

March 26, 2009

The Honorable Joseph I. Lieberman
Chairman, Committee on Homeland
Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to provide a copy of the U.S. Nuclear Regulatory Commission's (NRC) Fiscal Year 2008 Annual Report on the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002. The report is submitted in accordance with the requirements of Section 203 of the No FEAR Act. My Commission colleagues and I look forward to working with you and advising you of the NRC's efforts to maintain a model Equal Employment Opportunity program in the future.

If you have any questions about the report, please contact Ms. Corenthis B. Kelley, Director, Office of Small Business and Civil Rights (SBCR), at 301-415-7380 (corenthis.kelley@nrc.gov) or Ms. Lori Suto-Goldsby, Civil Rights Program Manager, SBCR, at 301-415-0590 (lori.suto-goldsby@nrc.gov).

Sincerely,

/RA/

Dale Klein

Enclosure:
As stated

cc: Senator Susan Collins

Identical letter sent to:

The Honorable Joseph I. Lieberman
Chairman, Committee on Homeland
Security and Governmental Affairs
United States Senate
Washington, D.C. 20510
cc: Senator Susan Collins

The Honorable Nancy Pelosi
Speaker of the United States
House of Representatives
Washington, D.C. 20515

The Honorable Henry A. Waxman
Chairman, Committee on Energy
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United States House of Representatives
Washington, D.C. 20515
cc: Representative Joe Barton

The Honorable Kathie A. Whipple
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The Honorable Robert C. Byrd
President, Pro Tempore
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Washington, D.C. 20510

The Honorable Adolphus Towns
Chairman, Committee on Oversight
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United States House of Representatives
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cc: Representative Darrell Issa

The Honorable Barbara L. Boxer
Chairman, Committee on Environment
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cc: Senator James M. Inhofe

The Honorable Naomi C. Earp
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The Honorable Eric H. Holder, Jr.
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United States Department of Justice
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Notification and Federal Employee Antidiscrimination and Retaliation Act Report

Fiscal Year 2008

Enclosure

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 February 2, 2007

I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) provides its FY 2008 Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174.

The NRC's mission is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. The NRC is headed by a five-member Commission. The President designates one member as Chairman and official spokesperson. The Executive Director for Operations (EDO) carries out the policies and decisions of the Commission. During FY 2008, the agency's workforce increased by approximately 300 employees, and at the end of this period, the agency had more than 3,800 permanent employees. To accommodate the growth in staff, the agency obtained additional temporary space for its headquarters employees in several buildings in Montgomery County, Maryland. This expansion requires the agency to be more attentive to proper notification of No FEAR Act rights; the agency has been successful in this task. NRC's headquarters is located in Rockville, Maryland, and its regional offices are located in King of Prussia, Pennsylvania; Atlanta, Georgia; Lisle, Illinois; and Arlington, Texas. The NRC's Technical Training Center is located in Chattanooga, Tennessee.

The results of the 2007 Federal Human Capital Survey recognized the NRC among Federal agencies as the Best Place to Work in the Federal Government. The 2008 Survey has resulted in the agency appearing in the top ten rankings for Federal agencies in the four Human Capital Assessment and Accountability Framework indices: (1) Leadership and Knowledge Management, (2) Results Oriented Performance, (3) Talent Management, and (4) Job Satisfaction.

NRC's population grew by approximately 8 percent in FY 2008. The agency's informal and formal complaint activity also increased; however, the agency resolved a significant number of complaints through its administrative complaint process. The greatest number of complaints filed was under Title VII of the Civil Rights Act of 1964, as amended (Title VII). Age, race, and reprisal discrimination were the most frequently filed bases, and non-selection for promotion and harassment (nonsexual) were the most common issues. During this period, the agency issued three final agency decisions. There were no findings of discrimination.

During FY 2008, there were no new cases filed in Federal district court against the agency, and there were no reimbursements to the Judgment Fund.

The agency's Office of Human Resources (HR) provides an ancillary process for issues of harassment to be presented under the NRC's Policy for Preventing and Eliminating Harassing Conduct in the Workplace. HR's efforts have been instrumental in encouraging early intervention to resolve workplace disputes. During FY 2008, no disciplinary actions were issued in conjunction with the Whistleblower Protection Act (WPA) or the agency's Policy for Preventing and Eliminating Harassing Conduct in the Workplace.

Since the enactment of the No FEAR Act, the NRC has had many accomplishments that have positively impacted the workplace climate. Examples include the following:

- Fostering continued support for the No FEAR Act by the Commission and senior agency executives through policy statements and in key meetings.

