



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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Memorandum

To: Bureau EEO Officers

From: Sharon D. Eller
Director
Office of Civil Rights

Subject: 29 C.F.R. §1614 Amendments
Submission of Appeals and Complaint Files

On July 25, 2012, the United States Equal Employment Opportunity Commission (EEOC) implemented amendments to 29 C.F.R. §1614. Specifically pertinent to the EEO Officers is 29 C.F.R. §1614.403(g), which states in pertinent part that “agencies are required to submit appeals and complaint files to the EEOC in digital format, unless they can establish good cause for not doing so.” This amendment must be effectuated no later than 60 days after it was implemented. The full text of the amended regulations can be obtained from the Office of the Federal Register at <http://www.gpo.gov/fdsys/pkg/FR-2012-07-25/html/2012-18134.htm>.

In accordance with 29 C.F.R. §1614.403(g), effective October 1, 2012, my office will no longer be accepting paper files. All files must be submitted electronically using the Hearings Electronic Case Processing System (HECAPS). Training on the HECAPS system will be provided at upcoming Complaints Managers meetings to Bureau Complaints Managers and Bureau Records Managers.

Please revisit your investigator contracts to ensure that the investigators maintain and provide electronic files to you. Regarding investigations currently underway, please convert them to an electronic format before submitting them to my office.

If necessary, I am available to assist your office if you have any questions or concerns regarding this matter. You may reach me at (202) 208-3235. You may also contact Vanessa Green, Chief, Employment Complaints and Adjudication Division, Office of Civil Rights, at (202) 208-6120.

Attachments: EEOC Press Release Dated July 24, 2012
Q&A on EEOC's Final Rule Implementing Revisions to 29 C.F.R. Part 1614

- A requirement that agency EEO programs comply with part 1614 and EEOC Management Directives and Management Bulletins. EEOC will review agency programs for compliance and issue notices to agencies when non-compliance is found. 29 CFR § 1614.102(e).
- A new subsection allowing agencies, with prior Commission approval, to conduct pilot programs whose procedural complaint processing procedures vary from the requirements of Part 1614. 29 CFR § 1614.102(f).
- New language stating that a complaint which alleges that a proposal or preliminary steps to take a personnel action is discriminatory can be dismissed unless the complaint alleges that the proposal is retaliatory. 29 CFR § 1614.107(a)(5).
- A requirement that an agency which has not completed its investigation in a timely manner provide the complainant with written notice that the investigation is not complete, an estimated date of when the investigation will be completed, and a notice that the complainant has a current right to request a hearing or file a lawsuit. 29 CFR § 1614.108(g).
- A revision to the class complaint regulations making an administrative judge's decision on the merits of a class complaint a final decision, rather than a recommended decision, which an agency can implement or appeal. 29 CFR §§ 1614.204(i) and (j).
- A requirement that agencies submit appeals and complaint files to EEOC in a digital format, unless they can establish good cause for not doing so. Complainants are encouraged to submit their documentation electronically. 29 CFR § 1614.403(g).

6. What are some of the other revisions that are being implemented?

- A revision allowing for expedited processing of appeals of decisions to accept or dismiss class complaints (certification decisions). 29 CFR § 1614.405(b).
- A revision that removes the words "Decision without a hearing" and adds instead the words "Summary Judgment." 29 CFR § 1614.109(g).
- A revision which provides that EEOC appellate decisions are final for purposes of filing a civil action, unless a timely request for reconsideration is filed by either party. 29 CFR § 1614.405(c).
- A revision extending the time period within which agencies must provide ordered relief from 60 to 120 days. 29 CFR § 502(c).
- A revision which distinguishes appeals alleging breach of settlement agreements from those alleging breach of final decisions. EEOC can order compliance with both settlement agreements and final decisions, and, in the case of a settlement breach, order that the complaint be reinstated from the point processing ceased. 29 CFR § 1614.504(c).

7. Does the requirement that agencies comply with Part 1614 and EEOC's Management Directives and Bulletins impose additional responsibilities upon agencies?

No. Section 717 of Title VII authorizes EEOC to issue regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under section 717. This revision simply makes clear that, as has been the case since 1979 (when EEOC was given authority over the federal sector EEO process), agencies must comply with Part 1614 and the compulsory instructions contained in EEOC's Management Directives and Bulletins.

8. If EEOC develops new Management Directives or Bulletins, will agencies have an opportunity to review and comment upon them before they are issued?

