

FINAL SUPPORTING STATEMENT
FOR
NRC FORM 646, "FORMAL DISCRIMINATION COMPLAINT"

(3150-XXXX)
NEW

Abstract

The U.S. Nuclear Regulatory Commission's (NRC) Form 646, "Formal Discrimination Complaint" is used to collect or document required information for processing Equal Employment Opportunity (EEO) complaints filed against the NRC by an employee, former employee, or applicant for employment with the NRC, who believe that they have been subjected to discrimination based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information. Once received by the NRC, an authorized NRC representative will place the completed NRC Form 646 in a secure folder created specifically for the aggrieved individual within an automated tracking system. The information will be maintained under a government-wide system of records designated as EEOC/GOVT-1.

A. JUSTIFICATION

1. Need For the Collection of Information

On behalf of the NRC, the Office of Small Business and Civil Rights (SBCR) Civil Rights Program (CR) administers and ensures agency compliance that prohibit discrimination in the workplace in accordance with the following Federal civil rights laws, regulations, policies, and guidance:

- Title VII of the Civil Rights Act of 1964, as amended
- Age Discrimination in Employment Act of 1967
- Section 501 of the Rehabilitation Act of 1973
- Equal Pay Act of 1963
- Genetic Nondiscrimination Act of 2008.
- Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002
- Elijah E. Cummings Federal Employees Antidiscrimination Act of 2020
- Equal Employment Opportunity Commission's (EEOC) Title 29 Code of Federal Regulations, Part 1614 (29 C.F.R., Part 1614), Federal Sector Equal Employment Opportunity¹
- EEOC's Management Directive 110 (MD 110), *Complaint Processing*²

¹ 29 C.F.R., Part 1614: <https://www.gpo.gov/fdsys/pkg/CFR-2007-title29-vol4/pdf/CFR-2007-title29-vol4-part1614.pdf>

² MD 110: <https://www.eeoc.gov/federal-sector/management-directive/management-directive-110>

- EEOC's Management Directive 715 (MD 715), *Affirmative Action Programs*³

The information is needed to ensure agency compliance with these laws, regulations, policies, and guidance.

2. Agency Use and Practical Utility of Information

The NRC Form 646 serves as the required written request to further pursue unresolved claim(s) of unlawful discrimination through the formal complaint procedure in accordance with 29 C.F.R. §1614.106 and MD 110. The information collected enables the Agency to properly identify the claim(s) raised by the complainant and determine if such claim(s) can legally be accepted for investigation or dismissed in accordance with 29 C.F.R. §1614.106 and 29 C.F.R. §1614.107.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. The NRC encourages respondents to use information technology when it would be beneficial to them. Respondents are able to submit the requested information using fillable forms. The form is currently placed on a secure drive and uploaded into the iComplaints case management system, which is the secure automated tracking system that provides a complaint number for the file and is used to create mandated agency reports. iComplaints maintains individual data records for all individuals who contact the Office of Small Business and Civil Rights (SBCR) to file informal and formal Equal Employment Opportunity (EEO) complaints. SBCR uses iComplaints to collect, track, and monitor EEO complaints in order to comply with Equal Employment Opportunity Commission (EEOC) data reporting requirements as set forth in the Code of Federal Regulations governing Federal Sector EEO complaint processing (29 CFR part 1614) and The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act). In December 2021, SBCR will be upgrading the tracking system by migrating from iComplaints to Tyler Technology's Entellitrak (ETK EEO). ETK EEO will include a new feature called e-File. E-File will provide agency employees, along with members of the public that are applicants for employment, the ability to electronically contact SBCR, request a Counselor, and initiate an EEO complaint. Throughout the complaint cycle, the e-File user will be able to see accurate and current information on their complaint. Potential complainants will no longer need to mail or hand-deliver paper forms in order to initiate a complaint. It is estimated that 100% of the potential responses are filed electronically.

4. Effort to Identify Duplication and Use Similar Information

³ MD 715: <https://www.eeoc.gov/federal-sector/management-directive/instructions-federal-agencies-eeo-md-715>

No sources of similar information are available. There is no duplication of requirements.

5. Effort to Reduce Small Business Burden

Not applicable. Information is collected from individuals rather than businesses.

6. Consequences to Federal Program or Policy Activities if the Collection Is Not Conducted or Is Conducted Less Frequently

Without the form, aggrieved individuals may not meet the necessary criteria to properly file a formal complaint through the NRC and are subject to dismissal in accordance with 29 C.F.R §1614.107. The form is completed only once per complaint; therefore, reporting frequency cannot be reduced.

7. Circumstances Which Justify Variation from OMB Guidelines

In accordance with 29 C.F.R §1614.106(b), the NRC must receive the completed NRC Form 646 within 15 calendar days of receipt of the "Notice of Right to File" as required by 29 C.F.R. § 1614.105 (d), (e) or (f).

8. Consultations Outside the NRC

Opportunity for public comment on the information collection requirements for this clearance package has been published in the *Federal Register* on February 11, 2022 (87 FR 8060). Four comments were received on the proposed NRC Form 646.