- Issuing a revised Comprehensive Diversity Management Plan (CDMP) and continuing promotion of the CDMP, which includes goals and strategies to achieve a positive and discrimination-free work environment where all employees are valued and use their diverse talents to support the agency's mission.
- Holding semi-annual equal employment opportunity (EEO) briefings.
- Conducting agency-wide briefings on the Policy for Preventing and Eliminating Harassing Conduct in the Workplace, as well as 'on demand,' office specific training.
- Conducting training programs for managers and employees on the No FEAR Act, EEO, diversity management, the WPA, prohibited personnel practices, reasonable accommodation, harassment prevention, and Alternative Dispute Resolution (ADR).
- Conducting EEO, Affirmative Employment, and Diversity Management program assessments to determine whether the agency is meeting the Equal Employment Opportunity Commission's (EEOC) standards for a model EEO program.
- Timely processing of all EEO complaints and ensuring that no backlog of cases occurs.

Additionally, the NRC has been committed to raising awareness and promoting the agency's ADR program to resolve complaints at the earliest stage.

II. Introduction

The No FEAR Act requires Federal agencies to submit annual reports to the Speaker of the House of Representatives, the President *pro tempore* of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Attorney General, the EEOC, and the Office of Personnel Management (OPM). This report is submitted by the NRC to satisfy this reporting requirement.

III. Background

The No FEAR Act was signed into law by President George W. Bush on May 15, 2002, and became effective on October 1, 2003. The act requires Federal agencies to be accountable for violations of antidiscrimination and whistleblower protection laws and post on its Web site certain statistical data relating to Federal sector EEO complaints filed with the agency. Section 203 of the No FEAR Act requires that each Federal agency submit an annual report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal district court cases arising under each of the respective areas of law specified in the act in which discrimination was alleged, the status or disposition of cases, the amount of money required to be reimbursed to the Judgment Fund, the number of employees disciplined, any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual or committed a prohibited personnel practice, and an analysis of the data collected with respect to trends and causal analysis.

NRC's Office of Small Business and Civil Rights (SBCR) is responsible for administering and ensuring agency compliance with the Federal EEO laws, regulations, policies, and guidance

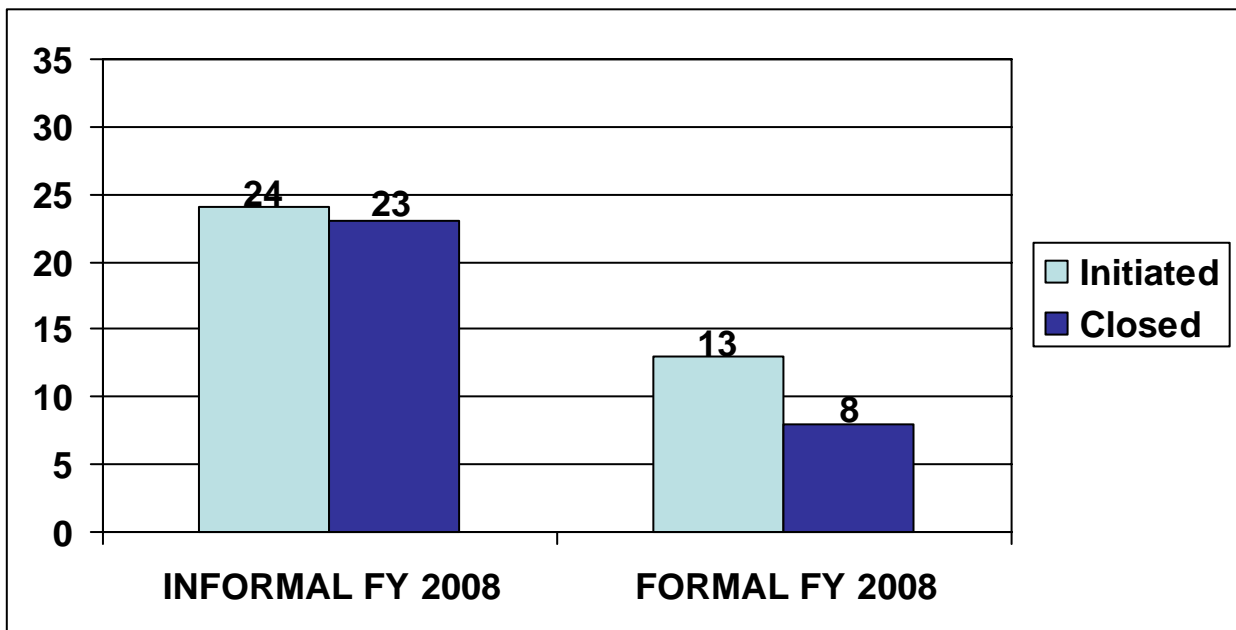
that prohibit discrimination in the Federal workplace based on race, color, national origin, religion, gender, age, disability, or reprisal. SBCR is also responsible for preparing the agency's *Annual No FEAR Act Report*. HR, the Office of the Inspector General (OIG), and Office of the General Counsel (OGC) also play a role in the implementation of the No FEAR Act for NRC employees.

