

§ 72.3 [Amended]

■ 42. In § 72.3, amend the definition of “High-level radioactive waste or HLW”, in paragraph (1), by removing the text “radioactive” and adding in its place the text “radioactive.”

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 43. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 161A, 170D, 170E, 170H, 170I, 223, 229, 234, 170I (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 44. In § 73.4 revise paragraph (b) to read as follows:

§ 73.4 Communications.

* * * * *

(b) By hand delivery to the NRC’s offices at 11555 Rockville Pike, Rockville, Maryland 20852–2783;

* * * * *

§ 73.50 [Amended]

■ 45. In § 73.50, amend the introductory text by adding the article “a” before the words “nuclear reactor”.

Dated: August 18, 2023.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**29 CFR Part 1614**

RIN 3046–AB23

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (“EEOC” or “Commission”) is issuing a final rule revising its Federal sector complaint processing regulations to allow for the digital transmission of equal employment opportunity hearing and

appellate documents and to address various uses of the Commission’s Electronic Public Portal.

DATES: Effective August 24, 2023.

FOR FURTHER INFORMATION CONTACT:

Kathleen Oram, Assistant Legal Counsel, at (202) 921–2665 or kathleen.oram@eeoc.gov, or Gary J. Hozempa, Senior Staff Attorney, at (202) 921–2672 or gary.hozempa@eeoc.gov, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission. Requests for this document in an alternative format should be made to the EEOC’s Office of Communications and Legislative Affairs at (202) 921–3191 (voice), 1–800–669–6820 (TTY), or 1–844–234–5122 (ASL video phone).

SUPPLEMENTARY INFORMATION:**Introduction**

On September 27, 2022, the EEOC published in the **Federal Register** a Notice of Proposed Rulemaking (“NPRM”) announcing its intention to amend 29 CFR part 1614 by authorizing the EEOC, the Office of Federal Operations (“OFO”), and the EEOC’s Administrative Judges (“AJs”) to issue and receive documents electronically instead of, or in addition to, using first class U.S. mail (“first class mail”). Currently, 29 CFR 1614.109(i) provides that an AJ “shall send copies of the hearing . . . decision to the parties.” Section 1614.405(a) requires that a Commission appellate decision be “transmitted to the complainant and the agency by first class mail.” The NPRM proposed authorizing the Commission to transmit its hearing and appellate decisions, orders, and related documents to registered complainants through the EEOC Electronic Public Portal (“Public Portal” or “Portal”). It also was proposed that complainants could file hearing requests, appeals, and related documents through the Portal. The NPRM further proposed requiring agencies to notify complainants that they can use the Public Portal to file hearing requests and appeals. Finally, the NPRM asked commenters to address when an EEOC decision transmitted through the Portal should be considered to be received.

The final rule formalizes the current use of electronic communications between the EEOC and its stakeholders by explicitly providing for the digital transmission of complaint files, hearing requests and associated documents, appeals and associated documents, and Commission decisions. The final rule confirms that the digital receipt of hearing requests, appeals, Commission hearing and appellate decisions, and related documents, is equivalent to

receipt by first class mail. Nevertheless, the final rule makes clear that a complainant’s use of the Portal is voluntary.

Thus, for complainants who choose not to establish a Portal account, or who establish an account but do not agree to receive EEOC communications only through the Portal, OFO will use first class mail to communicate with, and send documents to, complainants, even while transmitting the same documents to agencies via FedSEP (the EEOC’s separate electronic Portal for agency-only use); AJs also will use email to transmit documents. These same complainants will be able to file hearing requests, appeals, and related documents through the current methods available (first class and registered mail, facsimile, personal delivery, and email).

Comments Generally

The EEOC received five comments about the NPRM, four from individuals and one from an attorney organization (“organization”). The commentors generally favor authorizing the EEOC and its AJs to transmit decisions and orders through the Portal. They also approve of allowing complainants to use the Portal to transmit hearing and appellate requests and documents. The organization opposes certain proposals while it and some of the individuals recommend specific modifications. Most provided suggestions regarding determining a receipt date for Portal-transmitted decisions.

Specific Comments and EEOC’s Response**Complainant Opt-In To Communicate via the Portal**

The NPRM provided that, where a complainant registers with the Portal, the EEOC will communicate with the complainant only through the Portal unless and until the complainant informs the EEOC that they want to receive EEOC documents by first class mail. The organization argues for a final rule specifying that a complainant will receive documents electronically only after the complainant affirmatively consents, or opts-in, to receive documents through the Portal. It further proposes that, even when providing consent, the complainant should retain the option to send and receive documents by other methods, such as first class mail, in addition to receiving these same documents through the Portal. To this end, the organization proposes that a final rule should require agencies and the EEOC to provide complainants with relevant contact information for all filing methods

during all stages of the complaint process.

