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FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, (202) 273-1940 (this is not a toll-free number), 1-866-315-6572 (TTY/TDD).

Dated: December 5, 2019.

Roxanne L. Rothschild,
Executive Secretary.

[FR Doc. 2019-26596 Filed 12-10-19; 8:45 am]

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046-AB00

Official Time in Federal Sector Cases Before the Commission

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) proposes amending its rule covering official time for representatives who are employees of

the federal government. The Commission seeks to clarify that its rule concerning official time does not apply to representatives who serve in an official capacity in a labor organization that is the exclusive representative of employees in an appropriate unit. The Commission is doing this because it believes that the relevant labor relations statute articulates the best policy for determining if someone receives official time when they act for a labor organization and the Commission does not want its regulations to undermine this approach.

DATES: Comments are due on or before February 10, 2020.

ADDRESSES: You may submit comments by the following methods:

You may submit comments, identified by RIN Number 3046-AB00, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** (202) 663-4114. (There is no toll free fax number). Only comments of six or fewer pages will be accepted via fax transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTY). (These are not toll free numbers).

- **Mail:** Bernadette B. Wilson, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

- **Hand Delivery/Courier:** Bernadette B. Wilson, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the agency name and docket number or the Regulatory Information Number (RIN) for this rulemaking. Comments need be submitted in only one of the above-listed formats. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information you provide.

Docket: For access to comments received, go to <http://www.regulations.gov>. Copies of the received comments also will be available for review at the Commission's library, 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m., until the Commission publishes the rule in final form but you must make an appointment to do so with library staff.

FOR FURTHER INFORMATION CONTACT:

Andrew Maunz, Special Assistant to the Chair, andrew.maunz@eeoc.gov or 202-663-4039.

SUPPLEMENTARY INFORMATION: Under section 717 of Title VII of the Civil Rights Act of 1964, as amended, the Commission is responsible for the enforcement of equal employment opportunity (EEO) in the federal employment. As such, the Commission is authorized to issue rules, regulations, orders, and instructions as necessary and appropriate to carry out its EEO responsibilities. Section 717(b) of Title VII provides that "[e]xcept as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies . . . and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section." Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16.

In 1978, the President consolidated numerous EEO responsibilities at the EEOC and, among other things, transferred responsibility for all federal sector EEO from the Civil Service Commission to the EEOC.¹ When the Commission took on responsibility for federal sector EEO, however, the Commission did not create a new process. As the Commission stated in 2015, when it contemplated a review of longstanding federal sector EEO procedures of which this proposed rule is a small part,

[T]he Federal sector EEO complaint processing procedures did not originate with EEOC in 1979 . . . Rather, formal, regulatory procedures first were promulgated by the Civil Service Commission ("CSC") in 1966, codified at 5 CFR part 713, and the basic framework contained in those procedures was adopted by EEOC in 1979 [and codified at 29 CFR part 1613]. Although EEOC has revised the procedures a number of times, the original structure inherited from the CSC—counseling, complaint, investigation, hearing, final agency action, and appeal—remains.

See Advance Notice of Proposed Rulemaking, 80 FR 6669 (Feb. 6, 2015) (ANPRM). The EEOC thus positioned itself to make changes to the federal sector EEO complaint process.

Although the EEOC's original 1979 federal sector regulation at 29 CFR part

¹ On February 23, 1978, the President submitted to Congress Reorganization Plan No. 1 of 1978, which consolidated Federal Equal Employment Opportunity Activities. The text of the President's message and the terms of the plan are at 124 Congressional Record H 1457 (H. Doc. No. 95-295).

1613 was silent about “official time” for representatives of complaining parties, in 1987 the Commission turned back to the CSC’s EEO rule for model language about “official time”. *Id.* at 6670. The Commission then adopted the “official time” rule that remains today, and which was unchanged during the Commission’s 1992 revision of federal sector EEO procedures, in which the Commission rescinded 29 CFR part 1613 and created 29 CFR part 1614. *See generally* 57 FR 12634 (April 10, 1992) (effective Oct. 1, 1992). Specifically, section 1614.605, under the heading “Representation and Official Time,” describes a complainant’s right to be represented in federal sector actions covered by the Commission’s regulations. Paragraph (b) of section 1614.605 discusses the right of both the complainant and representative, if they are employees of the agency at issue, to reasonable official time during their involvement in the complaint process. It is notable that the first two sentences of paragraph (b), which is the language that gives the right to reasonable official time to complainants and representatives, borrows heavily from the wording used for the comparable provision in the original CSC rule. *See* U.S. Civil Service Commission, Part 713—Equal Opportunity; Filing and Presentation of complaint, § 713.214(b), 37 FR 22717, 22719 (Oct. 21, 1972).

