Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Iliamna, AK [Revised]

Iliamna Airport, AK
(Lat. 59°45′20″ N., long. 154°55′04″ W.)
Iliamna NDB
(Lat. 59°44′53″ N., long. 154°54′35″ W.)

Within a 4.9-mile radius of the Iliamna Airport, AK, and within 2.5 miles each side of the 200° bearing of the Iliamna NDB, extending from the 4.9-mile radius to 7 miles south of the Iliamna Airport, AK. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Iliamna, AK [Revised]

Iliamna Airport, AK
(Lat. 59°45′20″ N., long. 154°55′04″ W.)
Iliamna NDB
(Lat. 59°44′53″ N., long. 154°54′35″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of the Iliamna Airport, AK, and within 4 west and 8 miles east of the 200° bearing of the Iliamna NDB, extending from the 7.2-mile radius to 16 miles south of the Iliamna Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Iliamna Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 3, 2009.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–30281 Filed 12–18–09; 8:45 am]

BILLING CODE 4910–13–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN Number 3046–AA73

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission is proposing revisions to its federal sector complaint processing regulations. These proposals implement recommendations of the Commissioners' Federal Sector Workgroup.

DATES: Comments on the notice of proposed rulemaking must be received on or before February 19, 2010.

ADDRESSES: Written comments should be submitted to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, Room 6NE03F, 131 M Street, NE., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) 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 (TTD). (These are not toll-free telephone numbers.) You may also submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. Copies of comments submitted by the public can be reviewed at *http://www.regulations.gov* or by appointment at the Commission's library, 131 M Street, NE., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m. (call 202–663–4630 (voice) or 202–663–4641 (TTY) to schedule an appointment).

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, Kathleen Oram, or Gary Hozempa, Office of Legal Counsel, 202–663–4640 (voice), 202–663–7026 (TDD). This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: In 2004, former EEOC Chair Cari M. Dominguez asked Commissioner Stuart J. Ishimaru to lead a workgroup to develop consensus recommendations from the Commissioners for improvements to the discrimination complaint process for Federal employees. The Federal Sector Workgroup considered testimony and submissions from the November 12, 2002 Commission meeting on Federal sector reform, draft staff proposals for Federal sector reform, and numerous submissions of internal and external stakeholders with suggestions for improvements to the Federal sector process. The Workgroup determined that there was not consensus within the Workgroup for large scale revision of the Federal sector EEO process at this time, but that there was agreement on several discrete changes to the existing regulations that would clarify or build on the improvements made by the last major revisions to Part 1614 in 1999. These regulation changes will be accompanied by the issuance of additional guidance in Management Directive 110 and other program changes at EEOC.

The Commission sent the draft NPRM to 170 Federal agencies for coordination, pursuant to Executive Order 12067. Thirty-three agencies or agency components submitted comments on the proposed draft. Three agencies noted that they had no comments, or that they believed the proposed changes were improvements. Of the remaining thirty comments, nearly one-third were from various components of the Department of Justice. The inter-agency comments are summarized where appropriate in the discussion of the proposed changes below.

Agency Process

The Workgroup considered many recommendations for improvement to the parts of the Federal sector EEO process for which the agencies bear responsibility—counseling, investigations, and final actions. The Workgroup made a number of non-regulatory and regulatory recommendations to improve the agency process. EEOC proposes the following changes to the agency process in part 1614.

The Commission proposes to add two new paragraphs to § 1614.102. One paragraph requires that agency EEO programs comply with part 1614 and the Management Directives and Bulletins issued by EEOC, and indicates that the Commission will review

programs for compliance and that the Chair may issue notices to agencies when non-compliance is found. With this provision, the Commission intends to provide a mechanism for reviewing and seeking compliance from agencies that fail to comply with the requirements of Part 1614, Management Directive 110, Management Directive 715, and Management Bulletin 100–1. The proposed regulation would also require that agencies comply with any Management Directives or Bulletins that may be issued in the future. Federal agencies will receive appropriate notice of any new or changed Management Directives or Management Bulletins.

A number of agencies opposed this proposal, arguing that requiring agency compliance with EEOC directives and bulletins that have not been subject to the notice and comment rulemaking process violates the Administrative Procedure Act. In this proposed new paragraph, the Commission simply intends to remind agencies of their statutory responsibilities, contained in section 717(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(16)(b), to ''comply with such rules, regulations, orders, and instructions'' issued by EEOC. A few agencies also commented on the proposed review of agency programs for compliance and the issuance of non-compliance notices. Some objected to the proposal, and others questioned whether EEOC would afford a non-compliant agency an opportunity to comply or explain its non-compliance before reporting the non-compliance or issuing a notice from the Chair. Agencies are currently afforded the opportunity to respond to non-compliance notices and to communicate with EEOC regarding their compliance actions. Under the proposed compliance regulation, EEOC will continue to offer agencies opportunities to respond and explain their programs.

