# Equal Employment Opportunity Data Posted Pursuant to the *No Fear Act*

Pursuant to Section 301 of the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (the No Fear Act), the NRC has posted summary statistical data pertaining to complaints of employment discrimination filed by employees, former employees and applicants for employment under 29 CFR Part 1614. The specific data posted is described in section 301(b) of the Act and 29 CFR 1614.704.

# NRC Discrimination Complaint Activity
## FY 2002 - FY 2007

| 29 CFR § 1614.704(a) - (c) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | |
|---|---|---|---|---|---|---|
| **Complaint Activity** | **2007** | **2006** | **2005** | **2004** | **2003** | **2002** |
| Number of Complaints Filed in FY 1614.704(a) | 4 | 13 | 10 | 12 | 9 | 14 |
| Number of Complainants 1614.704(b) | 4 | 13 | 9 | 12 | 8 | 12 |
| Repeat Filers 1614.704(c) | 1 | 2 | 0 | 0 | 1 | 2 |

| 29 CFR § 1614.704(d) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | |
|---|---|---|---|---|---|---|
| **Complaint by Basis** | **2007** | **2006** | **2005** | **2004** | **2003** | **2002** |
| Race | 2 | 8 | 3 | 4 | 3 | 7 |
| Color | 0 | 0 | 0 | 4 | 1 | 1 |
| Religion | 0 | 0 | 0 | 1 | 0 | 1 |
| National Origin | 0 | 4 | 0 | 3 | 2 | 3 |
| Sex (including complaint filed under Equal Pay Act) | 1 | 4 | 3 | 4 | 2 | 5 |
| Disability | 2 | 3 | 4 | 2 | 0 | 4 |
| Age | 1 | 5 | 4 | 7 | 4 | 6 |
| Reprisal | 2 | 5 | 4 | 6 | 3 | 7 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 |
| *-Data not collected by Color- Color included in basis "Race/Color" | | | | | | |

| 29 CFR § 1614.704(e) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | |
|---|---|---|---|---|---|---|
| **Complaint by Issue** | **2007** | **2006** | **2005** | **2004** | **2003** | **2002** |
| Appointment/Hire | 1 | 1 | 2 | 0 | 1 | 0 |
| Assignment of Duties | 1 | 7 | 6 | 5 | 4 | 3 |
| Awards | 1 | 6 | 2 | 2 | 0 | 1 |
| Conversion to Full-time | 0 | 0 | 0 | 0 | 0 | 0 |
| **Disciplinary Action** | | | | | | |
| Demotion | 0 | 0 | 0 | 0 | 0 | 0 |
| Reprimand | 0 | 0 | 0 | 0 | 0 | 0 |
| Suspension | 0 | 0 | 0 | 0 | 0 | 0 |
| Removal | 0 | 0 | 1 | 0 | 1 | 0 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 |
| Duty Hours | 0 | 1 | 0 | 0 | 0 | 0 |
| Evaluation Appraisal | 1 | 9 | 4 | 4 | 4 | 5 |
| Examination/Test | 0 | 0 | 0 | 0 | 0 | 0 |
| **Harassment** | | | | | | |
| Non-Sexual | 2 | 9 | 7 | 5 | 4 | 11 |
| Sexual | 0 | 0 | 0 | 1 | 0 | 0 |
| Medical Examination | 0 | 0 | 0 | 0 | 0 | 0 |
| Pay (Including Overtime) | 0 | 0 | 0 | 0 | 0 | 0 |
| Promotion/Non-Selection | 1 | 6 | 2 | 8 | 6 | 7 |
| **Reassignment** | | | | | | |
| Denied | 0 | 0 | 0 | 0 | 0 | 0 |
| Directed | 0 | 0 | 0 | 0 | 0 | 0 |
| Reasonable Accommodation | 0 | 0 | 2 | 0 | 0 | 1 |
| Reinstatement | 0 | 0 | 0 | 0 | 0 | 0 |
| Retirement | 0 | 0 | 0 | 0 | 0 | 1 |
| Termination | 0 | 0 | 0 | 0 | 1 | 0 |
| Terms/Conditions of Employment | 0 | 0 | 0 | 2 | 0 | 1 |
| Time and Attendance | 2 | 2 | 1 | 3 | 0 | 2 |
| Training | 1 | 4 | 4 | 5 | 1 | 2 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 |

| 29 CFR § 1614.704 (f) | | | |
|---|---|---|---|
| **Processing Time "...post the average length of time it takes to complete each step of the process for every complaint that is pending during any time of the then fiscal year..."** | | **FY 2007** | |
| | | **Number** | **Average Days** |
| All complaints pending in Investigative State | 1614.704(f)(1) | 6 | 151 |
| All complaints pending in Final Agency Decision/Action Stage | | 2 | 434 |
| All complaints pending in which Hearing was not requested | 1614.704(f)(2) | 8 | 222 |
| Time in Investigation Stage | | 6 | 151 |
| Time to issue Final Agency Action | | 2 | 434 |
| All complaints pending in which a Hearing was requested | 1614.704(f)(3) | 0 | 0 |
| Time in Investigation Stage | | 0 | 0 |
| Time to issue Final Agency Action | | 0 | 0 |

