Drug Coverage; 93.774 Medicare Supplementary Medical Insurance; 96.002 Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

Michael J. Astrue,

Commissioner of Social Security.

Accordingly, the interim final rule amending 20 CFR chapter III, part 418, subpart B and adding subpart C that was published at 75 FR 75884 on December 7, 2010, is adopted as a final rule without change.

[FR Doc. 2012–17935 Filed 7–24–12; 8:45 am]

BILLING CODE 4191–02–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN Number 3046–AA73

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is issuing this final rule to revise its regulations for processing equal employment opportunity complaints by federal sector employees and job applicants. The revisions implement those recommendations of the Commission's Federal Sector Workgroup which require regulatory changes. The revisions include: reaffirming the existing statutory requirement that agencies comply with EEOC regulations, Management Directives, and Bulletins; providing for EEOC notices to non-compliant agencies; permitting pilot projects for EEO complaint processing; requiring agencies to issue a notice of rights to complainants when the investigation will not be timely completed; requiring agencies to submit complaint files and appeals documents to EEOC in digital formats; and making administrative judge decisions on the merits of class complaints final with both parties having the right to appeal to EEOC. The Commission is engaged in further review of the Federal sector EEO complaint process in order to improve its quality and efficiency. The current rulemaking constitutes the Commission's initial step in that review. The Commission will consider additional reforms, including, but not limited to, regulatory changes.

DATES: Effective September 24, 2012.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, Kathleen Oram, Senior Attorney, or Gary Hozempa, Senior Attorney, Office of Legal Counsel, 202–663–4640 (voice), 202–663–7026 (TTY). (These are not toll free numbers.) 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 (voice) or 1–800–800–3302 (TTY).

SUPPLEMENTARY INFORMATION:

Introduction

EEOC enforces the statutes that prohibit workplace discrimination in the federal government. These statutes include: section 717 of Title VII of the Civil Rights Act of 1964, which prohibits discrimination against applicants and employees based on race, color, religion, sex, and national origin; section 501 of the Rehabilitation Act of 1973, which prohibits employment discrimination on the basis of disability; section 15 of the Age Discrimination in Employment Act of 1967, which prohibits employment discrimination on the basis of age; the Equal Pay Act of 1963, which prohibits sex-based wage discrimination; and the Genetic Information Nondiscrimination Act of 2008, which prohibits employment discrimination on the basis of genetic information. EEOC is responsible under these statutes for processing equal employment opportunity (EEO) complaints by Federal employees and applicants.

The EEO complaint process is initiated when a federal employee or job applicant contacts an EEO counselor to allege discrimination. If the allegation is not resolved in counseling, the individual may file a formal EEO complaint with the employing agency and that agency investigates the complaint. At the conclusion of the investigation, the complainant may request a hearing before an EEOC administrative judge or a final decision by the agency. After the hearing or final decision, the complainant may appeal to EEOC. Complainants also have the right to sue the alleged discriminating agency in federal district court if they are not satisfied with the administrative resolution of their complaints.

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 EEO complaint process. 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 from internal and external stakeholders with suggestions for improvements to the federal sector process. The Workgroup determined that it did not have internal consensus for large scale revision of the federal sector EEO complaint process at the 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 29 CFR Part 1614 in 1999. The EEOC plans to accompany this final rule with the issuance of additional guidance in Management Directive 110 and other program changes at EEOC. This final rule is part of an ongoing review by the Commission of the federal sector EEO complaint process in which the Commission is examining recommendations regarding the investigative function, including perceived conflicts of interest in the way investigations are conducted and alternatives to the current investigation process, and the hearings and appellate review process.

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

The Commission received thirty-five public comments on the NPRM: fourteen comments from federal agencies; five comments from civil rights groups; five comments from unions and other groups; five comments from attorneys; and six comments from individuals. The Commission has carefully considered all of the comments and has made several changes to the NPRM in response to the comments. The comments on the NPRM and the changes made are discussed more fully below.

Agency Process

The Workgroup considered many recommendations for improvement to

the parts of the federal sector EEO complaint 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. This final rule contains the following changes to the agency EEO complaint process in part 1614.