IV. Data Posted for FY 2008

As required by the No FEAR Act, NRC timely posts and prominently displays a link to the No FEAR Act data on its public Web site (www.nrc.gov). This information is updated quarterly, not later than 30 calendar days after the end of each quarter. See Attachment 1 for details.

Overall, NRC's informal and formal complaint activity is relatively low. When compared to historical data (FY 2003 – FY 2007) provided in the Equal Employment Opportunity Commission Annual Report on the Federal Workforce, Number of Complaints as a Percentage of the Total Workforce, the agency's complaint activity has consistently averaged 40 percent less than the average for Federal sector small agencies¹. We believe that this is due to a continual effort to maintain a positive work environment and the fact that a number of workplace disputes are resolved prior to complainants initiating the informal process. The following sections provide more information on the informal and formal complaints filed against the agency:

A. FY 2008 Informal and Formal Complaint Activity



During FY 2008, a total of 24 new informal complaints were initiated; no informal complaints were carried over from the previous FY. Of the 24 informal complaints, 23 were closed during FY 2008. A total of 13 formal complaints were filed against the agency, and 8 were closed. Formal complaint activity for FY 2008 was consistent with prior years.

¹ For the purpose of the EEOC Annual Report on the Federal Workforce, the NRC is classified as a small agency.

During FY 2008, all EEO investigations were completed in a timely manner. As of the end of FY 2008, there were six cases pending investigation; the processing time for these cases was also timely. During FY 2008, the agency issued three final agency decisions; there were no findings of discrimination. The NRC attributes the relatively low complaint activity to the use of proactive early intervention to resolve workplace disputes; the agency's ADR program; and provision of EEO and No FEAR Act training to NRC managers, supervisors, and employees.

B. Bases and Issues

The FY 2008 complaint data shows that complainants identified age, race, and reprisal as the most frequently filed bases that gave rise to complaints. Additionally, the data shows that complainants identified promotion/non-selection and harassment (non-sexual) as the most common issues for filing complaints. Several complaints included multiple bases. See Attachment 1 for details.

V. Civil Cases - Reimbursement to the Judgment Fund

Section 203(1) of the No FEAR Act requires that agencies include in their annual report the number of civil cases arising under the WPA and antidiscrimination laws, the status of such cases, and the amount of money reimbursed to the Judgment Fund. OPM published interim final regulations on January 22, 2004, to clarify the agency reimbursement provisions of the No FEAR Act. These interim regulations stated that the Federal Management Service (FMS), U.S. Department of Treasury, will provide notice to an agency's Chief Financial Officer within 15 business days after payment from the Judgment Fund. The agency is required to reimburse the Judgment Fund within 45 business days after receiving the notice from FMS or must contact FMS to make arrangements in writing for reimbursement.

During FY 2008, no Federal district court cases were filed against the agency, and there were no reimbursements to the Judgment Fund.

VI. Disciplinary Actions

Section 203(a)(6) of the No FEAR Act requires that agencies include in their annual report a detailed description of the policy implemented by the agency relating to disciplinary actions imposed against a Federal employee who discriminated against any individual in violation of any laws cited under section 201(a)(1) or (2), or committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2). Further, the act requires that, with respect to each such law, the agency report on the number of employees who were disciplined in accordance with such policy and the specific nature of the disciplinary action taken.

As indicated in the agency's prior No FEAR Act reports, the NRC's 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. On January 24, 2007, the agency issued the Policy for Preventing and Eliminating Harassing Conduct in the Workplace. See Attachment 2 for details. This policy reinforces the agency's commitment to establishing a workplace free from discrimination, harassment, and retaliation.

During FY 2008, 32 claims of harassment were filed with HR; however, the inquiries did not result in findings of violations related or prohibited personnel practices. Therefore, no disciplinary actions were issued.

VII. Training Requirement for No FEAR Act

Section 202(c) of the No FEAR Act requires that agencies train employees about the Act. To comply with the provision, on September 30, 2005, the agency implemented a No FEAR Act Web-based training course concerning the rights and remedies applicable to NRC employees under antidiscrimination and whistleblower protection laws. The NRC's training was updated during FY 2008, and approximately 95 percent of employees completed a refresher training course during this period. New employees are required to complete the training within 90 calendar days of being hired by the agency.

