

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on relaxation of the minimum grade requirement under the Washington apricot marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the minimum grade requirement in § 922.321 should be temporarily relaxed from Washington No. 1 grade to Washington No. 2 grade in order to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the minimum grade requirement for Washington apricots for the 2006 shipping season; (2) Washington apricot handlers are aware of this recommendations and need no additional time to comply with the relaxed requirements; (3) this rule should be in effect as close as possible to July 1, 2006, the date shipments of the 2006 Washington apricot crop are expected to begin; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 922 is amended as follows:

### PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR Part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

#### § 922.321 [Amended]

■ 2. Section 922.321 is amended by revising paragraph (a)(1) to read as follows:

(a) \* \* \*

(1) *Minimum grade and maturity requirements.* Such apricots that grade not less than Washington No. 1 and are at least reasonably uniform in color: *Provided*, That during the period July 1, 2006, through March 31, 2007, the minimum grade requirement for such apricots shall be not less than Washington No. 2; *Provided further*, That such apricots of the Moorpark variety in open containers shall be generally well matured: and

\* \* \* \* \*

Dated: July 27, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

#### 29 CFR Part 1614

RIN 3046–AA74

#### 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 implementing the posting requirements set forth in Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107–174. The No FEAR Act requires a Federal agency to post on its public Web site summary statistical data pertaining to complaints of employment discrimination filed under 29 CFR part 1614 by employees, former employees and applicants for employment. Title III authorizes EEOC to issue rules concerning the “time, form and manner” of the postings, to define the terms “issue” and “basis,” and to issue any other “rules necessary to carry out” Title III.

**DATES:** *Effective Date:* August 2, 2006.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Schlageter, Assistant Legal Counsel, Gary John Hozempa, Senior General Attorney, or Mona Papillon, Senior General Attorney at (202) 663–4669 (voice) or (202) 663–7026 (TTY). This final rule also is available in the following alternative formats: large print, braille, audiotape and electronic file on computer disk. Requests for the final rule in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362 (voice), 1–800–800–3302 (TTY), or 703–821–2098 (FAX—this is not a toll free number).

#### SUPPLEMENTARY INFORMATION:

##### Introduction

On January 26, 2004, EEOC published in the **Federal Register** an interim final rule setting forth the time, form and manner in which an agency shall post summary statistical EEO complaint data. 69 FR 3483 (2004). The interim rule included a 60-day comment period, which subsequently was extended an additional 30 days. 69 FR 13473 (2004).

EEOC received over 140 comments on the interim rule. One hundred and nine comments were submitted by persons identifying themselves as members of the “No FEAR Coalition.” Sixteen comments were submitted by Federal agencies and departments. Four comments were submitted by civil rights groups composed of Federal employees, one was submitted by a national civil rights group, one by an association of Federal EEO executives, one by a Member of Congress, and one was submitted by an association of Federal agency Web content managers. EEOC also received seventeen comments from individuals, most of whom identified themselves as Federal or former Federal employees.

The Commission has considered carefully all of the comments and has made some changes to the interim rule in response to the comments. The comments EEOC received and the changes made to the interim rule are discussed in more detail below.

##### Amendments to Complaints

When EEOC circulated its first draft of the interim rule under Executive Order 12067, the regulation required that, when posting information about the bases and issues raised in a complaint, agencies include bases and issues added by amendment. Agencies commenting on this provision argued that if bases and issues added by amendment were to be included among the data, withdrawals of issues and bases likewise should be reflected. When

EEOC issued its interim final rule it decided to drop the requirement that agencies track amendments.

Based on comments received on the interim final rule, both from agencies and members of the public, EEOC has reconsidered its approach and now believes that bases and issues added by amendment should be included among the posted data. EEOC is particularly concerned that the number of times retaliation is alleged will not be portrayed accurately if amendments are not tracked. As a number of commenters noted, complainants often allege that they have been retaliated against for having filed an earlier, pending complaint. These claims of retaliation are considered like and related to the initial complaint and therefore must be treated as amendments to the initial complaint rather than as separate complaints. See EEOC Management Directive 110, Chapter 5, Example 6 at page 5–11. Since EEOC believes amendments adding a claim of retaliation need to be captured, EEOC also believes it is best to capture all issues and bases that are added.

Tracking amendments requires that an agency post the basis or issue raised in the amendment when it is time to post quarterly or year-end data for the current fiscal year, whichever posting period occurs first after a complaint is amended. Where the amendment of a complaint filed in a prior fiscal year occurs in the current fiscal year, an agency shall not go back and modify prior fiscal year data regarding issues and bases since prior year data in these categories is unaffected by amendments occurring in subsequent fiscal years.

#### **Bases and Issues**

The interim rule requires that an agency post the number of complaints raising each basis of alleged discrimination and the number of complaints raising each challenged employment action. A few agencies opined that this will make it appear as if more complaints have been filed than is actually the case.

Given that sections 301(b)(4) and (5) of the No FEAR Act specifically require that this information be posted, EEOC does not have the discretion to change this part of the rule. Moreover, agencies must post the total number of complaints filed. Persons viewing all three data categories will be able to ascertain that the total number of times a basis or issue is asserted does not correspond to the number of complaints actually filed. Therefore, there is no basis for concern that the number of complaints filed will appear inflated.

Other commenters objected to the requirement that an agency post a complaint as having been filed even if it raises a basis not protected by one of the Federal EEO statutes. One objection was that such a complaint is not really an EEO complaint and therefore should not be counted. Another objection was that the inclusion of complaints raising a non-EEO basis unintentionally could convey the message that an EEO complaint can be maintained regardless of the basis alleged.

The very designation “non-EEO” basis will alert a viewer that the complaint falls outside the scope of the EEO laws. Thus, EEOC does not believe that requiring agencies to post this information will mislead the public into believing that employment discrimination laws protect an employee or applicant from non-covered forms of discrimination. Complaints raising a non-EEO basis, such as whistle blowing, will be dismissed. EEOC believes, however, that it is important to know how many claims filed under part 1614 do not belong in that process because it may indicate that employees need to be better informed of their rights and the correct forums in which to pursue their allegations of wrongdoing, or that persons are misusing the EEO complaint process.