Compliance

The final rule adds two new paragraphs to § 1614.102. One paragraph, § 1614.102(e), requires that agency EEO programs comply with part 1614 and the Management Directives and Bulletins issued by EEOC (hereinafter ''compliance proposal'') to carry out section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16, and indicates that the Commission will review programs for compliance. The final rule further provides that, as part of EEOC's compliance efforts, the Chair may issue notices to agencies when non-compliance is found, and may publicly identify non-compliant agencies (hereinafter ''program review proposal''). With these provisions, the Commission intends to re-emphasize all agencies' obligations to comply with EEOC's ''rules, regulations, orders, and instructions,'' as required by section 717 of Title VII, 42 U.S.C 2000e–16(b), and to provide some additional mechanisms 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, or any Management Directives or Bulletins that may be issued in the future to carry out section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C 2000e–16.

The majority of comments, including those submitted by several agencies, supported both proposals, with more than a third of them recommending that EEOC adopt stronger provisions, such as making reports of non-compliance public and providing for sanctions against non-complying agencies. A handful of agencies objected to the compliance proposal, arguing that it is duplicative of Title VII's requirement that agencies comply with EEOC guidance and instructions, and that, if enacted, the compliance proposal will give regulatory effect to EEOC Management Directives and Bulletins without notice and comment, in violation of the Administrative Procedure Act (APA). With respect to the program review proposal, several agencies requested that the regulation specifically provide for agency opportunity to comply or provide an explanation for non-compliance before EEOC issues a notice of non-compliance.

EEOC has slightly modified the proposed language of the NPRM to remove a reference to the Chair identifying non-compliant agencies in the Annual Report on the Federal Workforce, and has replaced it with a more general provision stating that, if the Office of Federal Operation's (OFO) attempts at compliance are not successful, the Chair may publicly identify non-compliant agencies. The compliance proposal derives from section 717(b) of Title VII, 42 U.S.C. 2000e–16(b), which requires an agency to comply with EEOC rules and directives pertaining to federal sector EEO programs (''the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this paragraph through appropriate remedies * * * and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section * * *. The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions * * *).'' Similarly, Executive Order 12067 authorizes EEOC to develop rules, policies, and guidelines to administer the federal sector EEO program and requires agencies to comply with those directives. While the compliance proposal, as some agencies noted, reiterates the authority given to EEOC under Title VII, it has been EEOC's experience that not all agencies understand that they are required to comply not only with the rules set forth in 29 CFR part 1614, but also with the compulsory instructions in EEOC's Directives and Bulletins, such as MD–110. Therefore, the compliance proposal is necessary to underscore both EEOC's authority over the federal sector EEO program and an agency's duty to maintain its EEO program consistent with EEOC's mandatory directives.

Agency concerns that the compliance proposal will deny them an opportunity to comment upon orders and procedures that EEOC may issue in the future are misplaced. Under Executive Order 12067, before EEOC issues a new rule, directive, or bulletin about the federal sector EEO program, it must first afford each federal agency an opportunity to comment, advise and consult. As a result, any new rule, directive, or bulletin contemplated by EEOC will go through this interagency coordination process and therefore no EEOC rule, directive, or bulletin, will be issued without agency notice and comment.

With respect to those agency objections that specifically rely on the APA, the National Employment Lawyers Association (NELA), in its comments, argues that ''the relationship between the EEOC and federal agencies is not governed by the APA, which allows a challenge to agency action only by a 'person suffering legal wrong.''' *See* 5 U.S.C. 702. Under the APA, a ''person'' includes entities ''other than agencies.'' 5 U.S.C. 551(2). Therefore, NELA argues, an agency is not an entity afforded the protection an individual enjoys under the APA. Even assuming that an agency lacks standing under the APA to complain about APA protections, EO 12067 provides agencies the notice and comment protections about which the agencies expressed concerns in their comments. As noted above, agencies will have the opportunity to review and comment upon future EEOC rules, directives, and bulletins before they are issued.

EEOC's intent is to assist agencies in perfecting their EEO programs and to persuade agencies whose EEO programs fall short of EEOC standards to correct any noted deficiencies. There will not be a single process for determining non-compliance. Each situation will depend upon the nature of the alleged non-compliance, how the non-compliance comes to EEOC's attention, and how the agency responds to EEOC's inquiries and attempts to obtain compliance. Therefore, it is not feasible to explain how EEOC will determine in every instance whether an agency is in compliance with 29 CFR part 1614 or the mandatory language in EEOC's Directives and Bulletins. In all instances, however, before the Chair issues an agency a notice of non-compliance, the agency will be given a reasonable opportunity to justify its non-compliance or persuade EEOC that it is in compliance with EEOC's regulation or the mandatory sections of EEOC's Directives and Bulletins. As appropriate, EEOC may also make the Chair's notice of non-compliance public. The program review procedures will be set out in MD–110.