| 29 CFR § 1614.704(g) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | |
|---|---|---|---|---|---|---|
| **Complaint Dismissed by Agency Pursuant to 1614.107(a)** | **2007** | **2006** | **2005** | **2004** | **2003** | **2002** |
| Total Complaints Dismissed by Agency | 2 | 1 | 0 | 0 | 4 | 2 |
| Average days pending prior to dismissal | 141 | 86 | 0 | 0 | 995.0 | 128.5 |

| 29 CFR § 1614.704(h) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | |
|---|---|---|---|---|---|---|
| **Complaint Withdrawn by Complainants Pursuant to 1614.107(a)** | **2007** | **2006** | **2005** | **2004** | **2003** | **2002** |
| Total Complaints Withdrawn | 0 | 4 | 2 | 4 | 1 | 1 |

| 29 CFR § 1614.704(i) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Total Final Agency Actions Finding Discrimination** | **2007** | | **2006** | | **2005** | | **2004** | | **2003** | | **2002** | |
| | **#** | **%** | **#** | **%** | **#** | **%** | **#** | **%** | **#** | **%** | **#** | **%** |
| Total Number Findings 1614.704(i)(1) | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Without Hearing 1614.704(i)(2) | 0 | | 0 | | 0 | | 1 | 100 | 0 | | 0 | |
| With Hearing 1614.704(i)(3) | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |

| 29 CFR § 1614.704(j) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Findings of Discrimination Rendered by Basis | 2007 | | 2006 | | 2005 | | 2004 | | 2003 | | 2002 | |
| | # | % | # | % | # | % | # | % | # | % | # | % |
| Total Number Findings 1614.704(j)(1) | 0 | | 0 | | 0 | | 1 | | 0 | | 0 | |
| Number of Finds Rendered Without Hearing 1614.704(j)(2) | 0 | | 0 | | 0 | | 1 | | 0 | | 0 | |
| Number of Finds Rendered After Hearing 1614.704(j)(3) | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Race | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Color | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Religion | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| National Origin | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Sex (include Equal Pay Act) | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Disability | 0 | | 0 | | 0 | | 1 | 100 | 0 | | 0 | |
| Age | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Reprisal | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |

| 29 CFR § 1614.704(k) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Findings of Discrimination Rendered by Issue | 2007 | | 2006 | | 2005 | | 2004 | | 2003 | | 2002 | |
| | # | % | # | % | # | % | # | % | # | % | # | % |
| **Total Number Findings 1614.704(k)(1)** | 0 | | 0 | | 0 | | 1 | | 0 | | 0 | |
| **Findings Without Hearing 1614.704(k)(2)** | 0 | | 0 | | 0 | | 1 | | 0 | | 0 | |
| **Findings After Hearing 1614.704(k)(3)** | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Appointment/Hire | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Assignment of Duties | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Awards | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Conversion to Full-time | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Disciplinary Action | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Demotion | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Reprimand | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Suspension | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Removal | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Other | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Duty Hours | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Evaluation Appraisal | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Examination/Test | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Harassment | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Non-Sexual | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Sexual | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Medical Examination | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Pay (Including Overtime) | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Promotion/Non-Selection | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Reassignment | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Denied | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Directed | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Reasonable Accommodation | 0 | | 0 | | 0 | | 1 | 100 | 0 | | 0 | |
| Reinstatement | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Retirement | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Termination | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Terms/Conditions of Employment | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Time and Attendance | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Training | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Other | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |

| 29 CFR § 1614.704(l) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | |
|---|---|---|---|---|---|---|
| **Complaints Pending From Previous Fiscal Years by Status** | **2007** | **2006** | **2005** | **2004** | **2003** | **2002** |
| Total complaints from previous Fiscal Years 1614.704(l)(1) | 4 | 2 | 3 | 2 | 9 | 12 |
| Total Complainants 1614.704(l)(2) | 4 | 2 | 3 | 2 | 8 | 9 |
| **Number of all pending complaints from previous Fiscal Years** 1614.704(l)(3) | | | | | | |
| Investigation | 2 | 1 | 2 | 0 | 1 | 4 |
| ROI issued, pending Complainant's action | 0 | 0 | 0 | 0 | 0 | 0 |
| Hearing | 0 | 0 | 1 | 2 | 7 | 4 |
| Final Agency Action | 2 | 1 | 0 | 0 | 1 | 4 |
| **Number of closed complaints pending** 1614.704(k)(3) | | | | | | |
| Appeal with EEOC Office of Federal Operations | 2 | 1 | 1 | 3 | 1 | 0 |

| 29 CFR § 1614.704(l) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | |
|---|---|---|---|---|---|---|
| **Complaint Investigations** | **2007** | **2006** | **2005** | **2004** | **2003** | **2002** |
| Number Pending Completion of Investigation | 6 | 5 | 8 | 8 | 7 | 11 |
| Pending Investigations Over Required Time Frames | 2 | 2 | 2 | 5 | 1 | 4 |

# AGENCY POLICY ON APPROPRIATE DISCIPLINARY ACTION FOR ENGAGING IN PROHIBITED PERSONNEL PRACTICES

## PURPOSE

This policy is set forth pursuant to Section 203 of the Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No Fear Act), and formalizes the Nuclear Regulatory Commission's long-standing practice that its employees not be subject to prohibited personnel practices, including discrimination and reprisal for lawful whistleblowing activities. Our policy is to take appropriate disciplinary action against any employee who discriminates against an individual or engages in other prohibited personnel actions against an individual, including retaliation for lawful whistleblowing activities or for exercising an appeal, complaint, or grievance right. Support for this policy is set forth in the Agency's management directive on discipline and adverse actions, which provides that disciplinary action, up to and including removal from the federal service, may be appropriate for individuals who engage in prohibited personnel practices.