The second proposed new paragraph to § 1614.102 would permit EEOC to grant agencies variances from particular provisions of part 1614 to conduct pilot projects for processing complaints in ways other than those prescribed in part 1614. Such pilots would be subject to EEOC approval by vote of the Commissioners and would usually not be granted for more than 12 months. Pilots could provide helpful data for future recommendations for changes to the Federal sector process.

The agencies that commented on the pilot proposal were all in favor of it. Most agencies noted that 12 months is too short a period within which to conduct a pilot and gauge its effectiveness. Some suggested that the time period should be two years, while others suggested that the regulation allow for an automatic extension to allow all complaints that entered a pilot to be fully processed in the pilot. Other agencies requested guidance on the pilot program elements that will be viewed favorably by EEOC. We note that pilots will not necessarily start on the date EEOC approves them because it may take some time for agencies to implement approved pilot projects. We seek additional comments on the length of time for pilots and on whether EEOC should provide for extensions of pilots. In addition, we note that the Commission will issue guidance in its Management Directive 110 on the procedures for requesting approval of pilots, including, among other things, information on plans for publicizing the pilot among agency employees, criteria for evaluating the success of the pilot, anticipated start and end dates, quarterly reports, etc.

The Commission proposes to add a new paragraph to § 1614.108 Investigation of complaints, that would require agencies that have not completed an investigation within the 180 day time limit for investigations (or up to 360 days if the complaint has been amended) to send a notice to the complainant indicating that the investigation is not complete, providing the date by which it will be completed, and explaining that the complainant has the right to request a hearing or file a lawsuit. The Commission believes that complainants may have forgotten their right to request a hearing or file a lawsuit 180 days after filing the complaint, or may not be aware of when the 180-day period expires. In addition, the Commission believes that requiring such a notice may shorten delays in agency investigations by providing an incentive for agencies to timely complete their investigations. The notice would be in writing and would describe the hearing process and include a simple explanation of discovery and burdens of proof.

Several agencies commented favorably on the notice proposal, but a larger number opposed it, arguing that it is superfluous, since the regulations require agencies to send notices detailing time limits to complainants at counseling and initial filing of the complaint. We are not persuaded by the agencies' arguments. The proposed notice would come later in the process, right at the time when the complainant has the right to request a hearing or file a civil action. The notice is intended to give the complainant the information needed to decide whether to wait for the completion of the investigation or request a hearing. We note, as well, that an agency's failure to provide the notice cannot be the basis of a ''failure to properly process'' claim. EEOC eliminated the investigation of ''spin-off'' complaints (those that allege failure to properly process a complaint) in the 1999 amendments to part 1614. It will continue to be the case that any ''failure to properly process'' claims must be dismissed, including any such claim involving an agency's failure to provide the proposed new notice.

The Commission proposes two clarifying changes in the agency process section of the regulations. Section 1614.103(b)(6) would be amended to comport with the coverage provisions of the Rehabilitation Act and state that part 1614 applies to discrimination complaints against the Government Printing Office, except for complaints under the Rehabilitation Act.

It is also proposed to revise the dismissals section to clarify that complaints alleging discrimination in proposals to take personnel actions or other preliminary steps to taking personnel actions should be dismissed unless the complaint alleges that a proposal or preliminary step is retaliatory. This change would conform the dismissals section of part 1614 to long-standing private sector Commission policy guidance on retaliation as set forth in EEOC's Compliance Manual. *See* 2 EEOC Compliance Manual § 8–II.D.3 (1998) (''[A]ny adverse treatment that is based on a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity'' is prohibited retaliation.). This change also will bring the regulations into conformity with published EEOC Federal sector appellate decisions that have addressed whether, notwithstanding 1614.107(a)(5), complaints challenging proposed or preliminary actions as retaliatory state a claim and should be investigated. *See, e.g., Lorina D. Goodwin* v. *F. Whitten Peters, Secretary, Department of the Air Force,* EEOC Appeal Nos. 01991301 & 01A01796, 2000 WL 1616337 (October 18, 2000) (holding that the complainant's challenge of a proposed dismissal as being retaliatory stated a claim because ''proposed actions can be considered adverse actions in the reprisal context if they are reasonably likely to deter protected activity'').