Pilot Projects

The second new paragraph in § 1614.102 permits 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. The NPRM provided that pilots would be subject to EEOC approval by vote of the Commissioners and that approval would usually not be granted

for more than 12 months. The Commission supports pilot projects because they can provide helpful data for future recommendations regarding changes to the federal sector EEO complaint process.

All of the agencies and several other commenters supported the pilot projects proposal. In the NPRM, the Commission specifically requested comments on the proposed 12 month maximum timeframe for pilot projects. Comments on the appropriate timeframe for pilot projects were mixed, with some noting that a year is sufficient, and others arguing that a two year timeframe would be preferable. The majority of commenters on the timeframe recommended that EEOC permit extensions of whatever timeframe is adopted. In addition, several comments suggested that agencies be permitted to keep pilot projects in place until all complaints that have entered the pilot project are fully processed. About a third of the commenters expressed concerns about the pilot project proposal. Some recommended that pilot projects be limited to the investigative stage only. Some suggested that pilot projects should be entirely voluntary with an opt-out feature. Others recommended that EEOC include in the regulation criteria that will ensure the protection of complainants' rights in pilot projects. Finally, some commenters noted that federal employee unions should be involved in the development of agency pilot projects.

We have amended § 1614.102(f) to extend the maximum timeframe for variances from the requirements of part 1614 for pilot projects to 24 months. We believe that the proposed 12 month maximum timeframe was too short for some pilot projects to provide meaningful data for analysis of alternatives to the part 1614 process. We note, however, that the timeframe is a maximum only, not a minimum, and that agencies may develop pilot projects that last less than 24 months as appropriate. We have also added a provision giving the Director of the Office of Federal Operations authority to grant, for good cause shown, requests for extensions of variances for up to 12 months. We note as well that the 24 month maximum timeframe for pilot projects will permit agencies to accept complaints into pilot projects for up to 24 months, and that agencies may conclude processing those complaints in the pilot project for a reasonable period thereafter.

We have also added a sentence to the regulation stating that pilot projects must require that complainants knowingly and voluntarily opt-in to the pilot project. It was always the Commission's intention that complainants must affirmatively choose to participate in pilot projects, and that, if they do not opt-in, their complaints would be processed under the part 1614 process. We note that the Commission plans to issue guidance in its Management Directive 110 on additional criteria that the Commission will consider for pilot projects, e.g., requirements that such projects are not a subterfuge for diminishing complainants' rights, that plans for publicizing the pilot among agency employees should be detailed, that criteria for evaluating the success of the pilot should be adequate, that interim evaluations will be done, that the proposed length of the pilot is justified, and that anticipated start and end dates are reasonable. Guidance will also be included on the timeframes for pilot projects and requests for extensions. Agencies may need to consult or negotiate with their unions about pilot project proposals and, if that is the case, they must do so before submitting proposals to EEOC for approval.

The Commission believes that it is preferable that EEOC provide oversight of pilot projects rather than having agencies secure independent authority to operate pilot projects that deviate from the requirements of part 1614, as has occurred in the past. Commission approval of pilot projects will ensure that agency management does not have unfettered discretion and that pilots will not disadvantage complainants.

Notice of Rights

The final rule adds a new paragraph to § 1614.108 Investigation of complaints, that requires 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 majority of agencies that commented opposed the notice proposal, arguing variously that it is unnecessary, duplicative, and would not add value to the complaint process. A few agencies, however, agreed with the proposal. All other commenters supported the notice proposal, with half of them recommending that it should include stronger provisions, including sanctions against agencies that fail to complete an investigation in 180 days.

