

(3) *Procedures for agency processing of mixed case complaints.* When a complainant elects to proceed initially under 29 CFR part 1614, subpart C, rather than with the MSPB, the procedures in 29 CFR part 1614, subpart A, shall govern the processing of the mixed case complaint with the following exceptions:

(i) At the time the Department advises a Complainant of the acceptance of a mixed case complaint, the Department shall also advise the Complainant that:

(A) If a final decision is not issued within 120 days of the date of filing of the mixed case complaint, the Complainant may appeal the matter to the MSPB at any time thereafter as specified at 5 CFR 1201.154(b)(2) or may file a civil action as specified at 29 CFR 1614.310(g), but not both; and

(B) If the Complainant is dissatisfied with the Department's final decision on the mixed case complaint, the Complainant may appeal the matter to MSPB (not EEOC) within 30 days of receipt of the Department's final decision;

(ii) Upon completion of the investigation, the notice provided the Complainant in accordance with 29 CFR 1614.108(f) will advise the Complainant that a final decision will be issued within 45 days without a hearing; and

(iii) At the time that the Department issues its final decision on a mixed case complaint, the Department shall advise the Complainant of the right to appeal the matter to the MSPB (not EEOC) within 30 days of receipt and of the right to file a civil action as provided at 29 CFR 1614.310(a).

(4) *Dismissal.* The Department may dismiss a mixed case complaint for the reasons provided in, and under the conditions prescribed in 29 CFR 1614.107. If MSPB's Administrative Judge finds that MSPB does not have jurisdiction over the matter, the Department shall resume processing of the complaint as a non-mixed case EEO complaint.

§ 7.34 Acceptability.

(a) The Director of EEO shall determine whether a complaint comes within the purview of 29 CFR part 1614 and shall advise the Complainant and Complainant's representative, if applicable, in writing of the acceptance or dis-

missal of the claims(s) of the complaint. The Notice of Receipt is provided to the Complainant, Complainant's representative, if applicable, and to the organizational unit through the appropriate EEO Officer and DCM.

(b) Dismissals of complaints are governed by the notice requirements and procedures in 29 CFR 1614.106(e)(1) and 29 CFR 1614.107.

(c) Prior to a request for a hearing in a case, the Department shall dismiss an entire complaint for any of the reasons provided in 29 CFR 1614.107(a)(1) through (9), including a complaint that alleges dissatisfaction with the processing of a previously filed complaint; or where the Department, strictly applying the criteria in EEOC decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires:

(1) Evidence of multiple complaint filings; and

(2) Claims that are similar or identical, lack specificity or involve matters previously resolved; or

(3) Evidence of circumventing other administrative processes, retaliating against the Department's in-house administrative processes or overburdening the EEO complaint system.

(d) Where the Director of EEO believes that some, but not all, of the claims in a complaint should be dismissed for the reasons provided in this section and 29 CFR 1614.107(a)(1) through (9), the Department shall notify the Complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under 29 CFR 1614.107(b)(1) that some claims should be dismissed is reviewable by an EEOC Administrative Judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

§ 7.35 Processing.

(a) The Director of EEO will process complaints filed under 29 CFR part 1614 for the Department with the assistance

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of the EEO Officer, DCM, the EEO Counselor and the full cooperation of all other Department managers, supervisors and other employees.

(b) The Director of EEO shall, in accordance with 29 CFR part 1614, provide for the development of an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. The person assigned to develop the factual record may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue and is encouraged, in accordance with 29 CFR 1614.108(b), to incorporate ADR techniques into the investigative efforts in order to promote early resolution of complaints.

(c) The Director of EEO will provide the Complainant and Complainant's representative, if applicable, and the EEO Officer a copy of the record developed. Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in 29 CFR 1614.108(f), the Department shall provide the Complainant with a copy of the investigative file, and shall notify the Complainant that, within 30 days of receipt of the investigative file, the Complainant has the right to request a hearing and decision from an EEOC Administrative Judge or may request an immediate final decision pursuant to 29 CFR 1614.110 from the Department.

§7.36 Hearing.

(a) *Notification of right to request a hearing.* The Director of EEO will notify the Complainant, the General Counsel, EEO Officer, DCM and Complainant's representative, where applicable, of the Complainant's right to request an administrative hearing and decision before the EEOC or the De-

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partment's final decision and the time frames for executing the right to request an administrative hearing. Note: Where a mixed case complaint is filed, the Complainant has no right to a hearing before an EEOC Administrative Judge unless the MSPB has dismissed the mixed case complaint or appeal for jurisdictional reasons. (See 29 CFR 1614.302(2)(b).)

(b) *Requesting a hearing.* Where the Complainant has received the notice required in §7.35(c) and 29 CFR 1614.108(f) or at any time after 180 days have elapsed from the filing of the complaint, the Complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the Department's acknowledgment letter. The Complainant shall send a copy of the request for a hearing to the Department's EEO office. Within 15 days of receipt of a copy of complainant's request for a hearing, or the docketing notice from the EEOC, whichever is earlier, the Director of EEO shall provide a copy of the complaint file to EEOC and, if not previously provided, to the Complainant, Complainant's representative, if applicable, and the appropriate Office of General Counsel.

(c) *EEOC appointment of EEOC Administrative Judge.* When a Complainant requests a hearing, the EEOC shall appoint an EEOC Administrative Judge to conduct a hearing in accordance with this section. Upon appointment, the EEOC Administrative Judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. Any hearing will be conducted by an EEOC Administrative Judge or hearing examiner with appropriate security clearances.

(d) *Dismissals.* EEOC Administrative Judges may dismiss complaints pursuant to 29 CFR 1614.107, on their own initiative, after notice to the parties, or upon the Department's motion to dismiss a complaint.

(e) *Offer of resolution.* Any time after the filing of the written complaint but not later than the date an EEOC Administrative Judge is appointed to conduct a hearing, the Department may