subsequent advancement.

Protected groups. Classes of persons afforded statutory and regulatory protection from discrimination on the basis of their race, color, national origin, religion, **sex**, age, or disability.

Individuals with handicap(s). Defined by 29 CFR Part 1614.203 as one who: (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment.

Applicability

(10.161-05)

The policy and guidance in this directive and handbook apply to all NRC employees and to applicants for employment. The age discrimination provisions apply to employees and applicants who are at least 40 years of age.

Handbook

(10.161-06)

Handbook 10.161 contains guidance for processing complaints of discrimination and explains NRC policy on sexual harassment and EEO policy on the EEO-based harassment including complaints of reprisal or retaliation.

References

(10.161-07)

Age Discrimination in Employment Act of 1967, as amended (ADEA) (29 U.S.C. 621 et seq.).

Civil Rights Act of 1991, Pub. L. 102-166.

Code of Federal Regulations, Title 29, Part 1614, Federal Sector Equal Employment Opportunity (29 CFR 1614).

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References

(10.161-07) (continued)

Executive Order 11478, Equal Employment Opportunity in the Federal Government, August 8, 1969.

Fair Labor Standards Act of 1938, as amended, (Equal Pay Act of 1963, EPA).

NRC Announcement No. 22, Agency Labor-Management Partnership Committee, March 14, 1994.

--- No. 37, Discrimination-Free Workplace, April 15, 1994.

--- No. 105, U.S.N.R.C. Sexual Harassment Prevention Brochure, December 10, 1993.

NUREG/BR-0182, "NRC Information Guide for People With Disabilities," December, 1993.

NUREG/BR-0212, "Processing Complaints of Discrimination at the U.S. Nuclear Regulatory Commission," August 1995.

Rehabilitation Act of 1973, as amended, Pub. L. 93-112 (29 U.S.C. 791 et seq.).

Title VII of the Civil Rights Act of 1964, as amended, Pub. L. 88-352 (42 U.S.C. 2000e et seq.).

U.S. Nuclear Regulatory Commission and National Treasury Employees Union, "Collective Bargaining Agreement," September 30, 1992.

NRC Equal Employment Opportunity Program

Handbook

*(Formerly
Appendix 4140)* **10.161**

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Part I

Program Managers, Advisory Committees, and Counselors

The Civil Rights Program Manager (A)

The Civil Rights Program Manager develops the NRC Affirmative Employment Plan in coordination with the Affirmative Action and Federal Women's Program Manager (AA/FWP), the Office of Personnel, office directors, and regional administrators. The general duties of the program manager follow.

- o Provides periodic reports to the Director, Office of Small Business and Civil Rights (SBCR), on status of the Equal Employment Opportunity (EEO) program. (1)
- o Recommends updates and changes to the NRC Affirmative Employment Plan. (2)
- o Prepares reports or statistical data required by the Equal Employment Opportunity Commission (EEOC), the Office of Personnel Management (OPM), or any other appropriate authority. As required by appropriate authority, identifies under-representation and under-utilization of minorities, women, and employees with disabilities in the NRC workforce. (3)
- o Coordinates with the staff of the Office of Personnel, regarding plans, procedures, regulations, reports and activities for implementing the NRC's affirmative employment program for minorities, women, and people with disabilities. (4)
- o Evaluates management's efforts to comply with the provisions and goals established in the Affirmative Employment Plan and with EEO laws and regulations, and advises the Director, SBCR, of any corrective action that might be needed. (5)

The Civil Rights Program

Manager (A) (continued)

- o Recommends changes in program emphasis on matters of concern to all employees in accordance with changing needs and circumstances within NRC and the Federal Government, utilizing NRC and applicable Federal regulations concerning personnel management, including the grievance process, labor relations, training, recruitment, and the merit selection and promotion process. (6)
- o Provides guidance and direction to NRC EEO counselors to ensure that they are properly performing their functions in accordance with 29 CFR 1614 and this directive. (7)
- o Provides training for headquarters and regional EEO counselors relating to counseling any employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, age, sex (including sexual harassment), national origin, or disability. (8)
- o Receives, acknowledges, and processes, where appropriate, complaints of discrimination filed under 29 CFR 1614. (9)
- o **As** appropriate, arranges for the investigation of complaints of discrimination. This includes authorizing the investigation, requiring employees to prepare and execute affidavits, and in some cases, requiring witnesses in the investigation to provide verbatim, on-the-record interviews transcribed by a court reporter. (10)
- o Reviews the record of any individual complaint before a final decision is made by the EDO, or his designee, and makes recommendations, as appropriate, to the deciding official through the Director, SBCR. (11)
- o Provides for periodic special training of NRC managers/supervisors for the purpose of improving their understanding and recognition of their responsibility for ensuring EEO for NRC employees and applicants for employment. (12)
- o Assists and advises management in the formal or informal resolution of EEO complaints. (13)
- o Serves as the agency representative in consultation with public and private groups and individuals concerned with the improvement of employment opportunities for minorities. (14)

The Civil Rights Program

Manager (A) (continued)

- o Assists the Directors, SBCR and **OP**, in developing the biannual EEO commission paper and briefing. (15)

The Affirmative Action and Federal

Women's Program (AA/FWP)

Manager (B)

The AA/FWP Manager implements and manages an agencywide Affirmative Action and Federal Women's Program (AA/FWP), including establishing the basic content and character of the program, such as program planning, management, and evaluation. The general duties of the program manager follow.