The Commission is retaining the notice requirement in the final rule. The Commission believes that it is important that agencies issue a notice to complainants about their rights in the EEO process at the conclusion of the 180-day investigation period so that they can make informed decisions about whether to wait for completion of the investigation, request an immediate hearing, or file a lawsuit. 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 must be in writing, must describe the hearing process and include a simple explanation of discovery and burdens of proof, and must contain an estimated investigation completion date. The Commission further notes that a full range of sanctions are available should an agency not complete its investigation within the required time period. See, *Royal* v. *Dept. of Veterans Affairs,* EEOC Request No. 0520080052 (Sept. 25, 2009); *Reading* v. *Dept. of Veterans Affairs,* EEOC Appeal No. 07A40125 (October 12, 2006); *Talahongva-Adams* v. *Dept. of the Interior,* EEOC Appeal No. 0120081694 (May 28, 2010). Nor does a complainant waive his right to seek sanctions when an agency fails to complete its investigation within the required timeframe simply because a notice is issued by the agency. Sanctions may be warranted even if the complainant elects not to request a hearing but instead waits for the completion of the investigation, unless a specific extension of time has been sought from, and granted by, the complainant, or for other good cause shown.

Rehabilitation Act Coverage

In the NPRM, the Commission proposed to amend § 1614.103(b)(6) to comport with the coverage provisions of the Rehabilitation Act and state that part 1614 applies to EEO complaints against the Government Printing Office, except for complaints under the Rehabilitation Act. We received only two comments on the proposal, both favorable. The final rule contains this revision.

Retaliation

EEOC proposed in the NPRM to amend § 1614.107(a)(5) 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 the proposal or preliminary step is retaliatory. After explaining its rationale for this change, EEOC also discussed

alternative language that had been suggested by an agency during the E.O. 12067 interagency coordination. The alternative language provided that complaints alleging discrimination regarding a proposal to take a personnel action, or other preliminary step to taking a personnel action, shall be dismissed ''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.''

The majority of comments supported EEOC's proposal. Non-agency comments were overwhelmingly supportive, and a handful of them specifically rejected the alternative discussed in the preamble. The Leadership Conference on Civil and Human Rights (LCCHR), for example, argued that the alternative has no basis in law and that there is no plausible rationale for requiring a different standard for federal employees. Agency comments were mixed, with some supporting EEOC's proposal, several supporting the alternative, and others simply criticizing EEOC's proposal without mentioning the alternative. The agencies opposing EEOC's proposal generally argued that the change would encourage premature complaints.

EEOC agrees with the comments favoring its proposed change and has retained it in the final rule. The change to § 1614.107(a)(5) is consistent with EEOC policy guidance on retaliation as applied in the private sector. *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). Moreover, the amendment codifies EEOC appellate decision precedent in the federal sector. *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'').

A number of commenters, such as the National Treasury Employees Union (NTEU), point out that it is possible that a supervisor might place an employee on a performance improvement plan or propose an adverse action against an employee with the intent of deterring that employee from filing or proceeding with an EEO complaint. And it is not difficult to imagine that the employee could be deterred. A proposed personnel action is not an empty gesture which an employee can ignore without fear of consequences. For example, when a manager proposes a removal for purported performance deficiencies, any employee not wanting to be fired 30 days later must answer the proposal and attempt to refute the agency's allegations of specific performance deficiencies. *See generally* 5 CFR 432.105. Defending against a proposal can be a daunting task, even if the allegations are untrue. Knowing this, an unscrupulous manager who has been accused of employment discrimination could initiate a trumped-up proposed removal in order to cause the employee to drop the complaint and avoid termination. If this occurs, the manager would have engaged in prohibited retaliation under EEOC guidance and precedent, and under the Supreme Court's holding in *Burlington Northern & Santa Fe Railway Co.* v. *White,* 548 U.S. 53, 68 (2006) (Title VII's anti-retaliation provision protects individuals from a retaliatory action that a reasonable person would have found ''materially adverse,'' which in the retaliation context means that the action might have deterred a reasonable person from opposing discrimination or participating in the EEO complaint process). Therefore, EEOC believes it is vitally important that an employee be able to challenge as retaliatory a preliminary step to a personnel action or a proposed action that is reasonably likely to deter that employee from engaging in protected activity.

This revision to the dismissal provision does not change the standard for stating a claim of retaliation under Title VII. Agencies should dismiss retaliation complaints filed by complainants who have not engaged in prior EEO activity or opposed unlawful employment practices. Also, 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). Agencies should dismiss complaints of allegedly retaliatory proposals and other preliminary steps under 29 CFR 1614.107(a)(1) if the alleged retaliatory actions are 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.[1]

Not all preliminary steps or proposals are materially adverse. As noted in *Burlington Northern,* ''[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.'' 548 U.S. at 68; *see also* 2 EEOC Compliance Manual section 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 threatened 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)).