Yes. Executive Order 12067 provides that, before EEOC issues any final EEO rules, policies, procedures, or orders, EEOC must give federal agencies an opportunity to comment upon and consult with EEOC regarding such matters. Thus, EEOC will not issue a new federal sector EEO rule, directive, bulletin, or instruction without first affording agencies notice and the opportunity to comment.

9. Will EEOC issue a notice of non-compliance in all instances in which it finds that an agency's EEO program is not in compliance with EEOC's regulations and mandatory orders?

No. When EEOC determines that an agency's EEO program is non-compliant, it will give the agency a reasonable opportunity to cure the defects that have been found, provide a reasonable justification for its non-compliance, or establish that its program is in compliance. Therefore, a notice of non-compliance will be issued only when an agency fails to satisfy one of these criteria.



U.S. Equal Employment Opportunity Commission

Questions and Answers on EEOC's Final Rule Implementing Revisions to 29 CFR Part 1614

The U.S. Equal Employment Opportunity Commission (EEOC or Commission) is responsible for issuing rules and orders governing the processing of equal employment opportunity (EEO) complaints filed by federal employees and applicants. This rule modifies the regulations for processing equal employment opportunity complaints by federal employees and job applicants to clarify and build on the improvements made by the last major revisions to 29 CFR Part 1614 in 1999.

A notice of proposed rulemaking (NPRM) was circulated to all agencies for comment pursuant to Executive Order 12067 and subsequently published in the Federal Register on December 21, 2009. 74 FR 67839 (2009). The notice proposed changes to the Commission's federal sector EEO complaint processing regulations at 29 CFR Part 1614 to implement the recommendations of the Federal Sector Workgroup. It sought public comment on those proposals. The final rule was published in the Federal Register on July 25, 2012. The following questions and answers provide information on the changes made to the federal sector complaint process by the final rule.

1. What Is the Purpose of 29 CFR Part 1614?

Under section 717 of Title VII of the Civil Rights Act of 1964, EEOC is responsible for the administration and enforcement of equal employment opportunity in federal employment. As such, EEOC is authorized to issue rules, regulations, orders, and instructions as necessary and appropriate to carry out its EEO responsibilities. 29 CFR Part 1614 governs the process for filing and adjudicating complaints of employment discrimination filed by federal employees and applicants. It also directs how agencies must administer their internal EEO programs.

2. Has 29 CFR Part 1614 been revised since 1992?

Yes, substantial revisions to Part 1614 were published in 1999.

3. Why has EEOC decided to revise Part 1614 once again?

In an effort to be responsive to stakeholder input regarding the federal sector complaint process, EEOC established a Federal Sector Workgroup to explore ways to improve the federal sector complaints process. The Workgroup agreed on a number of procedural modifications which will enhance the overall processing of federal sector EEO complaints.

4. Who is required to comply with 29 CFR Part 1614?

Federal executive agencies and a few other federal entities (such as the U.S. Postal Service, the Tennessee Valley Authority, and the Smithsonian Institution) must comply with the rules and procedures set forth in Part 1614. Thus, federal agencies must maintain EEO programs and establish EEO complaint processing procedures as set forth in Part 1614. Federal employees and applicants who believe they have been the victims of prohibited employment discrimination may file complaints and have them processed in accordance with Part 1614.

Part 1614 does not apply to the uniformed members of the federal government's military departments, to non-U.S. citizens employed by federal agencies in locations outside the United States, to members of Congress, their staffs, and employees, or to employees of the federal court system. Additionally, Part 1614 does not apply to private sector employers, their employees, or applicants, or to state or local governments and their employees and applicants.

5. What are the Final Rule's most significant revisions to Part 1614?

There are six main revisions. They are:



U.S. Equal Employment Opportunity Commission

PRESS RELEASE

7-24-12

EEOC Issues Final Rule Revising Federal Sector Equal Employment Opportunity Complaint Process

WASHINGTON – The U.S. Equal Employment Opportunity Commission (EEOC) today issued a final rule modifying certain aspects of the complaint process that is used by federal employees and applicants who believe they have been subjected to prohibited employment discrimination by federal agencies. The final rule was coordinated with other federal agencies and reviewed by the U.S. Office of Management and Budget. The rule was posted for public inspection today and will be published in the Federal Register on Wednesday, July 25, 2012.