VIII. Trends, Analysis, and Practical Knowledge

Section 203(7) of the No FEAR Act requires that agencies examine trends, causal analyses, practical knowledge gained through experience, and any actions planned or taken to improve the complaint or civil rights program of the agency.

An analysis of complaints filed during FY 2008 shows there was a slight increase in the number of informal and formal complaints filed against the agency. Complaint activity alleging age discrimination also increased during FY 2008. It is noteworthy that 75 percent of the NRC's workforce is age 40 and over. Complaint activity alleging all other bases has remained constant.

During the past year, the agency has worked diligently to improve the processing time for investigations and ensure that all investigations are completed in a timely manner. The average processing time for investigations has declined by 101 days. The agency's average processing time for investigations is now 180 days, which is in accordance with EEOC regulations.

The agency has made tremendous progress in developing standard operating procedures and internal controls to improve investigations. The agency has contractual arrangements to procure investigative services including an inter-agency agreement with the U.S. Postal Service. The NRC also has an internal staff of EEO investigators. SBCR's recruitment of a staff with considerable EEO complaint processing experience has resulted in the Civil Rights Program improving communication with complainants and managers; providing EEO training to employees to prevent discrimination; reducing the processing time for investigations; training collateral duty EEO Counselors on the No FEAR Act, ADR, reasonable accommodation, and EEO case law; and publicizing the ADR Program. SBCR continues to maintain contact with other Federal agencies and the Council of Federal EEO and Civil Rights Executives to gain knowledge and learn about best practices in the civil rights area.

The NRC's ADR program is used to help resolve workplace EEO disputes. The NRC has been committed to promoting ADR to eliminate actions that may give rise to EEO complaints and offered ADR to 100 percent of all parties in both the informal and formal complaint processes. The ADR program manager meets with the agency official and employee separately to discuss the ADR process and the issues in dispute. The parties are encouraged to discover, discuss, and engage in creative methods of dispute resolution. On February 2, 2007, the agency issued a reminder supporting the ADR program. See Attachment 3 for details.

The agency's participation rate for using ADR increased to 39 percent in FY 2008 compared to the overall FY 2007 Federal government participation rate of 48 percent. During FY 2008, the NRC took several steps to increase the agency's use of ADR: (1) conducting an ADR brown bag luncheon, (2) holding informational exhibits about ADR, (3) distributing ADR brochures to employees, (4) evaluating assessments of ADR sessions, and (5) providing ADR awareness training.

The agency continues to make significant progress in the area of ADR including participating in the Federal Sharing Neutrals Program (SNP) by providing SBCR staff to conduct mediations for other Federal agencies and also by using SNP mediators to facilitate NRC mediation for EEO matters.

In an effort to increase the ADR participation rate and to meet the EEOC's FY 2009 goal of 50 percent participation in ADR, the agency is continuing to promote the program through the use of periodic ADR training and other interactive events with agency offices.



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 2003 - FY 2008



| 29 CFR § 1614.704(a) - (c) | <u>29 CFR § 1614.705</u> Comparative Data Previous Fiscal Year Data | | | | | |
|--|--|-------------|-------------|-------------|-------------|-------------|
| Complaint Activity | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 |
| Number of Complaints Filed in FY 1614.704(a) | 13 | 11 | 13 | 10 | 12 | 9 |
| Number of Complainants 1614.704(b) | 12 | 11 | 13 | 9 | 12 | 8 |
| Repeat Filers 1614.704(c) | 1 | 2 | 2 | 0 | 0 | 1 |

| <u>29 CFR § 1614.704(d)</u> | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | |
|--|---|-------------|-------------|-------------|-------------|-------------|
| Complaint by Basis | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 |
| Race | 6 | 5 | 8 | 3 | 4 | 3 |
| Color | 2 | 0 | 0 | 0 | 4 | 1 |
| Religion | 0 | 0 | 0 | 0 | 1 | 0 |
| National Origin | 2 | 1 | 4 | 0 | 3 | 2 |
| Sex (including complaint filed under Equal Pay Act) | 3 | 4 | 4 | 3 | 4 | 2 |
| Disability | 0 | 3 | 3 | 4 | 2 | 0 |
| Age | 8 | 2 | 5 | 4 | 7 | 4 |
| Reprisal | 5 | 4 | 5 | 4 | 6 | 3 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 |
| * -Data not collected by Color- Color included in basis "Race/Color" | | | | | | |