The alternative language discussed in the preamble of the NPRM regarding 29 CFR 1614.107(a)(5) limits actionable complaints alleging that a proposal or preliminary step is retaliatory to those containing allegations of ''severe or repeated threats of adverse action'' that ''state a claim of a hostile work environment.'' The commenters opposed to the alternative, such as NTEU, Leadership Conference on Civil and Human Rights, and the NAACP Legal Defense & Educational Fund (LDEF), were concerned that the burden of proof necessary to establish a hostile work environment is greater than that necessary to show that a reasonable employee has been deterred from engaging in protected activity, especially in the context of threatened actions. These commenters noted that, under the alternative language, retaliation involving only a single or a few threats would not rise to the pervasive level necessary to establish a hostile environment and thus would be permitted unless the actions are sufficiently severe. They expressed concern that only a threat pertaining to

[1] Additionally, under 29 CFR 1614.105(a)(1), an aggrieved person is required to contact a counselor within 45 days of the date of the alleged discriminatory action unless that time period is extended pursuant to 29 CFR 1614.105(a)(2). Failure to contact a counselor within 45 days may result in dismissal under 29 CFR 1614.107(a)(2). An aggrieved person who wants to challenge a proposed or preliminary action, whether alone or in conjunction with a final action, should be mindful of the applicable time limits. In order to ensure that a retaliation claim based on a proposal or preliminary step will not be dismissed as untimely, the aggrieved person should contact a counselor within 45 days of that preliminary step or proposal.

an ultimate employment action, such as a removal, would suffice to establish severity under the alternative standard and thus state an actionable claim for retaliation. Under EEOC's proposal, on the other hand, the inquiry focuses more on the context in which the threat is made and the effect that threat would have on a reasonable employee. It is highly unlikely that a threat to transfer an employee's assigned duties without loss of pay or position, as occurred in *Burlington Northern,* would rise to the requisite level of pervasiveness or severity under the alternative approach, but it could reasonably deter protected activity and thus state a claim under EEOC's proposal.

The Commission believes the concerns expressed in the comments about the alternative proposal are well founded. *Burlington Northern* states that the anti-retaliation provisions of Title VII do not mirror the anti-discrimination provisions and that this difference must be given weight when interpreting the statute. 548 U.S. 53, at 62–63. As discussed in *Martinelli* v. *Penn Millers Ins. Co.,* 269 Fed.Appx. 226, 230, 2008 WL 723973 (3d Cir. March 18, 2008), after *Burlington Northern,* an employee claiming ''retaliation by workplace harassment'' is ''no longer required to show that the harassment was severe or pervasive * * *.'' *See also Thomas* v. *Atmos Energy Corp.,* 223 Fed.Appx. 369, 376 n.2, 2007 WL 866709 (5th Cir. March 21, 2007) (''*Burlington Northern* set a lower threshold for finding an adverse employment action'' and thus the employee need not show that he was retaliated against with respect to an ''ultimate employment action'' such as a removal). As noted by the LDEF, the alternative language ignores this distinction between the anti-retaliation and anti-discrimination provisions and therefore would require a higher threshold both to state a claim and to prevail on claims of retaliation. Additionally, the alternative does not account for threats or actions not related to the workplace, which also is inconsistent with the Court's ruling in *Burlington Northern.* 548 U.S. 53, at 63.

Adopting the alternative language would impose a higher threshold upon federal employees than exists for employees in the private sector and would therefore permit a federal agency to take actions against its employees that would be retaliatory if committed by a private employer. It also would depart from EEOC's own federal sector precedent regarding retaliation and threatened actions. In short, there is no legitimate reason for requiring that only federal employees be subject to the more stringent ''severe or pervasive'' standard applicable to hostile work environment claims. The alternative approach would make it harder for federal employees to prove retaliation than their private-sector counterparts and would result in significantly less enforcement of the anti-retaliation protections afforded federal employees.

EEOC Process

Electronic Filing

In the NPRM, the Commission proposed to require that agencies submit appellate records and complaint files to the Commission electronically. The NPRM provided that complainants would be encouraged, but not required, to submit appeals and other documentation electronically. The majority of commenters expressed concerns about the electronic filing proposal. The agencies noted that they are concerned about confidentiality of the records and the security of whatever system EEOC employs, noting that all documents would have to be encrypted. They also expressed concerns about costs and the need to budget for the requirement. A handful of other commenters supported the proposal, while others noted that EEOC needs to study security measures, and that the Commission should ensure that there is no adverse impact on complainants who continue to submit paper documents. Several commenters suggested that EEOC model its electronic filing system on the system used by the Merit Systems Protection Board, which permits electronic filing after a party has registered, but does not require it.