See Also

[Questions and Answers on EEOC's Final Rule Implementing Revisions to 29 CFR Part 1614](#)

The final rule contains a number of key revisions to 29 CFR Part 1614 ("Federal Sector Equal Employment Opportunity"):

- As part of the EEOC's authority to review agency programs for compliance with EEOC directives and guidelines which promote equal employment opportunity in the federal workplace, the EEOC can issue notices to agencies when non-compliance is found and not corrected.
- Agencies can seek approval from the EEOC to conduct pilot projects in which the complaint processing procedures vary from the requirements of Part 1614.
- A complaint which alleges that a proposal or preliminary step to taking a personnel action is discriminatory can be dismissed unless the complainant alleges that the proposal is retaliatory.
- An agency that has not completed its investigation in a timely manner must inform the complainant in writing that the investigation is not complete, provide an estimated date of completion, and remind the complainant that he or she has a current right to request a hearing or file a lawsuit.
- An administrative judge's decision on the merits of a class complaint is a final decision, rather than a recommended decision, which an agency can implement or appeal.
- Agencies must submit appeals and complaint files to the EEOC in a digital format, unless they can establish good cause for not doing so. Complainants are encouraged to submit digital filings.

Major revisions to the federal sector EEO complaint process were last implemented in 1999. Since then, in response to stakeholder dissatisfaction with certain elements of the process, the EEOC has held a public meeting on federal sector reform. It also established a Commissioner-led Federal Sector Workgroup to obtain suggestions for reform from complainants, agencies, unions, civil rights groups, and other stakeholders. This final rule is a product of the recommendations of the workgroup and the comments the EEOC received from the public and during the inter-agency coordination process. The Commission will revise Management Directive 110 to provide additional guidance regarding the changes made by the final rule and will continue to assess the federal sector EEO complaint process with a view to further improvements.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its public web site at www.eeoc.gov.

10. When EEOC issues a notice of non-compliance to an agency, will it also make the notice public?

Not always. Under the rule, the EEOC Chair retains the discretion to determine whether a notice of non-compliance should be made public. Therefore, not every notice of non-compliance that is issued to an agency will be made public. EEOC is in the process of developing standards and guidance addressing compliance issues and the procedures EEOC will follow before it issues a notice of non-compliance. This guidance will include circumstances that would warrant the issuance of a public notice of non-compliance.

11. What type of pilot projects will EEOC allow agencies to conduct?

The criteria for pilot projects have not been established. EEOC intends to issue pilot project guidance in the near future, possibly in MD-110, which will include some mandatory standards. EEOC will be open to innovative proposals that protect certain basic rights of all parties.

12. How long may a pilot project last?

In its Notice of Proposed Rulemaking, EEOC proposed that pilot projects be approved only for a one-year period. The final rule specifies that a pilot project can run for two years, and that, for good cause shown, the project can be extended an additional year.

13. When may an agency dismiss a complaint that challenges a proposed action?

A complaint that alleges that a proposed action, such as a proposed removal, is discriminatory normally should be dismissed by an agency. The revisions made to Part 1614 by this Final Rule, however, state that a complaint alleging that a proposed action, or other preliminary steps to taking a personal action, is retaliatory can state a claim and therefore should not be dismissed automatically. As a result, challenges to proposed actions or other preliminary steps generally will be actionable when the complainant alleges that a proposed action was issued: 1) because the complainant had engaged in prior EEO activity; 2) because the complainant had opposed a practice which he or she believed violated one of the federal EEO laws; or, 3) to dissuade the complainant, or a reasonable person in the complainant's circumstances, from engaging in protected EEO activity.

14. The Final Rule requires an agency to issue a notice during the investigatory stage of the EEO complaint process. How does this notice differ from the notice an agency currently must issue during this same time period?

The longstanding general rule under Part 1614 is that, within 180 days from the filing of a complaint, an agency must complete its investigation and notify a complainant that she has the right to request a hearing, or, in the alternative, an immediate final decision. Part 1614, as revised by this Final Rule, states that, if an agency does not complete its investigation within the required time period, it must, within the same applicable time period, issue a written notice to the complainant informing her that the agency has been unable to complete its investigation within the required time limits. Additionally, an agency must now estimate a date by which its investigation will be completed and inform the complainant of that date. Further, the notice must explain that if the complainant does not want to wait until the agency completes the investigation, she may instead request a hearing, or file a civil action in an appropriate United States District Court.