A few commenters were concerned about bases that are mislabeled by a complainant. Where a complainant appears to misidentify a basis (e.g., the complainant alleges race discrimination and identifies her race as “Danish”) and the agency determines that the complainant’s intent is to raise a national origin claim, the agency shall post only the corrected basis.

#### **Counseling**

A few commenters objected to the absence of counseling data in the posting requirements, arguing that counseling is an important part of the process. EEOC’s initial decision not to have agencies post counseling activity was based on its conclusion that the No FEAR Act does not address pre-complaint activity, which would include counseling. Nothing proffered in the comments convinces EEOC that its initial interpretation was in error.

That EEO counseling activity will not be tracked under the No FEAR Act does not lessen its importance or minimize EEOC’s belief that counseling is a vital component of the Federal sector complaint process. Many matters brought to a counselor’s attention are resolved before they become formal complaints. Counselors further perform the very valuable function of assisting

complainants to accurately define the matters about which they wish to complain. EEOC requires agencies to report counseling activity on the Form 462 (“Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints”) because it believes the counseling function is significant.

#### **Definitions**

Based on some of the comments EEOC received, there appears to be some confusion regarding the definition of “appeal” under § 1614.702(i). The appeal step of the process is to be distinguished from the request for reconsideration stage. Consequently, when posting data pursuant to § 1614.704(l)(2)(ii) (pending complaints filed in prior fiscal years) agencies need not track a complaint that is awaiting a decision on a request for reconsideration because it is not pending at the appeal stage.

#### **EEOC Form 462**

A few agencies opined that, now that they must post EEO data under Title III (and report EEO data under Title II), EEOC should discontinue the use of EEOC Form 462. As an alternative, a few agencies suggested that they be allowed to consolidate EEOC Form 462 with the information they must post under the No FEAR Act.

Form 462 seeks more, and in many cases different, information than is required to be posted under the No FEAR Act. While the posting of No FEAR data is primarily for use by the public, Form 462 data is intended for EEOC use and is delivered directly to EEOC for this reason. In addition to reporting consolidated Form 462 data to Congress, EEOC reviews each agency’s report to assess that agency’s compliance with its EEO obligations under part 1614. These roles, reporting to Congress and assessing an agency’s EEO program, are not responsibilities given to EEOC under the No FEAR Act. As a result, EEOC does not regard an agency’s posting obligations under the No FEAR Act as serving the same purpose as its Form 462 reporting requirements. For these reasons, EEOC will not discontinue the use of Form 462.

#### **Enforcement**

A number of comments focused on the fact that the interim rule does not contain an enforcement mechanism in the event an agency fails to post its EEO data. Some commenters want EEOC to fashion a scheme in which EEOC can sanction agencies and agency managers for non-compliance. While directing the

Commission to establish the "time, form, and manner" in which an agency must post its EEO data, the statute does not specify what action, if any, EEOC may take in the event an agency does not fulfill its posting obligations. Since the statute neither authorizes EEOC to sanction agency non-compliance nor sets forth the means by which EEOC can compel compliance, EEOC has not created an enforcement mechanism.

#### Government-Wide Data

A few commenters suggested that EEOC post government-wide EEO statistics on its Web site, using each agency's posted data as the source material. Since the statute does not require EEOC to post consolidated data and given that EEOC already consolidates Form 462 data, which overlaps somewhat with the No FEAR data, EEOC has decided not to consolidate government-wide No FEAR data.

In a similar vein, commenters suggested that EEOC post on its Web site a regularly updated listing indicating which agencies fully are in compliance with the posting requirements, partially are in compliance, or have not posted data. Again, this is beyond the responsibilities imposed by the statute and EEOC therefore will not implement the suggestion.

#### Issuance of the Interim Final Rule

Some commenters questioned EEOC's reasons for issuing an interim final rule rather than a final rule. EEOC's implementation of this rule as an interim final rule with provision for post-promulgation public comment was based upon the exceptions found at 5 U.S.C. 553(b)(A), (b)(B) and (d). Agency posting obligations under Title III of the No FEAR Act began in the first quarter of FY 2004. It was essential that agencies understand their responsibilities regarding the posting requirements so that they could begin capturing EEO data immediately. EEOC determined under 5 U.S.C. 553(b)(A) that this regulation, which covers the time, form and manner of agency postings under Title III of the No FEAR Act, affects agency organization, procedure, or practice and has no effect on the substantive rights of non-agency parties. In addition, it was feared that the absence of rules or the later promulgation of rules would result in confusion concerning the posting requirements, to the detriment of the public. EEOC therefore determined under 5 U.S.C. 553(b)(B) that it would be contrary to the public interest to delay promulgation of these rules by

issuing a notice of proposed rule making rather than the interim final rule that was issued. For the same reasons, EEOC determined under 5 U.S.C. 553(d)(3) that there was good cause for the rule to become effective immediately upon publication with provision for post-promulgation public comment. An additional advantage to this approach was that agencies were able to try out the rules, and the public was able to observe how agencies sought to comply with them, thus informing the comments they submitted to EEOC.

#### Link Location, Link Name, Search Engines and URLs

Section 1614.703(d) of the interim rule requires an agency to title its posted EEO information "Equal Employment Opportunity Data Posted Pursuant to the No Fear Act." This section further requires an agency to prominently place a hyperlink to the data on the homepage of its public Web site. There was some objection both to the location of the hyperlink and its name.

As for the location, agencies argue that their homepages already are well populated with hyperlinks which primarily are mission-specific. Adding another hyperlink, thereby producing crowding, may in fact be counter-productive. Moreover, many people visiting an agency Web site do so through hyperlinks from other non-agency Web sites or search engines that bypass an agency's homepage. Some agencies allow internet users to compose a personal homepage, which again bypasses the agency's standard homepage. For these and other reasons, the agencies that commented uniformly were of the opinion that a hyperlink on an agency's homepage is not the best way to ensure the public's access to an agency's posted EEO data. These agencies therefore suggested that each agency decide itself where to place its EEO data and hyperlinks to that data since each agency best knows where a target audience goes to look for certain information. A number of agencies offered suggestions where the hyperlink would be better placed, such as on the "About the Agency" or "Working for the Agency/Employment" pages.

