

§ 40.6

10 CFR Ch. I (1–1–10 Edition)

Regulatory Commission, Region IV, Division of Nuclear Materials Safety, 612 E. Lamar Blvd., Suite 400, Arlington, Texas 76011-4125; where e-mail is appropriate, it should be addressed to *RidsRgn4MailCenter@nrc.gov*.

[48 FR 16031, Apr. 14, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 40.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 40.6 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 40.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her em-

ployer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

(3) Other enforcement action.

Nuclear Regulatory Commission

§ 40.8

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon non-discriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by non-prohibited considerations.

(e)(1) Each specific licensee, each applicant for a specific license, and each general licensee subject to part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees", referenced in 10 CFR 19.11(c).

(2) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(3) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415-7232, via e-mail to FORMS.Resource@nrc.gov, or by visiting the NRC's Web site at <http://www.nrc.gov> and selecting forms from the index found on the home page.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or

other matters within NRC's regulatory responsibilities.

[58 FR 52409, Oct. 8, 1993, as amended at 60 FR 24551, May 9, 1995; 61 FR 6765, Feb. 22, 1996; 68 FR 58806, Oct. 10, 2003; 72 FR 63973, Nov. 14, 2007; 73 FR 30458, May 28, 2008]

§ 40.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150-0020.

(b) The approved information collection requirements contained in this part appear in §§ 40.9, 40.23, 40.25, 40.26, 40.27, 40.31, 40.35, 40.36, 40.41, 40.42, 40.43, 40.44, 40.51, 40.60, 40.61, 40.64, 40.65, 40.66, 40.67, and appendix A to this part.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In §§ 40.31, 40.43, 40.44, and appendix A, NRC Form 313 is approved under control number 3150-0120.

(2) In § 40.31, DOC/NRC Forms AP-1, AP-A, and associated forms are approved under control numbers 0694-0135.

(3) In § 40.31, Forms N-71 and associated forms are approved under control number 3150-0056.

(4) In § 40.42, NRC Form 314 is approved under control number 3150-0028.

(5) In § 40.64, DOE/NRC Form 741 is approved under control number 3150-0003.

[49 FR 19626, May 9, 1984, as amended at 56 FR 40768, Aug. 16, 1991; 58 FR 68731, Dec. 29, 1993; 62 FR 52187, Oct. 6, 1997; 73 FR 78604, Dec. 23, 2008]