## AUTHORITY

5 U.S.C. Sections 2302(b)(1)-(9), 2302(c) and 2302(d); 5 U.S.C. Sections 7503, 7513 and 7543.

## Anti-Discrimination and Retaliation

This Agency is committed to taking prompt and corrective action to eliminate discrimination in the workplace. The policy of the Nuclear Regulatory Commission is to provide equal employment opportunity (EEO) to its employees and applicants for employment and to designate all prohibited personnel practices, including any unlawful discrimination, as unacceptable conduct. Examples of personnel practices prohibited by the Agency include discrimination based on race, color, religion, gender/sex, national origin, age, sexual orientation, political affiliation, or disability and retaliation for exercising any appeal, complaint, or grievance right.

When an allegation of discrimination is made, the Agency's goals are to:

- stop the offensive and/or discriminatory behavior;
- provide prompt and objective investigation of the pertinent facts arising from the allegation(s); and
- take prompt and appropriate administrative action.

Allegations of discrimination or retaliation for engaging in protected EEO activity are primarily handled through the EEO Complaint process. If a formal complaint is filed, a Report of Investigation is prepared and the complainant may either request a hearing before an Equal Employment Opportunity Commission (EEOC) administrative judge or

request a Final Agency Decision. The Agency's practice is to assign the case to a Deputy Executive Director who acts as the deciding official for the Agency. The deciding official is responsible for issuing a Final Agency Decision and, if a hearing was requested, for reviewing the EEOC administrative judge's decision to determine if the Agency will fully implement it. The deciding official may also recommend that disciplinary action be taken against any Agency employee(s) that has engaged in harassment or other discriminatory conduct. In addition, the deciding official should address any improper conduct, whether or not it rises to the level of discrimination. Accordingly, even if no formal finding of discrimination is made, or if the case is settled, disciplinary or other appropriate action can be taken, if warranted. Disciplinary action can range from admonishment to removal from the federal service. Other appropriate action may include reassignment.

Alternatively, bargaining-unit employees may pursue allegations of discrimination or retaliation for engaging in protected EEO activity through the grievance procedure negotiated by the Nuclear Regulatory Commission and the National Treasury Employees Union (NTEU).

**Whistleblower Protection and Reprisal**

Whistleblowing is defined as the lawful disclosure of information that an employee reasonably believes is evidence of a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. The Nuclear Regulatory Commission is committed to ensuring an environment where its employees feel confident in coming forward to report misconduct, fraud, waste, or abuse. As noted above, our management directive on discipline and adverse actions (NRC Management Directive 10.99) expressly provides that suspension, reduction in grade or removal from the federal service may be appropriate for engaging in a prohibited personnel practice, which includes taking a personnel action because of a person's whistleblowing activities.

In addition, the unique nature of our Agency's mission requires that we foster free and open discussion of Agency issues, allowing employees to make known their professional judgments. As an Agency we recognize that differences of opinion are common, and therefore, we have developed procedures for the expression and disposition of differing professional opinions. Our management directive on this process (NRC Management Directive 10.159) specifically provides that any Agency employee that retaliates against another employee for submitting or supporting a differing professional viewpoint is subject to disciplinary action in accordance with our management directive on discipline and adverse actions. Employees that allege that retaliatory action has been taken may report such action to the Agency's Inspector General, seek redress internally through the negotiated grievance procedure (Article 51 of the Collective Bargaining Agreement between the Nuclear Regulatory Commission and the National Treasury Employees Union) or the Agency's administrative grievance procedure (NRC Management Directive 10.101), as appropriate, or seek redress through the EEO complaint process if the retaliatory action involves an EEO matter.

Additionally, employees may seek redress outside the Agency for a prohibited personnel practice by filing a complaint with the Office of Special Counsel.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

**TO: All NRC Employees**

**Announcement No. 049**
**Date: July 28, 2006**

**SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESS**

This is a reminder that the policy of the U.S. Nuclear Regulatory Commission (NRC) is to provide equal employment opportunity to its employees and applicants for NRC employment and to prohibit discrimination on the bases indicated by the following civil rights statutes:

- Title VII of the Civil Rights Act of 1964 (race, color, national origin, gender/sex, and religion, including reasonable accommodation for religious practice)
- Age Discrimination in Employment Act of 1967 (age 40 and over)
- Equal Pay Act of 1963 (gender-based wage discrimination)
- Rehabilitation Act of 1973 (mental and physical disability, including reasonable accommodation)

Pursuant to these statutes, the NRC also prohibits employees or applicants from being subjected to reprisal for either participating in activity protected by these statutes or opposing practices made unlawful by these statutes. The NRC also prohibits workplace harassment related to any basis covered by these statutes.