The Commission is concerned that without a uniform hyperlink location members of the public seeking EEO data from more than one agency will have trouble finding the data. If one agency's hyperlink is on the "About the Agency" page, another's is on the "Employment Opportunities" page, another's is on a page entitled "Civil Rights," and another's is on the homepage, locating the data for multiple agencies could well end up as an exercise in trial and

error. Even assuming that the homepage is not the best or most intuitive location for the hyperlink, EEOC is convinced that it would not be in the public interest to allow each agency to decide where on its Web site it will place the hyperlink. Thus, if not the homepage, EEOC must dictate another uniform location. The problem is that there are no other locations common to all agency public Web sites. Agencies do not label their "About the Agency" and "Employment" pages identically. Not every agency has an "Employment Opportunities" page. Thus, there is no way to standardize through a rule an alternative location for the link. This leaves only the homepage as the one Web page all agencies possess in common, and therefore it is the homepage which shall house the link.

Regarding the title of the hyperlink, EEOC agrees that it is too wordy. EEOC, however, does not agree that the label "No FEAR" will be widely misunderstood by members of the public. On the contrary, the term "No FEAR Act" has attained familiarity among employees and those involved in EEO matters. Accordingly, the final rule provides that the hyperlink shall be called "No FEAR Act Data." However, agencies will be required to title the page where its data appears as follows: "Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107-174."

In furtherance of making every agency's No FEAR Act data easily accessible, it was suggested that agencies maintain their posted data so that it is readily retrievable by commercial search engines. EEOC agrees and has added a subsection setting forth this requirement.

Finally, some commenters suggested that each agency provide EEOC with the hyperlink to its No FEAR data and that EEOC post the agency hyperlinks in one location on EEOC's public Web site. EEOC has decided to adopt this suggestion. Therefore, the final rule contains the requirement that an agency provide EEOC with the URL for the location of its No FEAR data and provide URL updates as necessary. Agencies can e-mail their URLs to EEOC at [NoFEAR.URLS@eoc.gov](mailto:NoFEAR.URLS@eoc.gov).

#### Other Data

Some commenters disagreed with EEOC's position that EEO data not required to be posted by the statute cannot be posted with No FEAR data but may appear elsewhere. Commenters argued that by excluding other, related

data, agencies are forced to present an incomplete view of their EEO performance. Commenters especially believed data regarding complaints found to be without merit by an administrative judge or EEOC should be posted along with the No FEAR Act data.

Other commenters wanted additional information posted because they believe it would indicate whether an agency is engaging in a pattern of discrimination, or is unfairly processing complaints, or obstructing the EEO complaint process. It was suggested, for example, that agencies post the grade levels of persons filing complaints, the number of complaints that allege unfair processing, the number of work hours an agency spends on EEO complaint processing, the number of days beyond the regulatory time frame it takes an agency to complete an investigation in a specific case, and the number of terminations, including constructive discharges, for each protected group.

Admittedly, the categories of data set forth in the statute do not present a complete view of an agency's EEO compliance. But the categories represent the information Congress deems most important and EEOC believes this information should not be obscured or rendered less prominent through juxtaposition with other non-required data. Consequently, the final rule specifically prohibits an agency from co-mingling other data with that required to be posted under the statute. An agency may, however, include a link on the No FEAR data page to any additional or related data it posts on another Web page.

#### **Pending Complaints Filed in Prior Fiscal Years**

As explained in the preamble to the Interim Final Rule, section 301(b)(10) of the No FEAR Act "specifies that an agency must look at all complaints pending in a current fiscal year and post the number that were filed before the start of that fiscal year \* \* \* The Act further requires an agency to post the number of individuals who filed the complaints that were filed before the start of the current fiscal year \* \* \* [O]f the complaints that were filed prior to the current fiscal year and are still pending, the agency shall specify how many of the complaints are at each specific processing step."

Section 1614.704(k) of the Interim Final Rule was intended to implement sections 301(b)(10)(A) and (B) of the Act. As one commentator pointed out, subsections 1614.704(k)(2) and (3) as contained in the Interim Final Rule can be read as applying to all pending

complaints and not just those that were filed in prior fiscal years. The Commission agrees that the language of these provisions is overbroad and has redrafted them in re-designated subsections 1614.704(l)(2)(i) and (ii) to make clear that they apply only to pending complaints filed in prior fiscal years.

#### **Posting by Subelements**

The interim final rule provides that an agency must post on its public Web page separate data pertaining to its subelements. The interim final rule defines a subelement as "any organizational sub-unit directly below the agency or department level which has 1,000 or more employees." A few persons commented that the 1,000 employee threshold is too low. Others argued that it is too high. EEOC chose the 1,000 employee figure because that was the figure EEOC was planning to use for reporting under EEOC Management Directive 715 (affirmative programs of equal employment opportunity). After the interim final rule was published, EEOC issued instructions for compliance with EEOC Management Directive 715 (MD-715). These instructions require that, of those subordinate components having 1,000 or more employees, only those "enjoying a certain amount of autonomy" constitute subordinate components for purposes of reporting under MD-715.

In order to maintain consistency, the final rule adopts the distinction used in reporting under MD-715. As a result, the final rule substitutes the term "subordinate component" for "subelement." The definition of "subordinate component" is the same as the definition of "second level reporting component" used in the instructions to MD-715. The change to the definition will mean that there will be fewer subordinate components for which separate data must be posted. More importantly, requiring agencies to report on subordinate components based on functional criteria, such as operating autonomy from the parent agency, will result in more meaningful data.

The concept of subordinate components is discussed in Question and Answer No. 5 in EEOC's publication, "Frequently Asked Questions About Management Directive-715," which can be accessed at <http://www.eeoc.gov/federal/qanda-md715.html>. A list of the second level subordinate components can be accessed at <http://www.eeoc.gov/federal/715instruct/agencylist.html>.

Some commenters objected to the fact that EEOC is not requiring agency

subordinate components to post component data on their respective public Web pages. The final rule requires that an agency with a qualifying subordinate component post on the parent agency's public Web site both consolidated, agency-wide, EEO data (i.e., data deriving from the entire parent agency including any subordinate components) and separate data for each of its subordinate components. The physical location of where this data is posted, whether on the agency's public Web page or the component's, should not matter to the end-user. The final rule requires that subordinate components that have their own Web sites shall post a link on their homepages to their component-specific data. So long as a link to the component's data can be found on both the component's and parent agency's Web homepages, the data can be accessed from either Web site. In short, being able to access the data is what is important, not where in cyberspace the data is stored.