We note that this proposed change to the 1614.107(a)(5) dismissal provision does not change the standard for stating a claim of retaliation under Title VII. While agencies would no longer be able to dismiss a claim alleging that a proposal or preliminary step was

retaliatory under 29 CFR 1614.107(a)(5), they would still evaluate the claim under the failure to state a claim dismissal provision in 29 CFR 1614.107(a)(1). It is expected that agencies would only dismiss allegedly retaliatory proposals and other preliminary steps under 29 CFR 1614.107(a)(1) if the alleged retaliatory actions were not materially adverse, that is, if the alleged retaliatory proposal or preliminary step would not dissuade a reasonable worker in the complainant's circumstances from engaging in protected EEO activity.

Not all preliminary steps or proposals would constitute actionable retaliation. As noted by the Supreme Court in *Burlington Northern & Santa Fe Railway Co.* v. *White,* 548 U.S. 53, 68 (2006), ''[a]n employee's decision to report discriminatory behavior cannot immunize that employee from those petty slights or minor annoyances that often take place at work and that all employees experience.'' *See also* 2 EEOC Compliance Manual § 8–II.D.3 (1998) (''[P]etty slights and trivial annoyances are not actionable, as they are not likely to deter protected activity.''). Therefore, the challenged preliminary step or proposed action must be likely to deter a reasonable employee from protected activity. Given all the circumstances, a proposed letter of warning may not deter a reasonable complainant from filing a complaint, whereas a proposed suspension may have a deterring effect. ''Context matters * * * for an 'act that would be immaterial in some situations is material in others.''' *Burlington Northern,* 548 U.S. at 69 (quoting *Washington* v. *Illinois Dept. of Revenue,* 420 F.3d 658, 661 (7th Cir. 2005)).

A number of agencies objected to the proposal, arguing that it is inconsistent with the statutory text applicable to the Federal sector or that it would encourage the filing of premature and non-actionable complaints. One agency's alternative proposal would exempt from dismissal complaints alleging that a proposal or preliminary step is retaliatory only if they contain allegations of severe or repeated threats of adverse action that may state a claim of a hostile work environment. This alternative proposal would amend § 1614.107(a) along the following lines: ''Prior to a request for a hearing in a case, the agency shall dismiss an entire complaint: * * * (5) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory, *except that with regard to a claim of retaliation, allegations of severe or repeated threats of adverse action may state a claim of a hostile work environment that is not subject to dismissal on such basis.''*

In considering this alternative proposal, it should be noted that the Supreme Court has recognized that a hostile work environment is created where an employer's actions are ''sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.''' *Meritor Savings Bank* v. *Vinson,* 477 U.S. 57, 67 (1986) (citation omitted). Where the threatened act or acts, if implemented, would be sufficiently severe in the context of the complainant's employment to result in a materially adverse consequence to the employee, the threats may meet this standard.

Under this alternative proposal, the alleged retaliation should be viewed in the context of the complainant's underlying claim of discrimination. Together, the allegations of discrimination and of retaliatory threats for challenging that discrimination could constitute pervasive conduct that amounts to an actionable hostile work environment.

In addition, courts have recognized that single actions, if sufficiently severe, can without more constitute a hostile work environment. *See, e.g., Smith* v. *Sheahan,* 189 F.3d 529, 534 (7th Cir. 1999) (''[a]lthough less severe acts of harassment must be frequent or part of a pervasive pattern of objectionable behavior in order to rise to an actionable level, 'extremely serious' acts of harassment do not'') (citing *Faragher* v. *City of Boca Raton,* 524 U.S. 775, 788 (1998)). Therefore, a single threat of adverse action made because the employee complains of, or opposes, unlawful discrimination, may satisfy the standard set forth in the alternative proposal if it threatens sufficiently serious consequences (even if the threat is made before the employee files an EEO claim). For example, a retaliatory threat of termination of employment against an employee complaining of, or opposing, unlawful discrimination could in appropriate circumstances constitute retaliation with consequences so severe that the complaint challenging that threat should not be dismissed. A retaliatory threat of actions that would cause significant monetary loss, such as a lengthy suspension without pay or threats of future violence, could also be sufficient in appropriate circumstances.

The regulation proposed by EEOC differs from the alternative proposal discussed above. Under the Commission's proposal, it would be sufficient for the employee to show that the challenged agency proposed action or threat is likely to dissuade a reasonable employee from complaining or assisting in complaints about discrimination. Under the alternative proposal, the employee would have to show that the proposed actions or threats were either pervasive enough or severe enough to create a hostile working environment. EEOC invites comments on both its proposed regulation and on the alternative proposed language.