- o Recommends to the Director, SBCR, AA/FWP policies and develops procedures including NRC directives, technical instructions, and guidelines. (1)
- o Recommends changes in program emphasis on matters of concern to women and minority employees in accordance with changing needs and circumstances within NRC and the Federal Government, utilizing NRC and applicable Federal regulations concerning personnel management, including grievance process, labor relations, training, recruitment, selection process, and career development. (2)
- o Provides recommendations for monitoring and institutionalizing specific improvements in all areas of EEO for women and minorities, including recruitment, career counseling, career development, training, hiring, and promotion of women employees. (3)
- o Serves as the agency liaison with NRC EEO advisory committees; develops general operating procedures and guidance for committee membership and responsibilities. (4)
- o Assists and advises management in the informal and formal resolution of EEO complaints. (5)
- o Recommends training programs to the Office of Personnel that are designed to assist the career opportunities for employees including women and minorities. (6)

The Affirmative Action and Federal Women's Program (AA/FWP) Manager (B) (continued)

- Provides authoritative program guidance to NRC regional FWP coordinators and EEO Advisory Committee members to ensure that they are properly informed and perform their functions in accordance with 29 CFR 1614 and this directive. (7)
- Reviews, analyzes, and provides comments on the NRC Affirmative Employment Plan to ensure that it properly identifies and addresses systemic barriers and areas of under-representation and under-utilization of women and minorities. (8)
- Periodically evaluates the adequacy of the total agency program emphasis on concerns of women and minority employees and reports thereon with recommendations for improvement. (9)
- As the NRC's technical authority on protected groups in the labor force, assists managers in accomplishing their objectives and advises managers on means for effecting change and eliminating barriers to the advancement of members of protected groups. (10)
- Develops and maintains outreach and liaison efforts with Federal, State, and local governments, professional organizations, colleges and universities, and congressional committees to promote cooperative actions that will improve employment opportunities for minorities and women. (11)
- Recommends special studies concerning women and minorities such as surveys of employment patterns in various grade levels and occupations. (12)
- Provides input and comments to the Director, SBCR, for biannual briefing of the Commission on the status of the agency's EEO program. (13)

Advisory Committees (c)

Within the NRC EEO program there are several special emphasis programs that focus on the employment concerns of groups of employees protected under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1974, and the Rehabilitation Act of 1973. These groups include persons with disabilities, African Americans, Asian Americans/Pacific Islanders,

Advisory Committees (c) (continued)

Native Americans, women, and Hispanics. The NRC special emphasis programs consist of seven **EEO** advisory committees. (1)

The general focus of all of the advisory committees is to recommend policies, methods, or procedures that are likely to improve, where necessary, protected group representation and utilization at all grade levels and under all occupational codes within the NRC. The general goal of all the advisory committees is to enhance equal employment opportunities through—(2)

- Improvements to the NRC Affirmative Employment Plan as it pertains to under-represented groups (a)
- Prevention or elimination of discriminatory practices and patterns through all appropriate channels (b)
- Recommendations for recruitment sources to expand sources of applicants (c)
- Participation in recruitment activities designed to attract more women and minority applicants to the NRC (d)
- Increased participation in formal professional training (e)
- Promotion of measures by which employees, including under-represented groups, may improve their job-related knowledge and skills to enhance their job performance and increase their opportunities for advancement (f)
- Improvements to job structuring to provide for maximum utilization of employees, including those in under-represented groups, and to facilitate upward mobility in all occupational areas (g)
- Dissemination of information designed to increase awareness of NRC programs of particular interest to under-represented groups (h)

The special focuses of each advisory committee are described below. (3)

Affirmative Action Advisory Committee (AAAC) The AAAC provides special emphasis on the evaluation and recommendation of policies, methods, short- and long-term goals, or procedures designed to

Advisory Committees (c) (continued)

create a climate within the NRC that will further equal employment opportunity without regard to race, color, national origin, religion, sex, age, or physical or mental disabilities. The climate will be consistent with Federal policy prohibiting discrimination on the basis of conduct not related to the job. (a)