We wish to reassure agencies and the public that EEOC will comply with all federal electronic information security requirements with respect to accepting digital records. EEOC has launched a pilot Web site portal electronic filing system that is available to all agencies. In addition, EEOC currently accepts digital complaint files from a number of agencies. Some agencies place scanned files in a secure location on their own Web sites that EEOC accesses with a password. Other agencies submit password-protected CDs containing digital complaint files to EEOC. We have revised the regulation to require the submission of digital records rather than electronic filing. This will allow agencies and others to use the EEOC's portal (when available) or any of the other means described above to submit digital appeals, complaint files, and other filings. The final rule requires that agencies submit these records in an acceptable format to the Office of Federal Operations, absent a showing of good cause why the agency cannot do so. We do not anticipate that cost will constitute good cause in most cases since the cost of scanning equipment is relatively inexpensive and the staff time required to scan documents will probably be the same or less than the staff time required to make paper photocopies of documents. Complainants will be encouraged, but not required, to submit digital appellate records to the Office of Federal Operations. EEOC will provide more detailed guidance regarding acceptable digital formats and what constitutes a showing of good cause in Management Directive 110.

Filing Date for Opposition Briefs

In the NPRM, the Commission proposed to revise § 1614.403(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.) We requested additional comments on irradiation-based mail delay experience. Nearly all of the agencies that commented reported that they often have significant delays in receiving mail because of the irradiation process. They noted that delays can range from ten days to three or four weeks. If the deadline for filing opposition briefs is tied to service, rather than receipt, of the supporting brief, agencies experiencing irradiation mail delays will have fewer days to prepare and submit opposition briefs. Because of the frequency and length of irradiation delays, the Commission can anticipate many motions for extension or apparently untimely briefs with consequent increase in the number of motions for default, which would unnecessarily burden the parties and Commission staff. Accordingly, we have removed the proposed amendment from this final rule, and the current regulation providing that statements or briefs in opposition must be filed within 30 days of receipt of the statement or brief supporting the appeal will remain in effect.

Reconsideration

The final rule amends § 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. We received only two comments on this proposal, both favorable.

Breach

In the NPRM, the Commission proposed to revise § 1614.504(c) to differentiate the remedies available for breach of settlement agreements and breach of final decisions. We received only a handful of comments on the proposal; most were positive. The final rule retains the provision. For breach of a settlement, the regulation continues 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 regulation states that compliance is the only remedy. The Commission is making final its proposed 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, in the NPRM the Commission proposed 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 final decisions on the acceptance of class complaints, and the merits of individual complaints, but only issues recommended findings and conclusions on the merits of class complaints, which the agency may accept, reject, or modify in its final decision. Previously, in a 1999 rulemaking, the Commission changed the administrative judge's recommended decisions on the merits of individual complaints and on the acceptance of class complaints to final decisions that must be fully implemented or appealed by the agency in its final action. With the current change, all administrative judge decisions will be final decisions which the agency can either implement in full or appeal. If the agency does not fully implement the administrative judge's decision, it only has to appeal the parts of the decision that it wishes to contest. For example, if an administrative judge finds that the agency discriminated against the class and awards reinstatement and backpay, and if the agency disagrees with the award of reinstatement, the agency's appeal need only challenge the reinstatement award.

The Commission also proposed in the NPRM 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 proposed 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. We received uniform comments supporting both class complaint process proposals. Therefore, the final rule retains both provisions.

We note that, with respect to the class proposals, several commenters recommended additional changes to the class complaint process involving issues such as: Holding individual complaints in abeyance and subsuming individual complaints, permitting complainants to opt-out of a class complaint, changing the requirement that agencies notify class members of certification before appeal, mandating pre-certification discovery, and ensuring that certified cases are promptly assigned and processed. While these other comments fall outside of the scope of the changes proposed in the NPRM, the Commission will consider them for a future rulemaking. In addition, some of the recommendations for additional changes not proposed in the NPRM are not regulatory, and the Commission will separately consider whether any of them should be implemented independently from the final rule.