EEOC Process

The Workgroup recommended a number of changes to improve the hearings and appeals processes. The hearings changes are primarily non-regulatory. With respect to appeals, the Commission proposes to require that agencies submit appeals records and complaint files to the Commission electronically. Complainants would be encouraged, but not required, to submit appeals and other documentation electronically. Several agencies submitted comments in favor of the electronic submission proposal. Many others, however, expressed reservations, noting that each agency has unique information technology security requirements, and expressing concern about ensuring the security of files and the costs of converting paper files. Some agencies asked that the implementation of an electronic filing requirement be delayed to allow agencies to budget for it and develop the means to comply. We have retained the electronic filing provision, as we believe that it will enable more efficient processing of appeals. As to delayed implementation, we note that EEOC will have to secure approval from the National Archives and Records Administration to maintain EEO appeal records electronically before commencing such a program.

The Commission also proposes to revise § 1614.402(f) to require that briefs in opposition to appeals be submitted to the Commission and served on the opposing party within 35 days of service of the statement or brief supporting the appeal (as opposed to the existing requirement that they be filed within 30 days of receipt of the statement or brief supporting the appeal.) Agency comments on this proposal were mixed. Those that were opposed expressed concerns about the delays in receipt of mail caused by the irradiation of mail in Washington, DC. We are requesting additional comments on how widespread the irradiation delays are and whether irradiation delays affect only agencies.

The Commission proposes to revise § 1614.405(b) (redesignated as § 1614.405(c)) to provide that decisions

under the section are final for purposes of filing a civil action in federal court, unless a timely request for reconsideration is filed by a party to the case. Several agencies concurred with this proposal. The Commission also proposes to revise § 1614.504(c) to differentiate the remedies available for breach of settlement agreements and breach of final decisions. For breach of a settlement, the section would continue to state that the Commission may order compliance or reinstatement of the complaint for further processing from the point processing ceased, whereas for breach of a final decision, the proposal would clarify that compliance is the only remedy. Three agencies expressed their agreement with the proposed change. The Commission also proposes editorial changes to §§ 1614.402, 1614.405(a) and 1614.409 to correct errors and omissions.

Class Complaints

The Workgroup carefully considered the class complaint process and made a number of recommendations to improve its effectiveness. As a result of those recommendations, the Commission proposes to revise the class complaint regulations to make an administrative judge's decision on the merits of a class complaint a final decision, which the agency can fully implement or appeal in its final action. Currently, the administrative judge issues recommended findings and conclusions, which the agency may accept, reject, or modify in its final decision. For non-class complaints, the Commission changed the administrative judge's recommended decision to a final decision that is fully implemented or appealed by the agency in its final action in the 1999 regulation changes. This proposed change adopts the same language used in the individual complaint provision (''if the final order does not fully implement the decision of the administrative judge, then the agency shall simultaneously file and appeal * * * .'' 29 CFR 1614.110(a)) and would conform the class complaint decisions to the non-class complaint decisions.

Four agencies commented in favor of the proposed change, but ten opposed it. The opposing agencies objected to removing the agencies' option to modify the findings and recommendations of the administrative judge, arguing that the change would impede their ability to settle cases. Agencies raised similar objections when the Commission proposed to make non-class complaint administrative judge decisions final in 1999, but there has been no indication since then that agencies have been less able to settle complaints.

The Commission also proposes to provide for expedited processing of appeals of decisions to accept or dismiss class complaints (certification decisions) to shorten the class certification process. Specifically, the Commission proposes to amend § 1614.405, to provide that decisions on appeals of decisions to accept or dismiss class complaints will be issued within 90 days of receipt of the appeal.

Finally, the Commission proposes an editorial change to § 1614.204(f)(1) to correct the omission of the word ''shall.''

Other Clarifying Changes

The Commission proposes to amend § 1614.109(g) to rename the section ''Summary Judgment'' instead of ''Decision without a hearing.'' This change is intended to convey more clearly the Commission's policy that the standards of Rule 56 of the Federal Rules of Civil Procedure governing summary judgments apply in the EEOC hearings process. This change is not intended, however, to alter existing Commission policy or practice; Commission decisions on the summary judgment process will continue to apply.

The Commission proposes to amend § 1614.302(c)(2) to correct an erroneous cross reference. The section should refer to § 1614.107(a)(4).