#### **Posting Format**

In the preamble to the interim rule, EEOC stated that it had not decided whether to mandate a uniform posting format and layout but would revisit the issue when promulgating the final rule. No agency stated that EEOC should not develop a standard format. Thirteen agencies, on the other hand, asked EEOC to develop a standardized form or format for posting data. The rationale most often cited was that a uniform template would make it easier for interested parties to compare data among agencies. Interestingly, some agencies favoring a template nevertheless wanted to be able to choose whether to use EEOC's template or another one.

In the Commission's view, there is no point in making a template available if its use is not mandatory. A random review of agency Web sites indicates that there are a variety of formats in use. Some agencies, for example, present data in ascending chronological order while others do the opposite. Some agencies use formats that omit certain categories of data. Having given the matter careful consideration, EEOC has decided that a uniform template will make it easier to compare agency data and help agencies to post all required data. Accordingly, we have created a standard format that must be used by all agencies having 100 or more employees and all subordinate components. Two smaller agencies suggested that agencies having minimal EEO complaint activity use a modified posting format appropriate to the amount of data being

reported. EEOC agrees. Therefore, agencies having fewer than 100 employees have the option of using any posting format that provides all required information for those complaints.

The Commission has devised a format setting forth the manner in which agencies must present their No FEAR data on their public Web sites. The format is intended to give agencies a visual indication of how data is to be presented. This format can be viewed on EEOC's public Web site at <http://www.eeoc.gov/stats/nofear/index.html>.

As can be seen, prior fiscal year and cumulative quarterly data shall be presented in vertical columns. The current cumulative quarterly data shall appear in the right-most column for which data is entered (the last column reading left to right), and the most recent prior fiscal year data shall appear in the column immediately to the left of the cumulative quarterly data. The data for the remaining fiscal years shall appear in each succeeding column to the left, so that the oldest fiscal year data appears in the left-most column for which data is posted.

The categories of data that must be posted shall appear in the horizontal rows. The first row for which data is posted shall contain the number of complaints filed for that particular reporting period. The remaining rows shall, reading top to bottom, contain the data set forth in subsections 1614.704(a)–(m) in the order in which each subsection occurs in the regulation.

While developing the standard format, we noted some inconsistencies between the bases listed in § 1614.702(j) and reported on EEOC Form 462. First, the interim rule uses the term “retaliation” whereas Form 462 uses the term “reprisal.” Second, Form 462 lists the Equal Pay Act as a basis while interim 702(j) does not. Finally, the order of the bases as listed in interim 702(j) differs slightly from that on Form 462. In order to regularize an agency's reporting burdens, while at the same time enhancing the degree of detail available to the public through the posting of No FEAR data, we have decided to conform the bases in the final version of section 702(j) to that on Form 462. Accordingly, we have added the Equal Pay Act basis, changed the term “retaliation” to “reprisal,” and listed the bases in the manner in which they appear on the Form 462. The term “reprisal” as used in this subpart should not be construed to include the type of reprisal covered by the Federal whistleblower protection laws. Rather, it refers to any action taken against an individual either because that

individual opposed any practice made unlawful by the Federal employment discrimination laws or participated in any manner in any proceeding under those laws.

#### Public Hearings

Seventy-eight percent (78%) of the comments were received from the No FEAR Coalition or persons identifying themselves as members of the No FEAR Coalition. The No FEAR Coalition members submitted their comments using an identical or nearly identical letter. The Coalition requested that EEOC convene public hearings in different parts of the country in order to address the issues of employment discrimination and EEOC's rule making under the No FEAR Act. The Coalition requested that EEOC establish a citizens' advisory board that would oversee EEOC's promulgation of this final rule. The Coalition made suggestions that have been raised by other commenters, such as developing a rule that will ensure managers found to have engaged in discrimination are appropriately disciplined, that these manager's names be provided to Congress, that counseling data be among that required to be posted, that amendments to complaints be tracked, and that data pertaining to agency subordinate components be posted.

Those comments provided by the Coalition and which also were raised by others are discussed both above and below. With respect to holding public hearings as part of the rule making process, EEOC is required by the Administrative Procedure Act to “give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.” 5 U.S.C. 553(c). Thus, although an agency is permitted to accept comments through oral presentations, it is not required to do so. There is certainly no requirement in the Act for a public hearing. EEOC believes that the written comment process has provided meaningful public participation in this rule making.

In this regard, EEOC extended the initial 60-day public comment period and additional 30 days at the request of the No FEAR Coalition. As noted, many members of the Coalition submitted comments which the Commission carefully has considered. Additionally, during the public comment period the Chair of the Commission met with members of the No FEAR Coalition to discuss the substance of EEOC's rule making. We believe the public, including the No FEAR coalition, have had a meaningful opportunity to

participate in the Title III No FEAR rule making process.

Moreover, EEOC's rule making duties under Title III of the No FEAR Act are straightforward. Title III requires an agency to post on its public Web site summary statistical data pertaining to complaints of employment discrimination filed with the agency. The statistics that shall be posted are set forth specifically in the statute. EEOC's only role is to issue rules establishing the “time, form and manner” in which the statistics are posted. In such a narrow context, public hearings as an adjunct to written comments would not better inform EEOC's rule making process in any appreciable manner. It is unlikely that ideas as to when or how pre-defined statistics should be posted on an agency Web site could or would be better communicated orally than in writing. Accordingly, EEOC concludes that holding the suggested regional public hearings will not significantly aid the rule making process. Similarly, EEOC does not believe it would be advantageous to convene a citizens' advisory board. Finally, as noted above, holding public hearings or convening a citizens advisory committee is not required by the No FEAR or Administrative Procedure Acts.

#### Remands

A number of complaints are dismissed by agencies on procedural grounds (e.g., failure to comply with the applicable time limits, failure to state a claim). The complainant can appeal the dismissal to EEOC. If EEOC finds the complaint was dismissed improperly, EEOC remands the complaint to the agency for further processing. A few commenters inquired how these complaints should be handled once they are returned to the agency for processing.