If you believe that you have been subjected to unlawful discrimination under any of these statutes, you may pursue a complaint through the agency's discrimination complaint process. NRC has a prompt, fair, and impartial administrative process that is administered by the Office of Small Business and Civil Rights (SBCR). This process is in accordance with U.S. Equal Employment Opportunity Commission (EEOC) Regulations at 29 Code of Federal Regulations (CFR) Part 1614. These regulations may be accessed through EEOC's Web page at http://www.eeoc.gov/.

To initiate the process, you must first contact an agency Equal Employment Opportunity counselor or SBCR within 45 calendar days of the date of the alleged discriminatory event or, in the case of a personnel action, within 45 calendar days of the effective date of the action. During the initial interview, you will be advised, in writing, regarding your rights and responsibilities at the various stages of the process, including your right to request to participate in the agency's Alternative Dispute Resolution (ADR) process which is mediation.

Additional information regarding the agency's Civil Rights Program, the discrimination complaint process, ADR, and EEOC laws, rules and regulations, may be accessed through SBCR's Web page at http://www.internal.nrc.gov/SBCR. Questions may be directed to the Civil Rights Program staff at 301-415-7380 (TDD 301-415-5244) or SBCR's e-mail address at EEOPROGRAMS@nrc.gov.

Corenthis B. Kelley

Corenthis B. Kelley, Director
Office of Small Business and Civil Rights

Attachment 3

# UNITED STATES
# NUCLEAR REGULATORY COMMISSION

**ANNOUNCEMENT NO.** 075

**DATE:** September 29, 2006

TO: ALL NRC EMPLOYEES

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY AND DIVERSITY POLICY STATEMENT

As the U.S. Nuclear Regulatory Commission recruits, develops, and takes positive steps to retain a high-quality workforce that possesses the skills required to achieve its mission, it must also maintain an innovative, effective, and discrimination-free organizational environment. The Commission believes that fostering equal employment opportunity (EEO) and enhancing diversity management are sound business practices that enable the NRC to utilize the full potential of everyone in the organization and enhance the effectiveness of our programs.

Both management and staff play integral roles in ensuring continued progress in reaching our EEO and diversity management goals. The Commission expects NRC management to set an example by creating and supporting a positive work environment that enables employees to use their diverse talents to achieve the agency's mission. Management must also foster a work environment that is free of discrimination and respect employees' rights to participate in the EEO process without fear of harassment or retaliation. Employees are expected to continue to work responsibly, creatively, and cooperatively to support EEO and diversity in the work place.

The Commission is counting on all NRC employees to support the objectives of the agency's EEO policy and its Comprehensive Diversity Management Plan, which are critical to NRC's future and success.

Dale E. Klein
Chairman

# UNITED STATES
# NUCLEAR REGULATORY COMMISSION

**Announcement No.** 004

**Date:** January 24, 2007

**To:** **All NRC Employees**

**SUBJECT: NRC POLICY FOR PREVENTING AND ELIMINATING HARASSING CONDUCT IN THE WORKPLACE**

I am pleased to inform you that the Commission has approved an updated and expanded version of its policy statement on harassment in the workplace. The new policy supersedes the NRC Sexual Harassment Prevention Program Policy, which was originally approved by the Commission in the late 1980s and last updated in 1998. Under the new policy, the definition of harassing conduct has been broadened to include harassment based on race, color, religion, national origin, age, disability, sexual orientation, and reprisal for engaging in protected EEO activities in the workplace as well as sexual harassment. The policy also provides more explicit procedures for reporting, investigating, and resolving allegations of harassment.

Although the policy statement has been updated and expanded, its purpose remains the same – to maintain an NRC work environment that is free from harassing conduct. The Commission believes that the most effective way to maintain such a work environment is to inquire promptly into allegations of harassing conduct and, if proven true, take necessary and appropriate corrective action.

The text of the policy statement, which describes in detail the procedures that will be followed to report and investigate alleged harassment incidents and the appropriate roles and responsibilities of all NRC employees in carrying out the policy, is available on the Office of Human Resources (HR) Web site at http://www.internal.nrc.gov/HR/pdf/eliminating-harassment.pdf. HR staff will offer employee briefings on the policy statement in the near future, and the handling of harassing conduct will be incorporated in manager, supervisor, and employee training.

Maintaining a work environment that is positive; promoting professional and cooperative working relationships; protecting personal privacy; and fostering confidence, mutual trust, and respect is in everyone's interest. To that end, I strongly encourage all NRC employees to become familiar with the new policy statement. My Commission colleagues and I are counting on you to help us eliminate harassing conduct and make NRC an even better place to work.

**/RA/**

Dale E. Klein
Chairman

Attachment 5

**Nuclear Regulatory Commission Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace**

## I. Purpose

This Policy is intended to ensure that the Nuclear Regulatory Commission (NRC) takes appropriate action to accomplish the following:

Prevent sexual harassment and other forms of harassing conduct based on race, color, religion, sex, national origin, age, disability, sexual orientation, and retaliation for engaging in protected Equal Employment Opportunity (EEO) activity in the workplace;

Ensure that employees, supervisors, and managers are aware of their rights and responsibilities in maintaining a work environment that is free from harassing conduct and the options available for reporting claims of harassing conduct;

Provide an expedited, fair, and impartial process for reviewing allegations of harassing conduct as defined in this Policy;

Correct harassing conduct, as defined in this Policy; and

Administer corrective action, which may include disciplinary action, to any employee who violates this Policy.