| <u>29 CFR § 1614.704(e)</u> | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | |
|---|---|------|------|------|------|------|
| Complaint by Issue | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 |
| Appointment/Hire | 1 | 2 | 1 | 2 | 0 | 1 |
| Assignment of Duties | 5 | 2 | 7 | 6 | 5 | 4 |
| Awards | 2 | 2 | 6 | 2 | 2 | 0 |
| Conversion to Full-time | 0 | 0 | 0 | 0 | 0 | 0 |
| Disciplinary Action | | | | | | |
| Demotion | 0 | 0 | 0 | 0 | 0 | 0 |
| Reprimand | 1 | 0 | 0 | 0 | 0 | 0 |
| Suspension | 1 | 0 | 0 | 0 | 0 | 0 |
| Removal | 1 | 1 | 0 | 1 | 0 | 1 |
| Other | 2 | 0 | 0 | 0 | 0 | 0 |
| Duty Hours | 0 | 0 | 1 | 0 | 0 | 0 |
| Evaluation Appraisal | 4 | 2 | 9 | 4 | 4 | 4 |
| Examination/Test | 0 | 0 | 0 | 0 | 0 | 0 |
| Harassment | | | | | | |
| Non-Sexual | 6 | 4 | 9 | 7 | 5 | 4 |
| Sexual | 0 | 0 | 0 | 0 | 1 | 0 |
| Medical Examination | 0 | 0 | 0 | 0 | 0 | 0 |
| Pay (Including Overtime) | 0 | 0 | 0 | 0 | 0 | 0 |
| Promotion/Non-Selection | 10 | 6 | 6 | 2 | 8 | 6 |
| Reassignment | | | | | | |
| Denied | 0 | 0 | 0 | 0 | 0 | 0 |
| Directed | 0 | 0 | 0 | 0 | 0 | 0 |
| Reasonable Accommodation | 0 | 1 | 0 | 2 | 0 | 0 |
| Reinstatement | 0 | 0 | 0 | 0 | 0 | 0 |
| Retirement | 0 | 0 | 0 | 0 | 0 | 0 |
| Termination | 1 | 1 | 0 | 0 | 0 | 1 |
| Terms/Conditions of Employment | 0 | 0 | 0 | 0 | 2 | 0 |
| Time and Attendance | 1 | 2 | 2 | 1 | 3 | 0 |
| Training | 2 | 2 | 4 | 4 | 5 | 1 |

| <u>29 CFR § 1614.704(j)</u> | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | | | | | | | |
|--|---|---|------|---|------|---|------|---|------|-----|------|---|
| Findings of Discrimination Rendered by Basis | 2008 | | 2007 | | 2006 | | 2005 | | 2004 | | 2003 | |
| | # | % | # | % | # | % | # | % | # | % | # | % |
| Total Number Findings <u>1614.704(j)(1)</u> | 0 | | 0 | | 0 | | 0 | | 1 | | 0 | |
| Number of Finds Rendered Without Hearing <u>1614.704(j)(2)</u> | 0 | | 0 | | 0 | | 0 | | 1 | | 0 | |
| Number of Finds Rendered After Hearing <u>1614.704(j)(3)</u> | 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 | | 0 | | 1 | 100 | 0 | |
| Age | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| Reprisal | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |

| | | | | | | | |
|-------|---|---|---|---|---|---|---|
| Other | 0 | 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 | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 |
| Total complaints from previous Fiscal Years 1614.704(l)(1) | 2 | 2 | 2 | 3 | 2 | 9 |
| Total Complainants 1614.704(l)(2) | 2 | 2 | 2 | 3 | 2 | 8 |
| Number of all pending complaints from previous Fiscal Years 1614.704(l)(3) | | | | | | |
| Investigation | 0 | 0 | 1 | 2 | 0 | 1 |
| ROI issued, pending Complainant's action | 0 | 0 | 0 | 0 | 0 | 0 |
| Hearing | 0 | 1 | 0 | 1 | 2 | 7 |
| Final Agency Action | 2 | 1 | 1 | 0 | 0 | 1 |
| Number of closed complaints pending 1614.704(k)(3) | | | | | | |
| Appeal with EEOC Office of Federal Operations | 4 | 2 | 1 | 1 | 3 | 1 |

| 29 CFR § 1614.704(l) | 29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data | | | | | |
|--|---|------|------|------|------|------|
| Complaint Investigations | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 |
| Number Pending Completion of Investigation | 6 | 2 | 5 | 8 | 8 | 7 |
| Pending Investigations Over Required Time Frames | 0 | 0 | 2 | 2 | 5 | 1 |