Once the complaint is remanded, the agency will have to track its status for posting purposes but only with respect to subsequent information applicable to the remanded complaint. Thus, for example, information previously posted about the issues and bases raised in the complaint shall not be changed regardless of whether the remanded complaint is returned to the agency with more, less, or different issues and bases. All pertinent information applicable to the subsequent processing of the complaint (e.g., whether it was timely investigated following remand, whether it subsequently involves a finding of discrimination with or without a hearing) shall be posted. With respect to remanded complaints where the investigation was not completed prior to the agency's dismissal of the complaint,

the investigative period for purposes of § 1614.704(f) will include both the period between the dates the complaint initially was filed and dismissed and the period between the dates the EEOC's remand becomes final and the investigation is completed. For purposes of posting data under § 1614.704(l) (pending complaints filed in prior fiscal years), a remanded complaint will retain its original filing date.

#### Settlements

A few commenters noted that the interim final rule is silent on the issue of settlements and asked how settlement information should be tracked. The No FEAR Act does not require an agency to post settlement information (e.g., how many complaints were settled, when or where in the process settlement took place, the bases and issues that were settled, etc.) and consequently neither the interim nor the final rule deal with settlements. Prior to settlement, an agency shall post all required information (e.g., a complaint was filed, the number of persons who filed the complaint, the issues and bases raised in the complaint, whether the investigation was completed within the applicable period if settlement occurred after the investigative step). Once a complaint is settled, subsequent information about the complaint does not have to be tracked (but see next paragraph). An allegation by a complainant, pursuant to 29 CFR 1614.504, that the agency has breached a settlement agreement does not constitute a complaint for purposes of this subpart and therefore information about a breach allegation is not information that must be posted.

In certain breach situations, a previously settled complaint can be reinstated by EEOC and the agency ordered to process the complaint from the point processing ceased at the time of settlement. See 29 CFR 1614.504(c). All pertinent information applicable to the subsequent processing of the reinstated complaint shall be posted. An agency shall ignore, however, the period between the settlement date and the date EEOC's reinstatement decision becomes final when posting data under § 1614.704(f) and (m).

It should be noted that while Title III of the No FEAR Act does not require an agency to post data regarding settlements, the reporting provisions under Title II of the Act apply to certain agreements made in settlement of claims brought under Federal antidiscrimination and whistleblower protection laws. In reporting the amounts reimbursed to the Judgment Fund, an agency must include any

payments made as part of a settlement agreement in connection with litigation in Federal court. Also in connection with cases brought in Federal court, including those that are settled, an agency must report the number of employees disciplined and the types of disciplinary actions taken for conduct inconsistent with Federal antidiscrimination and whistleblower protection laws.

#### Short Form Title

Some commenters objected to EEOC's use of the term "No FEAR Act" as a shorthand method of referring to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002. These commenters opined that the term does not appear in the statute, use of the phrase in the Library of Congress's Thomas search engine does not lead to the statute, members of the public may confuse the term with matters having to do with homeland security, and members of the public will not associate the term with employment discrimination.

The term "No FEAR" is, like most shorthand titles for statutes, an acronym: Notification and Federal Employee Antidiscrimination and Retaliation Act. It is the popular name by which this statute is known and it is commonly and widely used in the media and throughout the Federal government. The full name of the statute appears at the beginning of this preamble and the regulation. EEOC believes this provides the public with information sufficient both to know under what statute these rules are being promulgated and to find the statute should members of the public wish to read it.

#### Title II Issues

While Title III of the No FEAR Act requires an agency to post EEO complaint data on its public Web site, Title II imposes other requirements. With respect to Federal employment discrimination and whistleblower protection laws, Title II mandates, among other things, that an agency: (1) Reimburse the Judgment Fund for payments concerning violations or alleged violations of Federal employment discrimination laws, Federal whistleblower protections laws, and retaliation claims arising from the assertion of rights under these laws; (2) notify covered individuals of their rights and protections under the Federal EEO laws; and (3) submit an annual report to Congress, EEOC, the Office of Personnel Management, and the Attorney General detailing, among other information, disciplinary actions taken against

employees for conduct inconsistent with Federal antidiscrimination and whistleblower protections laws. Title II empowers the President or the President's designee to issue rules necessary to carry out that Title. The President delegated this rule making authority to the Office of Personnel Management (OPM).

It appears that a number of commenters did not distinguish between EEOC's rule making authority under Title III and OPM's authority under Title II. Thus, for example, commenters urged EEOC to write rules ensuring that there would be management accountability for discriminating against employees, comprehensive training for employees (and managers) concerning the protections afforded them and the obligations imposed upon them under the various Federal statutes, and accurate agency reporting to Congress. As explained, however, these issues do not fall within the rule making authority applicable to Title III of the No FEAR Act and EEOC therefore has no authority to address them.

#### Withdrawn Complaints

In conjunction with comments received on whether amendments to complaints should be tracked, certain commenters suggested that the posted data track the number of complaints that are withdrawn by complainants. EEOC agrees. Therefore, EEOC has added the requirement in a new subsection 1614.704(h) that an agency post the number of complaints that are withdrawn in a given fiscal year. An agency shall track a withdrawn complaint in the same manner it tracks a complaint that is dismissed. That is, in tracking withdrawals, an agency shall not revise posted data pertaining to the number of complaints that have been filed in order to reflect the withdrawal. Rather, the withdrawal, like a dismissal, shall be accounted for in a separate data column.

#### Miscellaneous Comments

A few commenters discussed provisions not included in the No FEAR Act which they believe should have been included; for example, authority for EEOC to sue agencies directly and award punitive damages to Federal employees. Others called for EEOC to promulgate rules beyond the posting requirements set forth in Title III, arguing that to do so would make the posting requirements more effective. Suggestions included: Requiring agencies to post the names of agency employees found to have engaged in prohibited discrimination; referring

such persons to the Office of Special Counsel for possible disciplinary action; adding specific notations to such persons' Official Personnel Files indicating that they had been found to have engaged in prohibited discrimination; requiring agencies to review their posted EEO data in order to determine whether there were problem areas or managers. Other comments addressed the need for sanctions for the posting of false or incomplete data. One commentator wanted EEOC to clarify both the authority of EEOC administrative judges under part 1614 and the hearing process in general. All of these suggestions are beyond the scope of EEOC's authority under the No FEAR Act.

### Matters of General Applicability

A few commenters wondered how to calculate percentages required by the rule. The percentage components under § 1614.704(i)(2) and (3), (j)(1), and (k)(1) are to be based on the number of final actions rendered in that fiscal year which involve findings of discrimination, and not the total number of final actions rendered in that fiscal year regardless of whether a finding of discrimination is involved. With respect to § 1614.704(j)(2) and (3) and § 1614.704(k)(2) and (3), the percentage figure shall be based on the total number of findings for that particular subcategory.