This Policy updates the agency=s long-standing policy on the prevention of sexual harassment in the workplace. It is separate and apart from any collective bargaining agreement (CBA) or statutory complaint process, or other agency policy involving harassment. [See Section X.] Furthermore, this Policy does not alter the right of an employee to report harassing conduct to the Office of the Inspector General (OIG) or to file a complaint with the Office of Small Business and Civil Rights (SBCR).

## II. Authorities

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (Title VII); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a (ADEA); the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; Executive Order (E.O.) 11478, as amended by Executive Order 13087, May 28, 1998; Equal Employment Opportunity Commission=s (EEOC) *Model EEO Programs Must Have An Effective Anti-Harassment Program* (2005); EEOC=s Manual Directive 715 (2003); EEOC=s Enforcement Guidance: *Vicarious Employer Liability for Unlawful Harassment by Supervisors* (1999); *Faragher v. Boca Raton*, 514 U.S. 775 (1998); and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998.)

## III. The Definition of Harassing Conduct

For purposes of this Policy, harassing conduct is defined as any unwelcome verbal, visual, physical or other conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, or retaliation for

participation in protected EEO activities. To constitute harassing conduct under this Policy, one of these two conditions must be present:

A. The behavior reasonably can be considered to affect the work environment adversely; or

B. An employment decision affecting the employee is based upon the employee=s acceptance or rejection of such conduct.

Examples of unwelcome prohibited conduct under part A of the definition include, but are not limited to offensive remarks or comments; ridicule; offensive and derogatory words, phrases, epithets, or jokes; suggestive comments and unwelcome requests for sexual favors; exposure to offensive photographs, explicit drawings, cartoons, e-mails, or internet transmissions; touching; pinching; grabbing; gesturing; or stalking.

Examples of unwelcome prohibited conduct under Part B of the definition include, but are not limited to promoting or not promoting an employee; or taking or not taking a personnel action affecting the employee=s conditions of employment based on the employee accepting a date or sexual favor.

## IV. Policy

It is the Policy of the NRC that harassing conduct by anyone in the workplace is unacceptable and will not be condoned. NRC will maintain a work environment free from the harassing conduct described above. The NRC has determined that the most effective way to maintain such a work environment is to inquire promptly into allegations of harassing conduct and, if proven true, treat the offense as misconduct, even if it is not sufficiently severe or pervasive to constitute discriminatory harassment actionable under the civil rights laws.

The current EEO complaint process provides employees specific remedies for unlawful harassment that has already occurred. This NRC Policy, however, is focused on stopping harassing conduct at its earliest stage. A hostile environment that violates EEO law usually requires a showing of a pattern of offensive conduct. Under this Policy, however, the NRC will not wait, nor should the employee wait, for such a pattern to emerge. The NRC will, where possible, act to stop and correct harassing conduct before it becomes unlawful; that is, before it becomes so pervasive or severe as to create an unlawful hostile work environment. Accordingly, the NRC encourages all employees to report any incident of harassing conduct forbidden by this Policy immediately so that complaints can be resolved quickly and fairly. If the NRC is not made aware of harassing conduct, it cannot stop it.

In addition, NRC will not tolerate retaliation against any employee who makes a good faith report of harassing conduct under this Policy or any other policy or procedure, or for assisting in any inquiry about such a report. Allegations of retaliation will be handled in accordance with the procedures outlined in this Policy.

Allegations of harassing conduct will be addressed as promptly as possible. Employees

found to have violated this Policy will be held accountable for their actions and may be appropriately disciplined in accordance with 5 U.S.C. Chapter 75.

## V. Roles and Responsibilities

### A. Agency Employees

Each agency employee is responsible for creating and maintaining a work environment that is free from harassing conduct and is expected to do the following:

1. Comply with the Policy;

2. Attend a briefing on this Policy and Procedures;

3. Refrain from exhibiting harassing conduct;

4. Promptly report any incident of harassing conduct in accordance with the Procedures in Section VI.; and

5. Cooperate with any inquiry conducted under this Policy.

### B. Managers and Supervisors

In addition to the requirements in A. above, each agency manager and supervisor is responsible for the following activities:

1. Handling allegations of harassing conduct promptly and appropriately in accordance with the procedures Section VII.;

2. Implementing interim measures to protect alleged victims of harassing conduct pending the outcome of the inquiry and to ensure that further alleged misconduct does not occur;

3. Administering appropriate corrective action, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;

4. Taking action to prevent retaliation against individuals who make good faith reports of an allegation of harassing conduct or participate in any inquiry into an allegation of harassing conduct; and

5. Consulting with the agency Designated Official (DO) with respect to all appropriate actions under items B. 1. through 4. above.