Advisory Committee for African Americans (ACAA). The ACAA seeks to enhance equal employment opportunities for African Americans and to ensure that racial or ethnic discrimination is not a factor in the selection, promotion, placement, training, upgrading, and career development of all current or prospective employees, as well as in other areas relevant to African Americans. (b)

Asian/Pacific American Advisory Committee (APAAC). The APAAC seeks to ensure that discrimination is not a factor in the selection, promotion, placement, training, upgrading, and career development of all present or prospective Asian/Pacific American employees and to remedy under-representation of Asian/Pacific Americans when identified. (c)

Committee on Age Discrimination (CAD). CAD seeks to ensure that age discrimination is not a factor in the selection, promotion, placement, training, upgrading, and career development of all present or prospective employees. CAD monitors existing NRC short- and long-term goals designed to ensure full equal employment opportunity consistent with the intent of the Age Discrimination in Employment Act, as amended. (d)

Federal Women's Program Advisory Committee (FWPAC). The Federal Women's Program (FWP) was established to implement a recommendation of the President's Committee on the status of women and was later integrated into the Federal EEO program effort after the issuance of Executive Order 11478 (August 1969). FWPAC seeks to ensure that gender discrimination is not a factor in the selection, promotion, placement, training, upgrading, and career development of all present or prospective employees and other areas relevant to women. (e)

Hispanic Employment Program Advisory Committee (HEPAC). The Hispanic Employment Program (HEP) was established initially by Presidential directive in 1970 as a "Sixteen-Point Program for Spanish-Speaking Americans." This program was designed to ensure consideration of the needs and problems of persons of Hispanic origin

Advisory Committees (c) (continued)

in all aspects of Federal personnel management. HEPAC seeks to ensure that discrimination is not a factor in the selection, promotion, placement, training, upgrading, and career development of all present or prospective Hispanic employees and to remedy underrepresentation of Hispanics when identified. (f)

Joint Labor Management Equal Employment Opportunity Committee (JLMEEOC). The JLMEEOC was established to provide representatives from management and the National Treasury Employees Union an opportunity to exchange information and ideas and to discuss matters involving personnel policies, practices, and matters governing working conditions as they relate to EEO. The parties shall not consider specific grievances, complaints or appeals; however, this does not preclude the discussion of matters that might be identified for possible preventive action, when appropriate. (g)

Equal Employment Opportunity Counselors (D)

EEO counselors are appointed by the Director, SBCR, after consultation with their supervisors, for collateral duty under this program. They perform the following duties:

- o Make inquiries and conduct informal interviews relating to alleged acts of discrimination based on race, color, religion, sex (including sexual harassment), national origin, age, or disability, with employees, supervisors, and others who can contribute information to assist in informal resolution of complaints. (1)
- o Gather facts about problems involving alleged discrimination for the purpose of attempting to informally secure resolutions of these problems at the lowest organizational level possible. (2)
- o Submit a written report to the Civil Rights Program Manager for each case in which the complainant files a formal complaint of discrimination. This report is to be submitted 15 working days after the formal complaint is filed. The report should concisely describe the problem; give the complainant's name, location, and grade; explain the issues involved, the specific agency policy or practice challenged, the remedial action requested by the complainant, and the accomplished or attempted resolution. (3)

Equal Employment Opportunity

Counselors (D) (continued)

- o Provide the Civil Rights Program Manager with a report of the counseling given for each case in which the complainant files a formal complaint. Pursuant to **29 CFR** 1614.105(g), the identity of an aggrieved person may not be revealed without the consent of that person or until the person files a formal complaint of discrimination. (4)

Part II

Complaints of Discrimination

Process (A)

Complaints of discrimination shall be processed in accordance with the U.S. Equal Employment Opportunity Commission (EEOC) regulations (29 CFR **1614**). Bargaining unit employees also have the option to file an equal employment opportunity (EEO) complaint in accordance with the negotiated agreement between NRC and the National Treasury Employees Union. **(1)**

Employees or applicants for NRC employment may choose to first discuss a matter of alleged discrimination with the supervisor, selecting official, or other employee immediately concerned so that misunderstandings may be avoided or the problem resolved. If the matter is not resolved by such discussions, or if the aggrieved person does not wish to discuss the matter with the supervisor or official concerned, he or she may consult with an EEO counselor, a member of the Office of Small Business and Civil Rights (SBCR), or a member of the Office of Personnel. **(2)**

Employees with the NRC, or applicants for employment with the NRC, who believe that they have been discriminated against in connection with employment or application for employment on the basis of race, color, religion, sex (including sexual harassment), national origin, age, or mental or physical disability have the right to file a formal discrimination complaint with the agency. **(3)**

The complainant must contact an NRC EEO counselor within **45** calendar days from the date of the alleged discriminatory action. The counselor will make an informal inquiry into the matter and seek a resolution of the matter on an informal basis. The complainant has the right to be represented by a person of his or her choosing at any stage in the presentation of the complaint, including the counseling stage. Counseling time is limited to 90 days. **(4)**