15. How does the Final Rule change the way in which class complaints will be processed?

The Final Rule makes two changes to the class complaint process. First, an appeal of the acceptance or dismissal of a class complaint will be processed by EEOC on an expedited basis. Thus, after an EEOC administrative judge (AJ) issues a decision whether to accept or dismiss a class complaint, the agency or the class agent can appeal the decision to accept or dismiss the class complaint. That appeal will now be processed within 90 days, rather than 180 days under the previous rule.

Second, the revised Final Rule makes an AJ's decision on the merits of a class complaint a final decision, which the agency can fully implement or appeal in its final action. Under the previous rule, an AJ issued recommended findings and conclusions on the merits of a class complaint, which an agency could accept, reject, or modify in its final decision. With the current change, an AJ's class complaint decision will have the same status and effect as an AJ decision on an individual complaint; it will be a final decision which the agency or class agent can appeal. If the agency does not fully implement the administrative judge's decision, it only has to appeal the parts of the decision that it wishes to contest. For example, if an administrative judge finds that the agency discriminated

against the class and awards reinstatement and backpay, and if the agency disagrees with the award of reinstatement, the agency's appeal need only challenge the reinstatement award.

16. If an agency agrees with part of an Administrative Judge's merits decision but disagrees with other parts, must it appeal the entire decision?

No. As is the case with an individual complaint, an agency need appeal only that portion of the AJ's decision with which it disagrees. For example, if an AJ issues a decision finding that the class members were discriminated against with respect to training opportunities and promotions, and the agency agrees that there was class-wide discrimination regarding training, the agency can implement that part of the AJ's decision pertaining to training while appealing the AJ's findings on the promotion issue.

17. Is there a standard method an agency must use when filing an appeal with the EEOC or submitting appellate and complaint files to EEOC?

No. The new rule requires only the submission of digital records, not electronic filing. To comply with the new rule, an agency will have to convert its paper files to a digital format, but it can then choose the means by which it transmits its digital files. For example, an agency can place its digital files on password-protected CDs or DVDs and mail the discs to EEOC. An agency also can place its digital files on its website where EEOC can access them. Additionally, an agency can transmit appellate and complaint records electronically by using EEOC's secure filing portal.

18. May an agency request an exemption from the digital submission requirement?

Yes. Under the new rule, an agency can request a waiver. EEOC will permit an agency to continue to submit paper files "for good cause shown." Good cause can include the financial burden placed on an agency in having to convert to digital records. Good cause also can include a showing that an agency needs a specific amount of time to modify or upgrade its software, equipment, or systems in order to make compliance possible. EEOC will apply the good cause standard on a case-by-case basis, since cost and other factors that would establish good cause are relative and unique to each agency.

19. When do the changes to Part 1614 take effect?

The changes made by this Final Rule to Part 1614 are effective 60 days after publication in the Federal Register.

As a general rule, this does not mean that, if a particular stage of the complaint process has passed, an agency or complainant will have to revisit that stage in order to comply with a new procedure. Here are some examples:

- If an agency submitted its appeal and appellate and complaint files in paper form before the effective date of the final rule, it will not have to resubmit those same records in a digital format. All future submissions, however, will have to be in a digital format.
- An administrative judge's recommended decision that addresses the merits of a class complaint and was issued prior to the effective date of this Final Rule will be processed under the prior procedures. Any merits class complaint decisions issued after the effective date will be processed under the new procedures.
- With respect to pending complaints in which the investigation has not been completed, if, after the effective date of this Final Rule, more than 180 days elapse since the complaint was filed (and there are no applicable extensions involved), an agency must issue the complainant the new notification regarding the right to immediately request a hearing or file a civil action.
- The revised rule on proposed actions codifies current Commission precedent. As a result, any pending complaints which allege that a proposed action is retaliatory must be processed under the new procedures, regardless of what stage the complaint is at. EEOC and its AJs will apply the revised rule to all pending complaints and agencies must likewise do so. For example, if an agency dismissed a complaint that alleged that a proposed action was retaliatory, and the complainant filed an appeal which is pending with EEOC, the agency must revisit its final decision and determine whether it correctly dismissed the complaint. At the same time, EEOC may remand the complaint to the agency for a new determination.
- The revised rule extends the time period in which agencies must provide ordered relief from 60 to 120 days. This new time period will apply to any pending orders and all future orders.