

§ 7.120

40 CFR Ch. I (7–1–05 Edition)

(2) Its opportunity, before the determination in paragraph (d) of this section is made, to make a written submission responding to, rebutting, or denying the allegations raised in the review or complaint.

(c) *Postreview notice.* (1) Within 180 calendar days from the start of the compliance review or complaint investigation, the OCR will notify the recipient in writing by certified mail, return receipt requested, of:

- (i) Preliminary findings;
- (ii) Recommendations, if any, for achieving voluntary compliance; and
- (iii) Recipient's right to engage in voluntary compliance negotiations where appropriate.

(2) The OCR will notify the Award Official and the Assistant Attorney General for Civil Rights of the preliminary findings of noncompliance.

(d) *Formal determination of noncompliance.* After receiving the notice of the preliminary finding of noncompliance in paragraph (c) of this section, the recipient may:

(1) Agree to the OCR's recommendations, or

(2) Submit a written response sufficient to demonstrate that the preliminary findings are incorrect, or that compliance may be achieved through steps other than those recommended by OCR.

If the recipient does not take one of these actions within fifty (50) calendar days after receiving this preliminary notice, the OCR shall, within fourteen (14) calendar days, send a formal written determination of noncompliance to the recipient and copies to the Award Official and Assistant Attorney General.

(e) *Voluntary compliance time limits.* The recipient will have ten (10) calendar days from receipt of the formal determination of noncompliance in which to come into voluntary compliance. If the recipient fails to meet this deadline, the OCR must start proceedings under paragraph (b) of § 7.130.

(f) *Form of voluntary compliance agreements.* All agreements to come into voluntary compliance must:

- (1) Be in writing;
- (2) Set forth the specific steps the recipient has agreed to take, and

(3) Be signed by the Director, OCR or his/her designee and an official with authority to legally bind the recipient.

§ 7.120 Complaint investigations.

The OCR shall promptly investigate all complaints filed under this section unless the complainant and the party complained against agree to a delay pending settlement negotiations.

(a) *Who may file a complaint.* A person who believes that he or she or a specific class of persons has been discriminated against in violation of this part may file a complaint. The complaint may be filed by an authorized representative. A complaint alleging employment discrimination must identify at least one individual aggrieved by such discrimination. Complaints solely alleging employment discrimination against an individual on the basis of race, color, national origin, sex or religion shall be processed under the procedures for complaints of employment discrimination filed against recipients of Federal assistance (see 28 CFR part 42, subpart H and 29 CFR part 1691). Complainants are encouraged but not required to make use of any grievance procedure established under § 7.90 before filing a complaint. Filing a complaint through a grievance procedure does not extend the 180 day calendar requirement of paragraph (b)(2) of this section.

(b) *Where, when and how to file complaint.* The complainant may file a complaint at any EPA office. The complaint may be referred to the region in which the alleged discriminatory acts occurred.

(1) The complaint must be in writing and it must describe the alleged discriminatory acts which violate this part.

(2) The complaint must be filed within 180 calendar days of the alleged discriminatory acts, unless the OCR waives the time limit for good cause. The filing of a grievance with the recipient does not satisfy the requirement that complaints must be filed within 180 days of the alleged discriminatory acts.

(c) *Notification.* The OCR will notify the complainant and the recipient of the agency's receipt of the complaint within five (5) calendar days.

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(d) *Complaint processing procedures.* After acknowledging receipt of a complaint, the OCR will immediately initiate complaint processing procedures.

(1) *Preliminary investigation.* (i) Within twenty (20) calendar days of acknowledgment of the complaint, the OCR will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(ii) If the complaint is accepted, the OCR will notify the complainant and the Award Official. The OCR will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.

(iii) The party complained against may send the OCR a response to the notice of complaint within thirty (30) calendar days of receiving it.

(2) *Informal resolution.* (i) OCR shall attempt to resolve complaints informally whenever possible. When a complaint cannot be resolved informally, OCR shall follow the procedures established by paragraphs (c) through (e) of § 7.115.

(ii) [Reserved]

(e) *Confidentiality.* EPA agrees to keep the complainant's identity confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Ordinarily in complaints of employment discrimination, the name of the complainant will be given to the recipient with the notice of complaint.

(f) [Reserved]

(g) *Dismissal of complaint.* If OCR's investigation reveals no violation of this part, the Director, OCR, will dismiss the complaint and notify the complainant and recipient.

§ 7.125 Coordination with other agencies.

If, in the conduct of a compliance review or an investigation, it becomes evident that another agency has jurisdiction over the subject matter, OCR will cooperate with that agency during the continuation of the review of investigation. EPA will:

(a) Coordinate its efforts with the other agency, and

(b) Ensure that one of the agencies is designated the lead agency for this purpose. When an agency other than EPA serves as the lead agency, any action taken, requirement imposed, or determination made by the lead agency, other than a final determination to terminate funds, shall have the same effect as though such action had been taken by EPA.

§ 7.130 Actions available to EPA to obtain compliance.

(a) *General.* If compliance with this part cannot be assured by informal means, EPA may terminate or refuse to award or to continue assistance. EPA may also use any other means authorized by law to get compliance, including a referral of the matter to the Department of Justice.

(b) *Procedure to deny, annul, suspend or terminate EPA assistance—*(1) *OCR finding.* If OCR determines that an applicant or recipient is not in compliance with this part, and if compliance cannot be achieved voluntarily, OCR shall make a finding of noncompliance. The OCR will notify the applicant or recipient (by registered mail, return receipt requested) of the finding, the action proposed to be taken, and the opportunity for an evidentiary hearing.

(2) *Hearing.* (i) Within 30 days of receipt of the above notice, the applicant or recipient shall file a written answer, under oath or affirmation, and may request a hearing.

(ii) The answer and request for a hearing shall be sent by registered mail, return receipt requested, to the Chief Administrative Law Judge (ALJ) (A-110), United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Upon receipt of a request for a hearing, the ALJ will send the applicant or recipient a copy of the ALJ's procedures. If the recipient does not request a hearing, it shall be deemed to have waived its right to a hearing, and the OCR finding shall be deemed to be the ALJ's determination.

(3) *Final decision and disposition.* (i) The applicant or recipient may, within 30 days of receipt of the ALJ's determination, file with the Administrator