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Process (A) (continued)

If informal resolution cannot be effected during the informal counseling stage, a complainant may file a complaint with the Director, SBCR, or his designee. The complaint must be filed within 15 calendar days following the final interview with the EEO counselor or after 30 calendar days from the date of the complainant's first contact with the counselor about the matter if no informal resolution is effected. (5)

Once a complaint is filed—(6)

- o **An** investigation will be completed within 180 days from the filing of the complaint, and the complainant will be given a copy of the investigative file. Within **30** days of receipt of the investigative file, the complainant will be notified by letter of a right to a hearing to be conducted by the EEOC, or to an agency decision without a hearing. (a)
- o If the complainant fails to respond within 15 calendar days to the letter notifying him or her of the right to a hearing or decision, the complaint will be forwarded to the head of the agency or his or her designee for an agency decision. For example, the complaint will go to the Chairman if the complainant is from an office reporting to the Chairman or Commission or from the Office of the Inspector General; the complaint will **go** to the Executive Director for Operations if the complainant is from another agency office. (b)
- o If the complainant requests a hearing on a complaint, a designated EEOC Administrative Judge will review the complaint file and the investigative file, list and describe findings, conduct a hearing, and recommend a decision on the complaint. A verbatim transcription of the hearing will be made and forwarded to the agency, along with the files and the recommended decision. If the Administrative Judge finds that the file is incomplete, the complaint may be remanded to the agency for further investigation before the hearing is conducted. (c)
- o The head of the agency (or his or her designee) makes a final agency decision on the basis of the file and provides the Complainant with a copy of the Administrative Judge's recommended decision and verbatim transcript of the hearing. If the agency rejects or modifies the recommended decision, the reasons must be stated in the decision and a copy must be provided to the complainant. (d)

Process (A) (continued)

The complainant has the right to appeal the agency's final decision to the EEOC Office of Federal Operations within **30** calendar days from the date of the decision. (7)

- o If the complainant does not appeal the agency decision, the complainant has the right to file a civil action in Federal District Court within **30** calendar days of the agency decision.' (a)
- o If the complainant appeals to the Office of Federal Operations and is not satisfied with the decision in the appeal, the complainant may file a civil action in Federal District Court. (b)
- o The complainant also may file a civil action in Federal District Court if the agency fails to issue the agency decision within 180 days of filing the complaint, or if final action is not taken on an appeal to the Office of Federal Operations within 180 days of filing the appeal.' (c)

If the complainant's allegation is discrimination because of age, the administrative process described above may be avoided by the complainant filing a notice of intent to sue.' (8)

If the complainant's allegation involves a violation of the Equal Pay Act (EPA), the complaint must be filed directly with EEOC at any of its district or area offices (see NUREG/BR-0212). (9)

Sexual Harassment (B)

Similar to other allegations of discrimination, complaints of sexual harassment shall be reported, investigated, and processed under regulations of the EEOC in Title 29 of the Code of Federal Regulations, Part 1614. (1)

Employees or applicants for NRC employment may choose to first discuss a matter of alleged discrimination with the supervisor, selecting official, or other employee immediately concerned so that misunderstandings may be avoided or the problem resolved. (2)

¹ In age discrimination cases, a complainant may choose to file a formal complaint under **29 CFR 1614**, or the complainant may bypass this process and file a civil action directly in an appropriate **U.S.** District Court after giving EEOC not less than **30** days notice of intent to file such action. Such notice to EEOC must be filed within 180 days after the date of the alleged discrimination. Since the statute of limitations in these cases is not consistently applied by the courts, an aggrieved person wishing to bypass the administrative process should file in court as soon as possible after filing the notice of intent to sue.

Sexual Harassment (B) (continued)

If the matter is not resolved by informal discussions, or if the aggrieved person does not wish to discuss the matter with the supervisor or official concerned, he or she may consult with an EEO counselor, a member of **SBCR**, or the Office of Personnel. (3)

EEOC regulations require that consultation with the EEO counselor begin within 45 calendar days of the alleged sexual harassment or other act of alleged discrimination. Information concerning EEO counselors is provided in the current NRC telephone directory as well as posted in prominent positions throughout the agency. See **NRC** Announcement No. 105, Sexual Harassment Prevention Brochure, December 10, 1993. (4)

Reprisal or Retaliation (c)

NRC employees who are complainants, agents, representatives, witnesses, or agency officials having responsibility for processing complaints may file a complaint of discrimination if they believe they have been subjected to restraint, interference, coercion, or reprisal because of their involvement in the presentation or processing of a complaint of discrimination. Such complaints of reprisal are processed in accordance with the procedures outlined in 29 CFR **1614**.