*Example:* An agency issues 100 final actions in a given fiscal year, 25 of which involve findings of discrimination. Of those 25 cases involving findings of discrimination, 15 were rendered after a hearing and 10 were rendered without a hearing. Of the 15 rendered after a hearing, 10 involve findings of race discrimination and 5 involve findings of sex discrimination. Of the 10 rendered without a hearing, 5 involve findings of race discrimination and 5 involve findings of age discrimination. In posting its percentage data under § 1614.704(i)(2) and (3), the agency will report that 40% (10 of 25) of the final actions involving discrimination were rendered without a hearing and that 60% (15 of 25) were rendered after a hearing. (The agency also will post under § 1614.704(i)(1) that there were 25 final actions involving findings of discrimination). In posting percentage data under § 1614.704(j)(1), the agency will post that 15 and 60% (15 of 25) of the final actions involving a finding of discrimination were based on race discrimination, 5 and 20% (5 of 25) were based on sex discrimination, and 5 and 20% (5 of 25) were based on age discrimination. Under § 1614.704(j)(2), the agency will post

that 5 and 33% (5 of 15) of the final actions involving race discrimination were rendered without a hearing and that 5 and 100% (5 of 5) of the final actions involving age discrimination were rendered without a hearing. The agency further will post that 10 and 66% (10 of 15) of the final actions involving race discrimination were rendered after a hearing and that 5 and 100% (5 of 5) of the final actions involving sex discrimination were rendered after a hearing.

EEOC's explanatory comments in the preamble to the interim final rule applicable to those provisions that have not been changed in the final rule should continue to be used as guidance. That language can be found at 69 FR 3483 (2004).

### Regulatory Procedures

#### *Executive Order 12866*

Pursuant to Executive Order 12866, EEOC has coordinated this final rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local tribal governments or communities.

The posting requirements contained in Title III of The No FEAR Act apply only to Federal executive agencies, the United States Postal Service, and the Postal Rate Commission. All of these agencies, including EEOC, are required by the No FEAR Act to post statistical data on their public Web sites pertaining to EEO complaints filed with them. In addition, EEOC has to post government-wide data pertaining to requests for EEO hearings and appeals of EEO complaints.

Much of the information that will be used as source material to post the statistical data required by Title III already is collected and maintained by the agencies in connection with their pre-existing reporting obligations. All affected agencies currently maintain public Web sites. Consequently, the Congressional Budget Office estimated that the total cost for all agencies to comply with The No FEAR Act's posting requirements will not exceed \$5 million annually. House Rept. 107-101 Part 1, June 14, 2001, p 11-12. Also, according to the CBO, it will cost EEOC \$500,000 annually to post the additional government-wide data required by § 302. Id. Thus, the total cost of Title III

of the No FEAR Act should be less than \$5.5 million annually.

The benefits of posting EEO data will flow not just to the Federal agencies but to the public. An agency will be able to compare its EEO program statistics against prior quarters and years to determine if there are trends that need to be addressed or whether progress is being made. An agency can also compare its statistics against those of other agencies. Both types of analyses should be useful to the agency in monitoring its own compliance with 29 CFR part 1614 and ensuring equal opportunity in the agency's employment programs. Public posting will ensure that members of the public will have access to this information and will be able to make independent assessments of agencies' compliance and progress. Agency employees will be able to assess the degree to which their agency provides equal employment opportunity. Likewise, potential job applicants will be able to judge the relative desirability of each agency's working environment. The public display of this information should provide agencies with added incentives to improve their EEO programs and to prevent discrimination proactively so that they can demonstrate that they are true equal employment opportunity employers. Increased monitoring and improved compliance through public posting of EEO statistics should lead to a decline in incidents of employment discrimination, which is the primary goal of the No FEAR Act.

#### *Paperwork Reduction Act*

This regulation 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 rule will not have a significant economic impact on a substantial number of small entities, because it does not affect any small business entities. The regulation affects only Federal Government entities. For this reason, a regulatory flexibility analysis is not required.

#### *Unfunded Mandates Reform Act of 1995*

This final 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*

This action pertains to agency management, personnel and organization and 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 (SBREFA)). 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, Equal employment opportunity, Government employees, Individuals with disabilities, Race discrimination, Religious discrimination, Sex discrimination.

For the Commission.

Dated: July 27, 2006.

**Cari M. Dominguez,**  
*Chair.*

■ Accordingly, for the reasons set forth in the preamble, EEOC amends 29 CFR part 1614 as follows:

#### **PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY**

■ 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; 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, 1069 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. Subpart G is revised to read as follows:

#### **Subpart G—Procedures Under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act)**

Sec.

1614.701 Purpose and scope.

1614.702 Definitions.

1614.703 Manner and format of data.

1614.704 Information to be posted—all Federal agencies.

1614.705 Comparative data—all Federal agencies.

1614.706 Other data.

1614.707 Data to be posted by EEOC.

**Authority:** Sec. 303, Pub. L. 107–174, 116 Stat. 574.

#### **Subpart G—Procedures Under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act)**

##### **§ 1614.701 Purpose and scope.**

This subpart implements Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107–174. It sets forth the basic responsibilities of Federal agencies and the Commission to post certain information on their public Web sites.

##### **§ 1614.702 Definitions.**

The following definitions apply for purposes of this subpart.

(a) The term *Federal agency* or *agency* means an Executive agency (as defined in 5 U.S.C. 105), the United States Postal Service, and the Postal Rate Commission.

(b) The term *Commission* means the Equal Employment Opportunity Commission and any subdivision thereof authorized to act on its behalf.

(c) The term *investigation* refers to the step of the federal sector EEO process described in 29 CFR 1614.108 and 1614.106(e)(2) and, for purposes of this subpart, it commences when the complaint is filed and ceases when the complainant is given notice under § 1614.108(f) of the right to request a hearing or to receive an immediate final decision without a hearing.