### C. Director, Office of Human Resources

The Director, Office of Human Resources (OHR) is responsible for the following actions:

1. Ensuring that employees are informed of this Policy and the procedures to follow in connection with reporting harassing conduct by disseminating this Policy statement periodically to all employees and posting it on the NRC intranet website;

2. Ensuring that managers, supervisors, and employees are provided appropriate training on this Policy;

3. Identifying the Designated Official (DO); and

4. Ensuring that the identity of the DO is prominently displayed throughout the agency and on the NRC intranet and the identities of the Regional Personnel Officers are prominently displayed in the Regions.

**D. Agency Designated Official**

The agency's Designated Official (DO) is responsible for the following actions:

1. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;

2. Receiving allegations of harassing conduct reported in accordance with Section VII., below;

3 Determining whether an allegation falls within the jurisdiction of this Policy or otherwise interpreting and implementing this Policy;

4. Referring allegations received under this Policy to the Office of the Inspector General (OIG) for possible investigation;

5. Conducting or overseeing prompt, fair, and impartial inquiries into any allegation of harassing conduct. If the OIG decides not to make an inquiry on a referral received under this Policy, the DO has the authority to determine who will conduct the inquiry into any allegation of harassing conduct, including him/herself;

6. Advising managers and supervisors on implementing interim measures to protect alleged victims of harassing conduct pending the outcome of the inquiry and to ensure that further harassing conduct does not occur;

7. Advising managers and supervisors on administering appropriate corrective action, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;

8. Advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged harassing conduct or participate in

any inquiry into an allegation of harassing conduct;

9. Deciding whether to arrange for mediation services to resolve a dispute arising under this Policy. Mediation services may be offered from a variety of sources including the DO, the Federal Mediation and Conciliation Service, Office of Small Business and Civil Rights (SBCR), a contract mediator, and the HHS Sharing Neutrals Program;

10. Making the Director, SBCR aware of all allegations of harassing conduct under this Policy and actions taken to address such allegations;

11. Providing technical assistance and support, to ensure compliance with this Policy;

12. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act 5 U.S.C. 552a; and

13. Informing all persons reporting allegations that filing a report of harassing conduct under this Policy does not satisfy the requirements to initiate an EEO complaint, a Merit Systems Protection Board (MSPB) appeal or a grievance; nor does it delay the time limits for initiating those procedures.

**E. Regional Personnel Officer**

The Regional Personnel Officer (RPO) is responsible for the following actions:

1. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;

2. Receiving allegations of harassing conduct reported in accordance with Section VII.;

3. Promptly advising the DO and the Regional Administrator of any allegations reported under this Policy;

4. In coordination with the DO, conducting or overseeing prompt, fair and impartial inquiries into any allegation of harassing conduct;

5. In coordination with the DO, advising managers and supervisors on implementing interim measures to protect alleged victims of harassing conduct pending the outcome of the inquiry and to ensure that further harassing conduct does not occur;

6. In coordination with the DO, advising managers and supervisors on administering appropriate corrective action, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;

7. In coordination with the DO, advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged harassing conduct or participate in any inquiry in an allegation of harassing conduct; and

8. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act, 5 U.S.C. 552a.

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

The Director, SBCR is responsible for the following actions:

1. Processing any EEO complaint of discrimination filed under 29 CFR ' 1614;

2. Providing technical assistance and support, to assure compliance with this Policy;

3. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;

4. Assisting the Director, OHR, and DO in providing training under this Policy; and

5. Informing the DO of allegations of harassing conduct, to the extent permitted by law and EEO regulation.

**G. Office of the Inspector General (OIG)**

The OIG is responsible for:

1. Cases referred from the DO: for allegations that it decides to investigate, OIG will conduct an appropriate inquiry; if substantiated, OIG will refer the findings of the inquiry to NRC management for appropriate action;

2. Cases not referred from the DO:

   A. For allegations that it decides to investigate, the OIG will conduct an appropriate inquiry; if substantiated, the OIG will refer the findings of its inquiry to NRC management for appropriate action;

   B. For cases it decides not to investigate, the OIG will refer the matter to the DO for action, if any; and

   C. For record keeping purposes, at the end of any investigation, the OIG will report allegations of harassing conduct to the DO.

3. For all cases in which the OIG conducts an inquiry into harassment

allegations or misconduct, the OIG will report situations which it determines warrant prompt NRC management action to the DO.

## VI. Reporting Harassing Conduct

The procedures for reporting harassing conduct are as follows:

A. A headquarters employee who believes that he or she has been the subject of an incident of harassing conduct or who has witnessed harassing conduct and/or retaliation in violation of this Policy must report this matter to anyone in his/her management chain or to the DO;

B. A regional employee who believes that he or she has been the subject of an incident of harassing conduct or who has witnessed harassing conduct and/or retaliation in violation of this Policy must report this matter to anyone in his or her chain of command, to the DO, or to the Regional Personnel Officer (RPO). The RPO is then responsible for reporting this matter to the DO;

C. The employee reporting such conduct will be asked to provide details of the incident(s), including but not limited to: what occurred, when the incident(s) occurred; name of the alleged harasser and names of any witnesses. Once a report of harassing conduct is made under this Policy, the agency has a duty to conduct an appropriate inquiry, stop harassing conduct if found, and to take appropriate action, including disciplinary action;

D. Nothing in this Policy is intended to discourage an employee from telling the alleged harasser to stop the harassing conduct;