When the Civil Service Commission first crafted this approach in 1972, Congress had not yet passed the Federal Service Labor-Management Relations Statute (FSLMRS), which it did in 1978. The FSLMRS established the ability for someone acting on behalf of a labor organization to receive official time, in some instances as a right, but in many instances pursuant to an agreement between the agency and the union. 5 U.S.C. 7131. Specifically, 5 U.S.C. 7131(d)(1) states that “any employee representing an exclusive representative . . . shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.”

Since union official time did not exist in statute until 1978, there was no reason for the CSC’s original EEO procedures to address union official time when it first published the regulation in 1972. However, in its subsequent modifications of the EEO procedures, the Commission has not expressly addressed the availability of “reasonable” official time to union officials or how the Commission’s official time regulation for EEO proceedings interacts with the FSLMRS.

The Commission now proposes to amend section 1614.605(b) to exclude union representatives from its grant of reasonable official time for EEO proceedings. Failing to clarify the Commission’s regulation can cause agencies and unions to be unclear on exactly which aspects of official time they need to bargain. Furthermore, the FSLMRS was specifically designed to address the unique relationship between labor organizations and federal agencies. *See* 5 U.S.C. 7101(b) (“It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government.”). Considering this design, the Commission believes that the best policy approach is to leave the determination of whether a union official receives official time to the provisions of the FSLMRS.

Therefore, the Commission proposes to amend its regulation to clearly state that its official time provision does not apply if the representative serves in an official capacity in a labor organization that is an exclusive representative of employees at the agency.

Regulatory Procedures

Executive Order 12866

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a “significant regulatory action” under section 3(f) of the Order, and therefore it has not been reviewed by the Office of Management and Budget.

Executive Order 13771

This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

Paperwork Reduction Act

This proposed rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it applies exclusively to employees and agencies of the federal government and does not impose a burden on any business entities. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

While the Commission believes the proposed rule does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996), it will still follow the reporting requirement of 5 U.S.C. 801.

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Equal Employment Opportunity.

For the Commission.

Dated: December 5, 2019.

Janet Dhillon,
Chair.

For the reasons set forth in the preamble, the Commission proposes to amend part 1614 as follows:

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY [AMENDED]

■ 1. The authority citation for Part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16 and 2000ff–6(e); E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR 1954–1958 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No 1 of 1978, 3 CFR, 1978 Comp., p. 321.

■ 2. In § 1614.605 amend paragraph (b) by adding a sentence at the end of the paragraph to read as follows:

§ 1614.605 Representation and official time.

* * * * *

(b) * * * This paragraph does not apply to a representative if he or she serves as an officer, steward, or otherwise in an official capacity in a labor organization that is the exclusive representative of employees in an appropriate unit at the agency under the relevant provisions of the Federal Service Labor-Management Relations Statute (FSLMRS). The Commission will leave whether such a representative can

receive official time to the FSLMRS and the bargaining agreements between the agency and relevant labor organization.

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[FR Doc. 2019-26545 Filed 12-10-19; 8:45 am]

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POSTAL REGULATORY COMMISSION

39 CFR Parts 3010, 3020, 3050, and 3055

[Docket No. RM2017-3; Order No. 5337]

System for Regulating Market Dominant Rates and Classifications

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes revised rules modifying the system for regulating rates and classes for market dominant products. The revised rules incorporate feedback from comments received from the Commission's prior proposed rulemaking. The rule revisions replace some rules in their entirety, move others, and change existing rules as necessary.

DATES: *Comments are due:* February 3, 2020; *Reply Comments are due:* March 4, 2020.