(d) The term *hearing* refers to the step of the federal sector EEO process described in 29 CFR 1614.109 and, for purposes of § 1614.704(l)(2)(ii), it commences on the date the agency is informed by the complainant or EEOC, whichever occurs first, that the complainant has requested a hearing and ends on the date the agency receives from the EEOC notice that the EEOC Administrative Judge (AJ) is returning the case to the agency to take final action. For all other purposes under this subpart, a hearing commences when the AJ receives the complaint file from the agency and ceases when the AJ returns the case to the agency to take final action.

(e) For purposes of § 1614.704(i), (j), and (k) the phrase without a hearing refers to a final action by an agency that is rendered:

(1) When an agency does not receive a reply to a notice issued under § 1614.108(f);

(2) After a complainant requests an immediate final decision;

(3) After a complainant withdraws a request for a hearing; and

(4) After an administrative judge cancels a hearing and remands the matter to the agency.

(f) For purposes of § 1614.704(i), (j), and (k), the term *after a hearing* refers to a final action by an agency that is rendered following a decision by an administrative judge under § 1614.109(f)(3)(iv), (g) or (i).

(g) The phrase *final action by an agency* refers to the step of the federal sector EEO process described in 29 CFR 1614.110 and, for purposes of this subpart, it commences when the agency receives a decision by an Administrative Judge (AJ), receives a request from the complainant for an immediate final decision without a hearing or fails to receive a response to a notice issued under § 1614.108(f) and ceases when the agency issues a final order or final decision on the complaint.

(h) The phrase *final action by an agency involving a finding of discrimination* means:

(1) A final order issued by an agency pursuant to § 1614.110(a) following a finding of discrimination by an administrative judge; and

(2) A final decision issued by an agency pursuant to § 1614.110(b) in which the agency finds discrimination.

(i) The term *appeal* refers to the step of the federal sector EEO process described in 29 CFR 1614.401 and, for purposes of this subpart, it commences when the appeal is received by the Commission and ceases when the appellate decision is issued.

(j) The term *basis of alleged discrimination* refers to the individual's protected status (i.e., race, color, religion, reprisal, sex, national origin, Equal Pay Act, age, or disability). Only those bases protected by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, the Equal Pay Act of 1963, 29 U.S.C. 206(d), the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.*, are covered by the federal EEO process.

(k) The term *issue of alleged discrimination* means one of the following challenged agency actions affecting a term or condition of employment as listed on EEOC Standard Form 462 ("Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints"): Appointment/hire; assignment of duties; awards; conversion to full time; disciplinary action/demotion; disciplinary action/reprimand; disciplinary action/suspension; disciplinary action/removal; duty hours; evaluation/appraisal; examination/test; harassment/non-sexual; harassment/sexual; medical examination; pay/overtime; promotion/non-selection; reassignment/denied; reassignment/

directed; reasonable accommodation; reinstatement; retirement; termination; terms/conditions of employment; time and attendance; training; and, other.

(l) The term *subordinate component* refers to any organizational sub-unit directly below the agency or department level which has 1,000 or more employees and is required to submit EEOC Form 715-01 to EEOC pursuant to EEOC Equal Employment Opportunity Management Directive 715.

**§ 1614.703 Manner and format of data.**

(a) Agencies shall post their statistical data in the following two formats: Portable Document Format (PDF); and an accessible text format that complies with section 508 of the Rehabilitation Act.

(b) Agencies shall prominently post the date they last updated the statistical information on the Web site location containing the statistical data.

(c) In addition to providing aggregate agency-wide data, an agency shall include separate data for each subordinate component. Such data shall be identified as pertaining to the particular subordinate component.

(d) Data posted under this subpart will be titled "Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107-174," and a hyperlink to the data, entitled "No FEAR Act Data" will be posted on the homepage of an agency's public Web site. In the case of agencies with subordinate components, the data shall be made available by hyperlinks from the homepages of the Web sites (if any exist) of the subordinate components as well as the homepage of the Web site of the parent agency.

(e) Agencies shall post cumulative data pursuant to § 1614.704 for the current fiscal year. Agencies may not post separate quarterly statistics for the current fiscal year.

(f) Data posted pursuant to § 1614.704 by agencies having 100 or more employees, and all subordinate component data posted pursuant to subsection 1614.703(c), shall be presented in the manner and order set forth in the template EEOC has placed for this purpose on its public Web site.

(1) Cumulative quarterly and fiscal year data shall appear in vertical columns. The oldest fiscal year data shall be listed first, reading left to right, with the other fiscal years appearing in the adjacent columns in chronological order. The current cumulative quarterly or year-end data shall appear in the last, or far-right, column.

(2) The categories of data as set forth in § 1614.704(a) through (m) of this subpart shall appear in horizontal rows. When reading from top to bottom, the order of the categories shall be in the same order as those categories appear in § 1614.704(a) through (m).

(3) When posting data pursuant to § 1614.704(d) and (j), bases of discrimination shall be arranged in the order in which they appear in § 1614.702(j). The category "non-EEO basis" shall be posted last, after the basis of "disability."

(4) When posting data pursuant to § 1614.704(e) and (k), issues of discrimination shall be arranged in the order in which they appear in § 1614.702(k). Only those issues set forth in § 1614.702(k) shall be listed.

(g) Agencies shall ensure that the data they post under this subpart can be readily accessed through one or more commercial search engines.

(h) Within 60 days of the effective date of this rule, an agency shall provide the Commission the Uniform Resource Locator (URL) for the data it posts under this subpart. Thereafter, new or changed URLs shall be provided within 30 days.

(i) Processing times required to be posted under this subpart shall be recorded using number of days.

**§ 1614.704 Information to be posted—all Federal agencies.**

Commencing on January 31, 2004 and thereafter no later than 30 days after the end of each fiscal quarter beginning on or after January 1, 2004, each Federal agency shall post the following current fiscal year statistics on its public Internet Web site regarding EEO complaints filed under 29 CFR part 1614.

(a) The number of complaints filed in such fiscal year.

(b) The number of individuals filing those complaints (including as the agent of a class).

(c) The number of individuals who filed two or more of those complaints.

(d) The number of those complaints, whether initially or through amendment, raising each of the various bases of alleged discrimination and the number of complaints in which a non-EEO basis is alleged.

(e) The number of those complaints, whether initially or through amendment, raising each of the various issues of alleged discrimination.

(f) The average length of time it has taken an agency to complete, respectively, investigation and final action by an agency for:

(1) All complaints pending for any length of time during such fiscal year;

(2) All complaints pending for any length of time during such fiscal year in which a hearing was not requested; and

(3) All complaints pending for any length of time during such fiscal year in which a hearing was requested.