Other Changes

The final rule amends § 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, except insofar as Commission decision precedent has held or holds otherwise. 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 final rule includes an editorial change to § 1614.204(f)(1) to correct the omission of the word ''shall.''

The final rule also amends § 1614.302(c)(2) to correct an erroneous cross reference. The section now refers to § 1614.107(a)(4).

Finally, the Commission proposed in the NPRM 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.

Public comments were mixed on this proposal. While a couple of agencies supported it, individual commenters strongly opposed it, recommending that relief be provided immediately, and that remedial orders should be binding regardless of whether suit is filed. Other commenters suggested that EEOC should allow complainants to certify that they will not file suit, and then require agencies to provide relief within 30 or 60 days of certification. The Commission is sympathetic to the commenters' concerns about receiving relief in a timely fashion, but also recognizes that it is difficult in many instances for agencies to provide relief within the current 60 day timeframe. More importantly, the Commission believes that agencies should not be required to provide relief before the expiration of the complainants' 90-day right to file suit period. In the final rule, the Commission is adopting the proposal to extend the timeframe for providing relief to 120 days.

Regulatory Procedures

Executive Orders 13563 and 12866

This final rule has been drafted and reviewed in accordance with Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as recently reaffirmed and supplemented by E.O. 13563, ''Improving Regulation and Regulatory Review.'' This final rule is a ''significant regulatory action'' under E.O. 12866, section 3(f)(1), and accordingly was submitted to the Office of Management and Budget for interagency review. In promulgating this final rule, the Commission has adhered to the regulatory philosophy and applicable principles set forth in E.O. 13563, which directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its cost (recognizing that some benefits and costs are difficult to quantify); tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives; and select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

Based on the information currently available, we anticipate that most of the changes involve no or negligible cost and will benefit the agencies or users of the process by clarifying obligations,

correcting cross references, providing earlier appellate review, and providing quicker decisions from EEOC. Most agencies, for example, already comply with Part 1614 and EEOC's Management Directives and Bulletins, as required by section 717(b) of Title VII of the Civil Rights Act of 1964, as amended. Therefore, continued compliance will not require additional expenditures. The compliance proposal may actually reduce costs, e.g., to the extent that the agency's compliance obligation is clarified, it may save the agencies, complainants, and EEOC the time and costs of attempting to secure agency compliance.

With respect to monitoring compliance, EEOC already engages in compliance activities with its Directives and Bulletins. Therefore, no new personnel will need to be hired and EEOC's compliance efforts will not have to be increased. The only new provision is that the EEOC Chair may issue a notice of non-compliance that may be made public. The clarification of an agency's compliance responsibilities and the possibility of a public notice will eliminate some non-compliance and shorten other instances of non-compliance.

The cost that comes with most of the remaining changes is relatively small, and all costs are justified by the expected benefit and would only be borne by the federal government. Requiring an agency to notify the complainant when it will not complete an investigation in the required timeframe will have minimal cost but will provide an incentive for completing investigations timely while protecting the complainant's rights. Electronic filing will reduce costs and time. The cost of pilot projects will depend upon what the individual agency proposes and is likely to be a savings; the benefit of such projects is that potential changes to the process will be tested before they are implemented government-wide.

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. Sec. 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 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.

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).

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 18, 2012.

Jacqueline A. Berrien,

Chair.

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

PART 1614—[AMENDED]

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

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e-16; 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 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. If those efforts are not successful, the Chair may issue a notice to the head of any federal agency whose programs are not in compliance and publicly identify each non-compliant agency.

(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 24 months. The Director of the Office of Federal Operations for good cause shown may grant requests for extensions of variances for up to an additional 12 months. Pilot projects must require that participants knowingly and voluntarily opt-in to the pilot project. Requests for variances should be addressed to the Director, Office of Federal Operations.

■ 3. In § 1614.103, revise paragraph (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. In § 1614.107, revise paragraph (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 § 1614.407(b). Such notice shall contain information about the hearing procedures.

* * * * *

§ 1614.109 [Amended]

■ 6. In § 1614.109, revise the paragraph (g) subject heading to read ''Summary Judgment''.