The EEOC agrees that complainants who establish Portal accounts should be given an opportunity to affirmatively declare whether they agree to receive documents only through the Portal. A functionality will be added to the Portal for complainants to indicate this preference. Complainants who do not give their consent will receive OFO communications through first class mail and AJ communications through first class mail or email (if they provide an email address). However, the EEOC does not think it efficient to continue to use first class mail or other methods of communicating after a complainant affirmatively agrees to communicate via the Portal. Receipt by OFO of documents in the same matter through multiple means will complicate OFO recordkeeping, increase expenses, and cause delays.

Regarding addressing the various ways a complainant may communicate with an agency, the EEOC declines to implement the organization's recommendations as they exceed the scope of this rule. The EEOC did not intend to address in this rulemaking either an agency's communication methods with a complainant or a complainant's communication methods with an agency. Absent an opportunity for public comment on these matters, it is not appropriate to address them in this final rule.

Receipt Date of Decisions Issued via the Portal

As noted earlier, the NPRM specifically asked commenters to suggest when a decision or other document sent through the Portal should be deemed to be received by the complainant. Three individuals suggest that the receipt date should be the date the decision is first accessed by the complainant, regardless of when it is uploaded to the Portal. Two of these individuals stated that if the EEOC uses a standard such as, "a decision is deemed to be received within X days of when it is uploaded to the Portal," the rule also should state that this presumption does not apply if the EEOC learns that the decision "did not reach the person to be served."

The organization suggests creating two separate rules regarding receipt dates, depending on whether only the Portal is used, or email is used as well. If only email is used, the organization favors a rebuttable receipt date of seven days from the date of the email. If only the Portal is used, receipt should be deemed to occur when the complainant downloads the document. If both means

of transmittal are used, the receipt date should be the date the decision is accessed via the Portal or email, or seven days after the email is sent, whichever occurs first.

The EEOC appreciates receiving these suggestions about a receipt date and concludes that it will address this topic based on these submissions. The final rule borrows from some of the comments and 29 CFR 1614.604(b), which deems receipt of regular mail to occur within five days of when a document is mailed. Thus, for Portal, email, and all other digital communications, the final rule provides that receipt is deemed to occur when a document is accessed on the Portal or received via electronic means, or within 5 days of when a document is uploaded to the Portal or transmitted electronically, whichever occurs first. Further, 29 CFR 1614.604(c), which allows equitable tolling of time frames, will apply to all transmissions, digital or otherwise. Finally, 29 CFR 1614.605(d) provides that receipt of a document is calculated from the complainant's receipt, unless the complainant is represented by an attorney, in which case the attorney's receipt controls. This provision requires no edits to apply to digital receipts.

Useability of the Portal

The organization discusses difficulties it and its clients have had with certain features of the Portal. The organization offers a number of proposed technical enhancements to the Portal designed to make the Portal more user-friendly. These suggestions, while helpful, are not the proper subject matter for this final rule. Nevertheless, the EEOC will continue to work with its stakeholders to improve the functionality of the Public Portal (and FedSEP).

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 NPRM is not a "significant regulatory action" under section 3(f) of the order and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This final rule contains no new information collection requirements on

the public, and therefore, it creates no new paperwork burdens or modifications to existing burdens subject to review by the Office of Management and Budget.

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this NPRM will not have a significant economic impact on a substantial number of small entities because it applies exclusively to employees, applicants for employment, 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 NPRM 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

This NPRM does not substantially affect the rights or obligations of non-agency parties and, accordingly, it is not a "rule" pursuant to the Congressional Review Act. Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Age discrimination, Color discrimination, Equal employment opportunity, Equal pay, Genetic information discrimination, Government employees, Individuals with disabilities, National origin discrimination, Pregnancy discrimination, Race discrimination, Religious discrimination, Sex discrimination.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission amends chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY [AMENDED]

■ 1. The authority citation for 29 CFR 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, 1964–1965 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. Amend § 1614.108 by:

■ a. Adding a sentence at the end of paragraph (f); and

■ b. Revising the first sentence in paragraph (h).

The additions read as follows:

§ 1614.108 Investigation of complaints.

* * * * *

(f) * * * The notice that the complainant has the right to request a hearing and decision from an administrative judge shall inform the complainant that the hearing request may be filed using the EEOC Public Portal, available at <https://publicportal.eeoc.gov>.

* * * * *

(h) Where the complainant has received the notice required in paragraph (f) of this section or at any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the agency's acknowledgment letter, or by filing a request for a hearing through the EEOC Public Portal.

* * * * *

§ 1614.109 [Amended]

■ 3. In § 1614.109 amend paragraph (i) in the second sentence by removing the word “send” and adding in its place the word “transmit”.