ADDRESSES: For additional information, Order No. 5337 can be accessed electronically through the Commission's website at <https://www.prc.gov>. Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Relevant Statutory Requirements

Section 3622 of title 39 of the United States Code established a system to regulate the rates and classes of Market Dominant Postal products. The Commission is required to conduct a review of the Market Dominant ratemaking system 10 years after the enactment of the Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3198 (2006). 39

U.S.C. 3622(d)(3). The Commission's purpose in the review is to determine whether the system is achieving the objectives appearing in subsection (b) of section 3622, taking into account the factors appearing in subsection (c) of 3622. If, upon completion of the mandatory 10-year review, including an opportunity for notice and public comment, the Commission determines that the system is not achieving the objectives (taking into account the factors), the Commission may "by regulation, make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives." 39 U.S.C. 3622(d)(3).

II. Background

Pursuant to the directives in section 3622 of the PAEA, the Commission initiated Docket No. RM2017-3 to conduct a comprehensive analysis of whether the PAEA system achieved the nine objectives, taking into account the factors, in the decade following the PAEA's enactment. The Commission issued Order No. 4257 setting forth the findings from its review.¹ In Order No. 4257, the Commission determined that the overall PAEA system "has not achieved the objectives taking into account the factors of the PAEA." Order No. 4257 at 4, 275.

In response to its conclusions in Order No. 4257 and as contemplated by section 3622(d)(3), the Commission issued a Notice of Proposed Rulemaking (NPR)² preceded by an Advance Notice of Proposed Rulemaking.³ In the NPR, the Commission proposed to amend several parts of title 39 of the Code of Federal Regulations to achieve the objectives of 39 U.S.C. 3622(b). Order No. 4258 at 3. The NPR sought public comment on the Commission's proposed amendments. In response to the wide range of comments received and additional considerations, the Commission proposes new changes to the regulations and modifies and clarifies previous proposals.

III. Basis and Purpose of Revised Proposed Rules

In Order No. 4257, the Commission concluded that "while some aspects of

the system of regulating rates and classes for market dominant products have worked as planned, overall, the system has not achieved the objectives of the PAEA." Order No. 4257 at 5. The Commission analyzed the system by reviewing three topical areas that encompassed the nine objectives of the PAEA: (1) The structure of the ratemaking system; (2) the financial health of the Postal Service; and (3) service. *Id.* at 22. In its review of the structure of the ratemaking system, the Commission found that with respect to pricing, the system did not result in increased pricing efficiency. *Id.* at 48. It concluded that the system did not result in pricing efficiency because "workshare discounts were not set as close as practicable to their avoided costs despite the Postal Service's ability to do so under the price cap" in conjunction with the fact that "seven products did not cover their attributable costs during the PAEA era." *Id.* at 145.

In its analysis of the financial health of the Postal Service, the Commission determined that "financial stability, including retained earnings, has not been maintained for the Postal Service in the medium and long-term time frames and that cost reductions and operational efficiency gains have not been maximized." *Id.* at 148. The Commission further noted that the aggressive Retiree Health Benefits Fund prefunding and reductions in volume and revenue added to the Postal Service's net losses, as did the impact of the Great Recession combined with emergent technological trends resulting in even greater declining volumes for First-Class Single-Piece Mail. *Id.* at 38-40. Finally, in its review of service, the Commission determined that the system did not effectively encourage the maintenance of high quality service standards. *Id.* at 4-5, 250.

Subsequently, the Commission issued the NPR setting forth proposed rules to address the shortcomings of the system of ratemaking based on the conclusions in Order No. 4257. With respect to the finding that the system did not achieve pricing efficiency, the Commission proposed rules to modify the requirements related to workshare discounts. The proposed rules phased out two practices that harm pricing efficiency: "workshare discounts set substantially below avoided costs and workshare discounts set substantially above avoided costs." Order No. 4258 at 93.

To address the findings related to the system's failure to provide for the financial health of the Postal Service, the Commission made three proposals intended to address the failure to attain

¹ Order on the Findings and Determination of the 39 U.S.C. 3622 Review, December 1, 2017 (Order No. 4257).

² Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258).

³ Advance Notice of Proposed Rulemaking on the Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products, December 20, 2016 (Order No. 3673).