

Department of Energy

§ 1040.121

assistance is to be limited to the particular political entity or part of that entity or other applicant or recipient to whom the finding has been made and shall be limited in its effect to the particular program or part of the program in which the noncompliance has been found.

§ 1040.115 Other means authorized by law.

No action to effect compliance by any other means authorized by law is to be taken until—

(a) The Director has determined that compliance cannot be secured by voluntary means;

(b) The recipient or other person has been notified by the Director, in writing, that it has been found in formal noncompliance and that it has 10 days before formal enforcement proceedings begin in which to enter into a written voluntary compliance agreement.

(c) The expiration of at least ten (10) days from the mailing of the notice to the recipient or other person.

OPPORTUNITY FOR HEARING

§ 1040.121 Notice of opportunity for hearing.

(a) Whenever an opportunity for hearing is required by § 1040.113, the Director, OEO, or his/her designee shall serve on the applicant or recipient, by registered, certified mail, or return receipt requested, a notice of opportunity for hearing which will:

(1) Inform the applicant or recipient of the action proposed to be taken and of his/her right within twenty (20) days of the date of the notice of opportunity for hearing, or another period which may be specified in the notice, to request a hearing;

(2) Set forth the alleged item or items of noncompliance with this part;

(3) Specify the issues;

(4) State that compliance with this part may be effected by an order providing for the termination of or refusal to grant or to continue assistance, as appropriate, under the program involved; and

(5) Provide that the applicant or recipient may file a written answer with the Director, OEO, to the notice of opportunity for hearing under oath or af-

firmation within twenty (20) days of its date, or another period which may be specified in the notice.

(b) An applicant or recipient may file an answer, and waive or fail to request a hearing, without waiving the requirement for findings of fact and conclusions of law or the right to seek review by the FERC in accordance with the provisions established by the FERC. At the time an answer is filed, the applicant or recipient may also submit written information or argument for the record if he/she does not request a hearing.

(c) An answer or stipulation may consent to the entry of an order in substantially the form set forth in the notice of opportunity for hearing. The order may be entered by the General Counsel or his/her designee. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him/her of a right to:

(1) A hearing under Sec. 902 of title IX of the Education Amendments of 1972, Section 602 of title VI of the Civil Rights Act of 1964, Section 16, Section 401 and § 1040.113;

(2) Findings of fact and conclusions of law; and

(3) Seek review by the FERC.

(d) The failure of an applicant or recipient to file an answer within the period prescribed or, if the applicant or recipient requests a hearing, his failure to appear at the hearing shall constitute a waiver by him/her of a right to:

(1) A hearing under Section 902 of title IX of the Education Amendments of 1972, Section 602 of title VI of the Civil Rights Act of 1964, Section 16, Section 401, and § 1040.113;

(2) Conclusions of law; and

(3) Seek review by the FERC.

In the event of such a waiver, the Secretary or a designee may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

(e) An order entered in accordance with paragraph (c) or (d) of this section shall constitute the final decision of DOE unless the FERC, within forty-five (45) days after entry of the order, issues a subsequent decision which