■ 4. Amend § 1614.110 by adding paragraph (c) to read as follows:

§ 1614.110 Final action by agencies.

* * * * *

(c) When an agency takes final action by issuing a final order or decision that requires the agency to include a notice that the complainant has the right to file an appeal with the EEOC, the notice shall inform the complainant that the appeal may be filed using the EEOC Public Portal, available at <https://publicportal.eeoc.gov>.

■ 5. Amend § 1614.204 by adding sentences at the end paragraphs (j)(1) and (l)(3) to read as follows:

§ 1614.204 Class complaints.

* * * * *

(j)(1) * * * When an agency takes final action by issuing a final order or decision that requires the agency to include a notice that the class agent has the right to file an appeal with the EEOC, the notice shall inform the class agent that the appeal may be filed using

the EEOC Public Portal, available at <https://publicportal.eeoc.gov>.

* * * * *

(l)(3) * * * When an agency takes final action by issuing a final order or decision that requires the agency to include a notice that the class member has the right to file an appeal with the EEOC, the notice shall inform the class member that the appeal may be filed using the EEOC Public Portal, available at <https://publicportal.eeoc.gov>.

§ 1614.403 [Amended]

■ 6. Amend § 1614.403 paragraph (a) by adding the words “by email, or through FedSEP or the EEOC’s Public Portal, as applicable,” after the word “electronically”.

■ 7. Amend § 1614.405 by revising paragraph (a) to read as follows:

§ 1614.405 Decisions on appeals.

(a) The Office of Federal Operations, on behalf of the Commission, shall issue a written decision setting forth its reasons for the decision. The Commission shall dismiss appeals in accordance with §§ 1614.107, 1614.403(c) and 1614.409. The decision shall be based on the preponderance of the evidence. The decision on an appeal from an agency's final action shall be based on a de novo review, except that the review of the factual findings in a decision by an administrative judge issued pursuant to § 1614.109(i) shall be based on a substantial evidence standard of review. If the decision contains a finding of discrimination, appropriate remedy(ies) shall be included and, where appropriate, the entitlement to interest, attorney's fees or costs shall be indicated. The decision shall reflect the date of its issuance, inform the complainant of his or her civil action rights, and be transmitted to the complainant and the agency. For complainants who are not registered with the EEOC Public Portal, the decision will be transmitted by first class mail. For complainants who are registered with the Public Portal, the decision will be transmitted via the Portal provided the complainant affirmatively consents to receive the decision through the Portal. For registered complainants who do not provide affirmative consent, and for complainants who affirmatively consent but subsequently notify the Commission that they withdraw their consent, the decision will be transmitted by first class mail. The Commission will transmit the decision to the agency via FedSEP.

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■ 8. Amend § 1614.604 by:

■ a. Redesignating paragraphs (c) and (d) as paragraphs (f) and (g).

■ b. Adding new paragraphs (c), (d), and (e).

The additions read as follows:

§ 1614.604 Filing and computation of time.

* * * * *

(c) A hearing request, appeal, brief, or other document filed by a complainant using the EEOC Public Portal, or filed by an agency using FedSEP, shall be deemed filed on the date the document is uploaded to the Public Portal or FedSEP. The timeliness of documents submitted through the Public Portal and FedSEP will be determined based on the time zone from which the document was submitted.

(d) An EEOC decision that is transmitted to a complainant through the Public Portal or by email shall be deemed to be received when the decision is accessed on the Portal or when received if transmitted via email, or within five days of when the decision is uploaded to the Portal or emailed, whichever occurs first.

(e) For the purposes of §§ 1614.108, 1614.109, 1614.204(i), and 1614.401 through 1614.405, the terms *accept*, *file*, *filed*, *filing*, *issue*, *issuance*, *issuing*, *notify*, *notified*, *receive*, *receipt*, *send*, *serve*, *served*, *service*, *submit*, *submission*, *submitted*, *transmit*, and *transmitted*, shall include digital transmissions made through FedSEP, the EEOC Public Portal, or by email.

Dated: August 17, 2023.

Charlotte A. Burrows,
Chair.

[FR Doc. 2023–18100 Filed 8–23–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1206

[Docket No. ONRR–2011–0016; DS63644000
DRT000000.CH7000 223D1113RT]

RIN 1012–AA07

**Amendments to OMB Control Numbers
and Certain Forms; Correction**

AGENCY: Office of Natural Resources
Revenue (“ONRR”), Interior.

ACTION: Correcting amendment.

SUMMARY: On December 8, 2011, ONRR published a direct final rule that, among other things, corrected a thermal energy displaced equation without updating an image of the equation set forth in the regulations for illustration purposes. This document provides a replacement