(g) The number of complaints dismissed by an agency pursuant to 29 CFR 1614.107(a), and the average length of time such complaints had been pending prior to dismissal.

(h) The number of complaints withdrawn by complainants.

(i)(1) The total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination and, of that number,

(2) The number and percentage that were rendered without a hearing, and

(3) The number and percentage that were rendered after a hearing.

(j) Of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination,

(1) The number and percentage of those based on each respective basis,

(2) The number and percentage for each respective basis that were rendered without a hearing, and

(3) The number and percentage for each respective basis that were rendered after a hearing.

(k) Of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination,

(1) The number and percentage for each respective issue,

(2) The number and percentage for each respective issue that were rendered without a hearing, and

(3) The number and percentage for each respective issue that were rendered after a hearing.

(l) Of the total number of complaints pending for any length of time in such fiscal year,

(1) The number that were first filed before the start of the then current fiscal year,

(2) Of those complaints falling within subsection (l)(1),

(i) The number of individuals who filed those complaints, and

(ii) The number that are pending, respectively, at the investigation, hearing, final action by an agency, and appeal step of the process.

(m) Of the total number of complaints pending for any length of time in such fiscal year, the total number of complaints in which the agency has not completed its investigation within the time required by 29 CFR 1614.106(e)(2) plus any extensions authorized by that section or § 1614.108(e).

**§ 1614.705 Comparative data—all Federal agencies.**

Commencing on January 31, 2004 and no later than January 31 of each year thereafter, each Federal agency shall post year-end data corresponding to that required to be posted by § 1614.704 for each of the five immediately preceding fiscal years (or, if not available for all five fiscal years, for however many of those five fiscal years for which data are available). For each category of data, the agency shall post a separate figure for each fiscal year.

**§ 1614.706 Other data.**

Agencies shall not include or otherwise post with the data required to be posted under § 1614.704 and 1614.705 of this subpart any other data, whether or not EEO related, but may post such other data on another, separate, Web page.

**§ 1614.707 Data to be posted by EEOC.**

(a) Commencing on January 31, 2004 and thereafter no later than 30 days after the end of each fiscal quarter beginning on or after January 1, 2004, the Commission shall post the following current fiscal year statistics on its public Internet Web site regarding hearings requested under this part 1614.

(1) The number of hearings requested in such fiscal year.

(2) The number of individuals filing those requests.

(3) The number of individuals who filed two or more of those requests.

(4) The number of those hearing requests involving each of the various bases of alleged discrimination.

(5) The number of those hearing requests involving each of the various issues of alleged discrimination.

(6) The average length of time it has taken EEOC to complete the hearing step for all cases pending at the hearing step for any length of time during such fiscal year.

(7)(i) The total number of administrative judge (AJ) decisions rendered in such fiscal year involving a finding of discrimination and, of that number,

(ii) The number and percentage that were rendered without a hearing, and

(iii) The number and percentage that were rendered after a hearing.

(8) Of the total number of AJ decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage of those based on each respective basis,

(ii) The number and percentage for each respective basis that were rendered without a hearing, and

(iii) The number and percentage for each respective basis that were rendered after a hearing.

(9) Of the total number of AJ decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage for each respective issue,

(ii) The number and percentage for each respective issue that were rendered without a hearing, and

(iii) The number and percentage for each respective issue that were rendered after a hearing.

(10) Of the total number of hearing requests pending for any length of time in such fiscal year,

(i) The number that were first filed before the start of the then current fiscal year, and

(ii) The number of individuals who filed those hearing requests in earlier fiscal years.

(11) Of the total number of hearing requests pending for any length of time in such fiscal year, the total number in which the Commission failed to complete the hearing step within the time required by § 1614.109(i).

(b) Commencing on January 31, 2004 and thereafter no later than 30 days after the end of each fiscal quarter beginning on or after January 1, 2004, the Commission shall post the following current fiscal year statistics on its public Internet Web site regarding EEO appeals filed under part 1614.

(1) The number of appeals filed in such fiscal year.

(2) The number of individuals filing those appeals (including as the agent of a class).

(3) The number of individuals who filed two or more of those appeals.

(4) The number of those appeals raising each of the various bases of alleged discrimination.

(5) The number of those appeals raising each of the various issues of alleged discrimination.

(6) The average length of time it has taken EEOC to issue appellate decisions for:

(i) All appeals pending for any length of time during such fiscal year;

(ii) All appeals pending for any length of time during such fiscal year in which a hearing was not requested; and

(iii) All appeals pending for any length of time during such fiscal year in which a hearing was requested.

(7)(i) The total number of appellate decisions rendered in such fiscal year involving a finding of discrimination and, of that number,

(ii) The number and percentage that involved a final action by an agency rendered without a hearing, and

(iii) The number and percentage that involved a final action by an agency after a hearing.

(8) Of the total number of appellate decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage of those based on each respective basis of discrimination,

(ii) The number and percentage for each respective basis that involved a final action by an agency rendered without a hearing, and

(iii) The number and percentage for each respective basis that involved a final action by an agency rendered after a hearing.

(9) Of the total number of appellate decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage for each respective issue of discrimination,

(ii) The number and percentage for each respective issue that involved a final action by an agency rendered without a hearing, and

(iii) The number and percentage for each respective issue that involved a final action by an agency rendered after a hearing.

(10) Of the total number of appeals pending for any length of time in such fiscal year,

(i) The number that were first filed before the start of the then current fiscal year, and

(ii) The number of individuals who filed those appeals in earlier fiscal years.

[FR Doc. E6-12432 Filed 8-1-06; 8:45 am]

BILLING CODE 6570-01-P

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 362**

[DoD Directive 5105.19]

**Defense Information Systems Agency (DISA)**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This document removes part 362, "Defense Information Systems Agency (DISA)" presently in Title 32 of the Code of Federal Regulations. This part has served the purpose for which it was intended in the CFR and is no longer necessary.

**EFFECTIVE DATE:** August 2, 2006.

**FOR FURTHER INFORMATION CONTACT:** L.M. Bynum (703) 696-4970.

**SUPPLEMENTARY INFORMATION:** This part 362 is removed to as a part of a DoD exercise to remove organizational charters from the CFR because they have