The NRC received comments from U.S. Equal Employment Opportunity Commission. The first commenter requested the following items be added to the form: equal pay; genetics information; other (marital status, parental status, political affiliation, military service); and two selection boxes within Reprisal/Retaliation that say "Prior EEO Activity" and "Opposing policies/practices made unlawful. The NRC staff updated the form to reflect the requested changes.

In addition, the NRC received three comments from an anonymous commenter:

Comment 1: The information on the NRC Form 646, "Formal Discrimination Complaint" is redundant with the information on the NRC Form 655, "Counselor's Report" and the two forms should be consolidated into a single form.

NRC staff response: Per Title 29, Part 1614.105(c), as a part of the informal EEO complaint process, Counselors are required to submit a written report within 15 days to the agency office that has been designated to accept complaints and the aggrieved person concerning the issues discussed and actions taken during

counseling, which is captured by the Form 655. If the issue is not resolved during the informal EEO complaint process, the aggrieved person has the right to file a formal EEO complaint within 15 days of receipt of the notice of right to file. The aggrieved persons request to file a formal complaint is captured by the NRC 646 which initiates the formal EEO complaint process, at which time the complainant will pursue some or all of the issues that were not resolved during the informal process. The NRC cannot combine both forms due to the informal and formal EEO complaint processes being separate.

Comment 2: The one-hour burden per response estimate is insufficient.

NRC staff response: The estimated burden is the average time to complete the form. Some respondents may require more or less time to complete the form, it varies based upon the amount of information needed to support their claim(s) and/or whether they're represented by an attorney. Furthermore, the NRC staff piloted the completion of the form with four potential respondents who agreed that the one-hour burden estimate was in fact, accurate. The NRC staff did not change the burden estimate as a result of this comment.

Comment 3: The burden can be minimized using automated systems, but personally identifiable information is a concern.

NRC staff response: At this time, the NRC Form 646 has not been incorporated into an automated system. Respondents must complete and submit the form electronically via email. The form is then uploaded and maintained in Entellitrak Equal Employment Opportunity (ETK EEO) which is a case management system provided to the U.S. Nuclear Regulatory Commission (NRC) as a Software as a Service solution (SaaS) by Tyler Federal, LLC. ETK EEO is hosted by Tyler Federal on the Tyler Federal Product Suite (formerly MicroPact Product Suite) cloud platform authorized by the Federal Risk and Authorization Management Program (FedRAMP). This system of records is designated as EEOC/GOVT-1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records described at 71 Federal Register 24704 (April 26, 2006).

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b).

This information is maintained in a system of records designated as EEOC/GOVT-1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records described at 71 Federal Register 24704 (April 26, 2006).

11. Justification for Sensitive Questions

The EEOC MD 110 requires the Federal agency to determine if the aggrieved individual believes that he/she was discriminated against based on race, color, sex (gender; sexual harassment; pregnancy; or lesbian, gay, bisexual, or transgender-LGBT), religion, national origin, age (40 years or older at the time of the event giving rise to the claim), physical or mental disability, equal pay/compensation, genetic information, sexual orientation, or retaliation for participating in activities by EEO statutes. The NRC permits claims of discrimination based on sexual orientation. Collection of this information from the individuals is mandatory and forms the basis(es) for a complaint. The information is necessary to enter into the EEO complaint process. All information provided by persons alleging EEO discrimination is safeguarded and treated in accordance with the Privacy Act of 1974, as amended.

12. Estimated Burden and Burden Hour Cost

The NRC receives an estimated 30 submissions of NRC Form 646 annually. Each form takes approximately 60 minutes (1 hour) to complete. The estimated time to complete the form is based on previous submissions that required additional pages to accurately capture details of events. The total annual burden for NRC Form 646 is 30 hours (30 forms x 1 hour per form) at a cost of \$8,640 (30 hours x \$288/hr).

The \$288 hourly rate used in the burden estimates is based on the Nuclear Regulatory Commission's fee for hourly rates as noted in 10 CFR 170.20 "Average cost per professional staff-hour." For more information on the basis of this rate, see the Revision of Fee Schedules; Fee Recovery for Fiscal Year 2021 (86 FR 32146, June 17, 2021).

13. Estimate of Other Additional Costs

There are no additional costs.

14. Estimated Annualized Cost to the Federal Government

The estimated total annual burden for NRC staff to process NRC Form 646 is 10 hours (30 forms x 20 minutes per form) at a cost of \$2,880 (10 hours x \$288/hr).

15. Reasons for Change in Burden or Cost

This is a request for a new OMB clearance. The NRC Form 646 serves as the required written request to further pursue unresolved claim(s) of unlawful

discrimination through the formal complaint procedure in accordance with 29 C.F.R. §1614.105 and MD 110. The information collected enables the Agency to properly identify the claim(s) raised by the complainant and determine if such claim(s) can legally be accepted for investigation or dismissed in accordance with 29 C.F.R. §1614.106 and 29 C.F.R. §1614.107

16. Publication for Statistical Use

Not applicable.

17. Reason for Not Displaying the Expiration Date

The expiration date will be displayed.

18. Exceptions to the Certification Statement

There are no exceptions to the certification statement.