Finally, the Commission proposes to revise § 1614.502(c) to change the time frame within which agencies must provide the relief ordered from 60 days to 120 days. The regulation currently requires an agency to pay an administrative complainant who prevails before the EEOC within 60 days of EEOC's final decision. Since 1991, however, complainants have had up to 90 days to file suit in United States district court if they are dissatisfied with EEOC's decision. Once a civil action is filed, the EEOC decision is no longer final and the agency does not have to provide the relief awarded. Amending the regulation to require agency payment within 120 days will ensure that the EEOC award is final before the agency provides the relief. Agency comments were uniformly in favor of this proposed change.

Regulatory Procedures

Executive Order 12866

In promulgating this notice of proposed rulemaking, the Commission has adhered to the regulatory philosophy and applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed regulation has been designated as a significant regulation and reviewed by OMB consistent with the Executive Order.

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this 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. 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.

Paperwork Reduction Act

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

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Age discrimination, Equal employment opportunity, Government employees, Individuals with disabilities, Race discrimination, Religious discrimination, Sex discrimination.

For the Commission

Dated: December 15, 2009.

Stuart J. Ishimaru,

Acting Chairman.

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

PART 1614—[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; 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. In § 1614.102 add new paragraphs (e) and (f) to read as follows:

§ 1614.102 Agency program.

* * * * *

(e) Agency programs shall comply with this part and the Management Directives and Bulletins that the Commission issues. The Commission will review agency programs from time to time to ascertain whether they are in compliance. If an agency program is found not to be in compliance, efforts shall be undertaken to obtain compliance. The Chair may issue a notice to the head of any federal agency whose programs are not in compliance and identify each non-compliant agency in the Office of Federal Operations' annual report on the Federal workforce.

(f) Unless prohibited by law or executive order, the Commission, in its discretion and for good cause shown, may grant agencies prospective variances from the complaint processing procedures prescribed in this Part. Variances will permit agencies to conduct pilot projects of proposed changes to the complaint processing requirements of this part that may later be made permanent through regulatory change. Agencies requesting variances must identify the specific section(s) of this part from which they wish to deviate and exactly what they propose to do instead, explain the expected benefit and expected effect on the process of the proposed pilot project, indicate the proposed duration of the pilot project, and discuss the method by which they intend to evaluate the success of the pilot project. Variances will not be granted for individual cases and will usually not be granted for more than 12 months. Requests for variances should be addressed to the Director, Office of Federal Operations.

3. Revise 1614.103(b)(6) to read as follows:

§ 1614.103 Complaints of discrimination covered by this part.

* * * * *

(b) * * *

(6) The Government Printing Office except for complaints under the Rehabilitation Act; and

* * * * *

4. Revise 1614.107(a)(5) to read as follows:

§ 1614.107 Dismissals of complaints.

(a) * * *

(5) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory, unless the complaint alleges that the proposal or preliminary step is retaliatory;

* * * * *

5. Amend 1614.108 by redesignating paragraph (g) as paragraph (h), and adding a new paragraph (g) to read as follows:

§ 1614.108 Investigation of complaints.

* * * * *

(g) If the agency does not send the notice required in paragraph (f) of this section within the applicable time limits, it shall, within those same time limits, issue a written notice to the complainant informing the complainant that it has been unable to complete its investigation within the time limits required by § 1614.108(f) and estimating a date by which the investigation will be completed. Further, the notice must explain that if the complainant does not want to wait until the agency completes the investigation, he or she may request a hearing in accordance with paragraph (h) of this section, or file a civil action in an appropriate United States District Court in accordance with section 1614.407(b). Such notice shall contain information about the hearing procedures.

* * * * *

§ 1614.109 [Amended]

6. Amend the heading of § 1614.109(g) to remove the words ''Decisions without hearing'' and add in their place the words ''Summary Judgment.''

7. Amend 1614.204 to:

a. In paragraph (f)(1) remove the words ''administrative judge notify'' from the first sentence and add in their place the words ''administrative judge shall notify.''

b. Revise paragraphs (i), (j) and (k) to read as set forth below.

c. In paragraph (l)(2) remove the words ''final decision'' and add in their place the words ''final order.''

d. In paragraph (l)(3) remove the words ''final decision'' wherever they appear in the first and next to last sentences and add in their place the words ''final order''; and revise the third sentence to read as set forth below.

§ 1614.204 Class complaints.