E. Nothing in this Policy is intended to require that an employee communicate with the alleged harasser;

F. Nothing in this Policy affects the right of an individual to contact the OIG regarding alleged harassing behavior; nor does it affect the right of an individual to participate in the EEO complaint process, file an appeal with the MSPB, an agency administrative grievance, or for bargaining unit employees, initiate a grievance under the NRC-NTEU CBA. Filing a report of harassing conduct under this Policy **does not** satisfy the requirements associated with any complaint, appeal or other statutory or regulatory process that may apply, **nor does it delay the time limits** for initiating those procedures. Section X. provides further information on statutory and collective bargaining claims; and

G. All information will be maintained in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

## VII. Conducting an Inquiry

A. A supervisor or manager who receives an allegation or witnessed harassing conduct shall immediately:

1. Inform the DO of the allegation;

2. In consultation with the DO, take appropriate action to stop any potentially harassing conduct and prevent further alleged incidents while the allegations are being investigated, (i.e., providing appropriate interim measures); and

3. Document the allegation received or witnesses and his/her efforts to address it.

B. If the RPO receives an allegation of harassing conduct, he/she will promptly notify the DO and the Regional Administrator and provide further assistance as requested by the DO.

C. When the DO receives an allegation of harassing conduct, either directly from the complainant; through a supervisor, manager, or RPO; or from other sources, the DO will take the following actions:

1. Ensure that the OIG is immediately provided all pertinent information regarding the allegation;

2. In the event that the OIG elects not to investigate the matter, the DO shall ensure that a prompt, vigorous, impartial and appropriate inquiry is conducted and designate the person(s) who will conduct such an inquiry. (This inquiry may be conducted by the DO, the supervisor, the RPO, an outside contractor, or any other impartial individual delegated this responsibility by the DO); and

3. Contact appropriate agency officials in the alleged harasser's chain of command who are not involved in the allegations of harassment and recommend appropriate action to stop any harassing conduct and prevent further harassing conduct while the allegations are being addressed, (i.e., providing appropriate interim measures).

D. The inquiry will consist of appropriate fact-finding in order to obtain the information relevant to the allegation. As part of the inquiry, the complaining employee may be interviewed regarding the basis of the allegations. Additionally, the alleged harasser as well as other witnesses who may have knowledge of the circumstances of the allegations may also be interviewed. The determination as to the appropriate steps to be followed during the inquiry will be determined by the person conducting the inquiry with oversight by the DO. All individuals contacted in the course of an inquiry will be advised that any retaliation or reprisal against an individual who is an alleged target of harassing conduct, who has made a complaint under this Policy, or who has provided information in connection with a complaint, constitutes a separate violation of this Policy. The inquiry will be completed promptly absent extenuating circumstances.

E. An inquiry is a neutral, fact-finding process needed to determine whether

harassing conduct has occurred. An inquiry shall not, in and of itself, be construed as evidence that the allegations of harassing conduct are true.

F. When an inquiry by management discloses new, significant information regarding allegations of misconduct by management or employees, the OIG will be notified of these additional facts and provided an opportunity to assume jurisdiction over the matter. However, this is not intended to preclude NRC management from taking appropriate immediate action to carry out its responsibilities to maintain a safe and orderly workplace or to otherwise protect agency interests associated with this Policy.

G. Upon completion of the inquiry, the individual conducting the inquiry will prepare a written summary of the inquiry. The DO shall determine whether sworn declarations will be taken. The summary will be prepared promptly after completion of the inquiry. The summary, along with all of the documentation compiled during the inquiry, will be provided to the DO (if he/she did not conduct the inquiry) and generally the first level supervisor of the alleged harasser, unless such supervisor is involved in the allegation. In this situation, the summary and documentation will be provided to the lowest level supervisor/manager in the alleged harasser's chain of command who is not a subject of the inquiry.

H. All information will be maintained on a confidential basis to the greatest extent possible and in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

## VIII. Action To Be Taken Upon Completion Of The Inquiry

A. Upon receipt of the report of inquiry, including summary and supporting documentation, the appropriate supervisor/manager will promptly evaluate all of the documentation and determine the appropriate action. This responsibility normally will rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct, unless such supervisor is involved in the allegation. The supervisor/manager should consult with the OHR, including the DO, the servicing Labor and Employee Relations Specialist, and the Office of General Counsel as needed to determine the appropriate action.

B. Where the inquiry establishes that an employee did engage in harassing conduct under this Policy, he/she will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.

C. Where the inquiry establishes that a supervisor or manager did not properly carry out the responsibilities under this Policy, he/she will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.

D. The DO should notify SBCR and the OIG of the outcome of the agency inquiry, including whether the allegation was substantiated, what corrective action was taken; and any other action taken to address the matter.

## IX. Confidentiality

The maintenance of records and disclosures of information from records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. All information obtained under this Policy, including but not limited to, reports of harassing conduct, will be maintained confidentially to the greatest extent possible. Such information, however, may be required to be disclosed in connection with proceedings resulting from the harassing conduct, (e.g., disciplinary action). Further, information may need to be disclosed to those officials and employees within the agency with a need to know in order to carry out the purpose and intent of this Policy.