■ 7. Amend § 1614.204:

■ a. In paragraph (f)(1), by removing the words ''administrative judge notify'' from the first sentence and adding in their place the words ''administrative judge shall notify'';

■ b. By revising paragraphs (i), (j), and (k);

■ c. In paragraph (l)(2), by removing the words ''final decision'' and adding in their place the words ''final order'';

■ d. In paragraph (l)(3), by removing the words ''final decision'' in the first and next to last sentences and adding in their place the words ''final order'' and

■ e. By revising the third sentence in paragraph (l)(3).

The revisions read as follows:

§ 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 573 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. In § 1614.302, in paragraph (c)(2), remove the words ''§ 1614.107(d)'' wherever they appear and add in their place the words ''§ 1614.107(a)(4)''.

§ 1614.401 [Amended]

■ 9. In § 1614.401, in paragraph (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. In § 1614.402, add a sentence to paragraph (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), and add 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. * * *

* * * * *

(g) Agencies are required to submit appeals, complaint files, and other filings to the Office of Federal Operations in a digital format acceptable to the Commission, absent a showing of good cause why an agency cannot submit digital records. Appellants are encouraged, but not required, to submit digital appeals and supporting documentation to the Office of Federal Operations in a format acceptable to the Commission.

■ 12. Amend § 1614.405 by revising the second sentence of paragraph (a), redesignating paragraph (b) as paragraph (c), adding a new paragraph (b), and revising the first sentence of newly redesignated paragraph (c) introductory text 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. In § 1614.409, revise the first sentence to read as follows:

§ 1614.409 Effect of filing civil action.

Filing a civil action under § 1614.407 or § 1614.408 shall terminate

Commission processing of the appeal.
* * *

§ 1614.502 [Amended]

■ 14. In § 1614.502, amend the last sentence of paragraph (c) by removing the words ''60 days'' and adding in their place add the words ''120 days''.

■ 15. In § 1614.504, revise the second sentence of paragraph (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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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 223

[Docket ID: DOD–2010–OS–0108]

RIN 0790–AI64

DoD Unclassified Controlled Nuclear Information (UCNI)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule updates policies and responsibilities for controlling Department of Defense (DoD) Unclassified Controlled Nuclear Information (UCNI) in accordance with the provisions of current U.S. Code. This revision streamlines and reflects current practices within the Department of Defense. This rule may be altered, in accordance with applicable statutory and regulatory requirements, as necessary to align with any future direction given in response to on-going efforts currently being led by the National Archives and Records Administration in the implementation of Executive Order 13556, ''Controlled Unclassified Information,'' signed on November 4, 2010.

DATES: This rule is effective August 24, 2012.

FOR FURTHER INFORMATION CONTACT: Linda B. Jones, (757) 229–3866.

SUPPLEMENTARY INFORMATION: The Department of Defense published a proposed rule on April 25, 2011 (76 FR 22849–22854). Comments from two submitters were received and are addressed below:

Comment: One submitter suggested clarifications and changes to the markings specified by sections 223.6(d) and 223.6(e). We made the changes suggested.

Comment: One comment suggested a change to the placement of the required markings for consistency with 32 CFR part 2001.21(b). As 32 CFR part 2001 applies only to classified national security information, we have not changed the placement requirements in the final rule.

Comment: One comment recommended adding a statement regarding parenthetical markings for classified messages. The change was made.

Comment: Suggestions for clarifying the last half of paragraph 223.6(d)(3) were made. Changes were incorporated in the final rule when we agreed they clarified the guidance.

Comment: One comment questioned the scope of the allowable dissemination within the U.S. Government. A change to the dissemination guidance was made.

Comment: One submitter suggested more definitive guidance on identifying information that qualifies for designation as DoD UCNI and that which qualifies for classification. Classification of information regarding protection of DoD special nuclear material, equipment and facilities, is a decision made by an authorized classification authority based on his or her reasoned judgment as to the degree of damage that could be caused by unauthorized disclosure. As such determinations are inherently subjective, risk-managed decisions and, thus, it is not possible to identify a ''definitive line where UCNI stops and higher classification starts.'' No changes were made as a result of this comment.

Comment: Additional changes were made based on DoD legal and editorial review.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR part 223 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

It has been certified that 32 CFR part 223 is not economically significant, and 32 CFR part 223 has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 223 does not contain a Federal mandate that may result in the expenditure by State, local, and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 223 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 223 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 223 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 223

National defense, Nuclear energy, Reporting and recordkeeping requirements, Security measures.

■ Accordingly, 32 CFR part 223 is revised to read as follows.