* * * * *

(i) *Decisions:* The administrative judge shall transmit to the agency and class agent a decision on the complaint, including findings, systemic relief for the class and any individual relief, where appropriate, with regard to the personnel action or matter that gave rise to the complaint. If the administrative judge finds no class relief appropriate, he or she shall determine if a finding of individual discrimination is warranted and, if so, shall order appropriate relief.

(j) *Agency final action.* (1) Within 60 days of receipt of the administrative judge's decision on the complaint, the agency shall take final action by issuing a final order. The final order shall notify the class agent whether or not the agency will fully implement the decision of the administrative judge and shall contain notice of the class agent's right to appeal to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit, and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the administrative judge, then the agency shall simultaneously file an appeal in accordance with § 1614.403 and append a copy of the appeal to the final order. A copy of EEOC Form 673 shall be attached to the final order.

(2) If an agency does not issue a final order within 60 days of receipt of the administrative judge's decision, then the decision of the administrative judge shall become the final action of the agency.

(3) A final order on a class complaint shall, subject to subpart D of this part, be binding on all members of the class and the agency.

(k) *Notification of final action:* The agency shall notify class members of the final action and relief awarded, if any, through the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the agency within 10 days of the transmittal of the final action to the agent.

(l) * * *

(3) * * * The claim must include a specific detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which class-wide discrimination was found in the final order. * * *

§ 1614.302 [Amended]

8. Remove the words ''§ 1614.107(d)'' wherever they appear in § 1614.302(c)(2) and add in their place the words ''§ 1614.107(a)(4).''

§ 1614.401 [Amended]

9. In § 1614.401(c), remove the words ''a class agent may appeal a final decision on a class complaint'' and add

in their place the words ''a class agent may appeal an agency's final action or an agency may appeal an administrative judge's decision on a class complaint.''

10. Add a new sentence to § 1614.402(a) before the last sentence to read as follows:

§ 1614.402 Time for appeals to the Commission.

(a) * * * Appeals described in § 1614.401(d) must be filed within 30 days of receipt of the final decision of the agency, the arbitrator or the Federal Labor Relations Authority. * * *

* * * * *

11. In § 1614.403, revise the first sentence of paragraph (a), revise the first sentence of paragraph (f) and add a new paragraph (g) to read as follows:

§ 1614.403 How to appeal.

(a) The complainant, agency, agent, grievant or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 77960, Washington, DC 20013, or electronically, or by personal delivery or facsimile. * * *

* * * * *

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 35 days of service of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal. * * *

(g) Agencies are required to submit all appeals, complaint files, and other appellate filings to EEOC electronically, except in exigent circumstances. Appellants are encouraged, but not required, to submit appeals and supporting documentation electronically.

12. Amend § 1614.405 to revise the second sentence of paragraph (a), redesignate paragraph (b) as paragraph (c), add a new paragraph (b) and revise the first sentence of redesignated paragraph (c) to read as follows:

§ 1614.405 Decisions on appeals.

(a) * * * The Commission shall dismiss appeals in accordance with §§ 1614.107, 1614.403(c) and 1614.409. * * *

(b) The Office of Federal Operations, on behalf of the Commission, shall issue decisions on appeals of decisions to accept or dismiss a class complaint issued pursuant to § 1614.204(d)(7) within 90 days of receipt of the appeal.

(c) A decision issued under paragraph (a) of this section is final within the meaning of § 1614.407 unless a timely request for reconsideration is filed by a party to the case. * * *

13. Revise the first sentence of § 1614.409 to read as follows:

§ 1614.409 Effect of filing a civil action.

Filing a civil action under §§ 1614.407 or 1614.408 shall terminate Commission processing of the appeal. * * *

§ 1614.502 [Amended]

14. Revise the last sentence of § 1614.502(c) to remove the words ''60 days'' and in their place add the words ''120 days.''

15. Revise the second sentence of § 1614.504(c) to read as follows:

§ 1614.504 Compliance with settlement agreements and final action.

* * * * *

(c) * * * If the Commission determines that the agency is not in compliance with a decision or settlement agreement, and the noncompliance is not attributable to acts or conduct of the complainant, it may order such compliance with the decision or settlement agreement, or, alternatively, for a settlement agreement, it may order that the complaint be reinstated for further processing from the point processing ceased. * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0818; FRL–9087–4]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from the application of adhesives and sealants, cleaning and degassing of storage tanks and pipelines, and coating operations of metal containers, closures, and coils. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by *January 20, 2010.*

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2009–0818], by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SCAQMD Rule 1125, SCAQMD Rule 1149, and SCAQMD Rule 1168. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not