## X. Statutory and Collective Bargaining Claims

This Policy is in addition to statutory and collective bargaining prohibitions [NRC-NTEU CBA, Article 2] against harassment and the procedures and remedies they provide for addressing unlawful harassment. Filing a report of harassing conduct under this Policy **does not** satisfy the requirements to initiate any complaint, appeal or other statutory or regulatory process that may apply, **nor does it delay the time limits** for initiating those procedures. An employee who chooses to pursue statutory or collective bargaining remedies for unlawful harassment must:

1. Initiate the EEO complaint process pursuant to 29 C.F.R. 1614.105 (available for all claims of unlawful harassment other than those based on sexual orientation) by contacting an EEO counselor in the SBCR within 45 calendar days from the date of the alleged harassment (or personnel action if one is involved); or

2. File a grievance under the CBA, Article 51 or agency grievance procedure; or

3. File an appeal to the MSPB within 30 days of an appealable action as defined in 5 C.F.R. Section 1201.3.;

4. If an employee pursues a claim of harassment through the formal EEO process (including EEO counseling), an MSPB appeal, a union grievance, or an administrative grievance, the agency official who receives the information about such a claim will promptly notify the DO, unless inconsistent with applicable requirements. Because the agency has an obligation to comply with the terms of this Policy regardless of whether a statutory or collective bargaining procedure has been invoked, the DO will promptly initiate an inquiry into the matter if an appropriate management official has not already done so. Similarly, the DO will provide the Office handling the statutory or collective bargaining claim the record of actions taken under this Policy.

# UNITED STATES
# NUCLEAR REGULATORY COMMISSION

**ANNOUNCEMENT NO.** 2004-048

**DATE:** 9/24/04

**To:** All NRC Employees

**SUBJECT:** **POLICY REMINDER: THE NO FEAR ACT: GENERAL EMPLOYEE INFORMATION REGARDING WHISTLEBLOWER PROTECTION, ANTI-DISCRIMINATION AND RETALIATION, AND SUPERVISORY TRAINING**

It is the policy of the NRC to provide equal employment opportunity to its employees and applicants for employment, and to ensure an environment where employees feel confident in coming forward to report possible violations of law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety.

The Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No Fear Act) took effect on October 1, 2003, and holds Federal agencies accountable for violations of anti-discrimination and whistleblower protection laws. Consistent with the provisions of the No Fear Act, the NRC is providing:

- Information to all employees about their rights, protections and remedies under anti-discrimination and whistleblower protection laws, as well as NRC's policy statement about appropriate disciplinary action for engaging in prohibited personnel activities. All employees should familiarize themselves with this information posted on the Whistleblower and Anti-Discrimination Rights Page on the HR Website:

  Rights and Protections Regarding Whistleblower Protection, Anti-Discrimination and Retaliation (.pdf file)

  Agency Policy on Appropriate Disciplinary Action for Engaging in Prohibited Personnel Practices (.pdf file)

- Quarterly postings of statistical data relating to EEO complaint filings by employees, former employees, or job applicants on our public website and through reports. Statistical complaint data for the past 5 fiscal years may be accessed at: http://www.nrc.gov/who-we-are/civil-rights/dca.html.

- Training for all supervisors on whistleblower protections and the prevention of prohibited personnel practices beginning immediately. The training will consist of viewing a 45-minute presentation by Elaine Kaplan, Former Director, Office of Special Counsel. Headquarters supervisors will be able to view the presentation in the Individualized Learning Center (ILC), Room T-3B1, Two White Flint North, and should contact

Tawanda Swann, ILC at 301-415-7744 to register and schedule a time to do so. Regional supervisors should contact their training coordinators to arrange a time to view the presentation.

The Agency relies on all staff members to help make NRC a workplace that values diversity and welcomes openness and differing viewpoints.

Patricia G. Norry
Deputy Executive Director
for Management Services

# UNITED STATES
# NUCLEAR REGULATORY COMMISSION

**ANNOUNCEMENT NO.** 068

**DATE:** September 30, 2005

To: All NRC Employees

SUBJECT: WEB-BASED TRAINING COURSE FOR THE NO FEAR ACT

The Offices of Human Resources and Small Business and Civil Rights recently developed a Web-based training (WBT) course entitled The No FEAR Act. This new course explains the provisions of the No FEAR Act of 2002 concerning the rights and remedies applicable to NRC employees under antidiscrimination and whistleblower protection laws.

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act) took effect on October 1, 2003, and makes Federal agencies accountable for violations of antidiscrimination and whistleblower protection laws. It also requires that all current Federal employees receive training about the act. To comply with this provision, all NRC employees are required to complete the Web-based No FEAR Act training course by December 31, 2005, and to complete refresher training biennially thereafter. Future employees will receive the training as part of New Employee Orientation training.

You may access the Web-based No FEAR Act training course by going to No FEAR Act Training. You may also go to the Training Section on the NRC Internal Web page (www.internal.nrc.gov) and locate the course under the Self-Paced and Web-Based headings. It should take less than an hour to complete this required training.

It is the NRC's policy to provide equal employment opportunity to its employees and applicants for employment, and to ensure an environment where employees feel confident in coming forward to report possible violations of law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety.

Contact the Professional Development Center at 301-415-7750 if you have questions about the course.

James F. McDermott, Director
Office of Human Resources

Attachment 7