



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P.O. Box 77960**  
**Washington, DC 20013**

[REDACTED]  
Jacinta B.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Field Areas and Regions),  
Agency.

Appeal No. 2023005128

Agency No. 1F441008822

**DECISION**

Complainant timely appealed with the Equal Employment Opportunity Commission ("EEOC" or "Commission") from an August 4, 2023 final agency decision ("FAD") that found the Agency was in compliance with the terms of the settlement agreement into which the parties entered. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405. For the following reasons the Commission MODIFIES the FAD.

**ISSUE PRESENTED**

Whether the Agency substantially complied with the January 27, 2022 Settlement Agreement between Complainant and Management.

**BACKGROUND**

During the relevant time period, Complainant was employed by the Agency as a Mail Handler, 04, in Louisville, Kentucky.

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

On January 27, 2022, Complainant and the Agency entered into a negotiated, binding settlement agreement ("Agreement") to resolve a discrimination complaint that Complainant raised with an EEO Counselor.

The Agreement, signed by Complainant, Complainant's representative, and a Supervisor, Distribution Operations, EAS-17 ("Supervisor" or, as referenced in the Agreement, "Management") includes the following stipulations:<sup>2</sup>

1. Management will designate a board and post important information, including upcoming job details from daily service talks.
2. Management will devise a plan to complete the implementation of the local memorandum and ensure that all mail handlers are trained junior qualified up within 120 days.

On April 28, 2023, Complainant notified the Agency in writing that it was in breach of the Agreement and requested that her underlying EEO complaint be reinstated for further processing. Specifically, Complainant alleged:

I continue to be singled-out/targeted and have my seniority rights violated by management. April 2023 I was approached by management to fulfill the Dock Tech position. Management has failed to designate a board & post important information, including upcoming Job details from daily service talks nor did management comply within 120 days to train junior qualified up as Dock Techs.

The Agency initiated an investigation of Complainant's breach notice. The record contains signed statements from Supervisor dated May 1, 2023 and June 1, 2023, and from Complainant dated June 14, 2023. There are also grainy photographs of papers tacked to a bulletin board.

For Stipulation 1, both Complainant and Supervisor recounted that on May 21, 2023, Supervisor notified Complainant that a pinup board near the time clock, which contains weekly schedules, vacation schedules, and other information, had been designated for posting important information.

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<sup>2</sup> The Agreement also stipulated that "Management will provide [Complainant] with a copy of the 1723 Form from December 18, 2021," however both parties agree that Supervisor complied with this stipulation.

Supervisor stated that job detail opportunities are only offered once a year, and are posted from late November through Mid-December.

For Stipulation 2, Supervisor stated that prior to Complainant's EEO action, a plan to provide all mail handlers with 7 days of dock training to become junior qualified up. The plan was revised on January 22, 2022. He asserted that "A plan for implementation of [the] memorandum and to ensure all mail handlers are trained has been implemented, which is an ongoing process. Training is conducted according to the availability of a Dock Tech job trainer and the employees to be trained." Supervisor explained that some of the employees who completed training have since left the Agency or changed crafts or tours. He identified 4 junior mail handlers who have left the Agency and 7 Mailhandlers who were trained but retired or moved to another tour or craft. He also states that there are 9 Mailhandlers who are "Qualified Terminal Dock Techs," in the Terminal.

In a supplemental statement, Supervisor explained that there was no standard operating procedure for the Dock Tech Position. A Certified trainer must meet with the Mailhandler (trainee) to train them on the Dock Tech position (providing specific duties such as scanning and tracking loads, fork lift and other equipment). The trainee is proved with 3 to 7 days (sometimes longer) to qualify, then a Certified Trainer will sign off on it. Supervisor listed 9 Mailhandlers who all were certified and worked Tour 2, which he stated was Complainant's shift.

On July 24, 2023, the Agency's EEO Compliance and Appeals Office, Field Operations, issued a FAD, finding breach of the Agreement where Supervisor failed to notify Complainant about the location of the designated board. The Final Determination properly declined to address Complainant's allegations that Management continues to disregard her seniority, singles her out, and continues to assign her expediter tasks because they fell outside the scope of the Agreement. The Agency erroneously advised Complainant to contact Management regarding her claims that were not addressed (as opposed to an EEO Counselor).

On August 4, 2023, the Agency's EEO Compliance and Appeals Office, Region 3, issued an Amended FAD. The Agency acknowledged that Supervisor failed to comply within the 120 day time frame specified in the Agreement.

However, the Agency found that it was not in breach of the Agreement because Supervisor corrected the breach of Stipulation 1 within 35 days of receipt of Complainant's Breach Notice in accordance with 29 C.F.R. 1614.504(b), and Supervisor demonstrated substantial compliance with Stipulation 2. The Agency also stated that Complainant set forth no evidence to indicate that Supervisor's delay in compliance with the Agreement was intentional. Additionally, the Agency properly identified Complainant's additional allegations as new claims of discrimination and instructed Complainant to initiate a new EEO complaint if she wanted to pursue them.

#### CONTENTIONS ON APPEAL

Complainant contends that the Agency breached the Agreement when Management failed to complete the stipulated actions by May 27, 2022, which is 120 days after the parties entered the Agreement. Complainant contends that the Agency continues to be in breach of the Agreement because mailhandlers with less seniority than her have not been Dock Tech Qualified, nor do they have an anticipated date to be trained and qualified. She asserts that by approaching her to work as Dock Tech, Management demonstrated that it had yet to comply with the Agreement. She also asserts that Supervisor's failure to inform her when and where he posted the designated board for Stipulation 1 constituted breach.

Complainant further contends that the Agency's investigation was insufficient to render a determination on whether breach occurred. Specifically, Complainant states that the Agency's investigator failed to address "the reason Management deliberately did not post a board from February 2022 through April 2023," and "the reason Management deliberately delayed having junior mailhandlers Dock Tech qualified." Also, in light of Supervisor's proffered list of trained/qualified Dock Techs, Complainant contends that the investigator should have asked "why was management still approaching [Complainant] to fulfill this job."

Adding to the alleged deficiencies in the record, Complainant contends that Supervisor provided misleading responses to the investigator's questions about Dock Tech training. Specifically, Supervisor omitted the names of junior mailhandlers, and included the names of individuals who received training but had higher seniority than Complainant. Complainant notes that the Agreement concerns training junior mailhandlers.

The Agency contends that it is not in breach of the Agreement, citing Supervisor's testimony in the investigative record.<sup>3</sup> The Agency did not respond to Complainant's contentions about deficiencies in the investigative record and the misleading nature of Supervisor's responses.

#### STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to *de novo* review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

#### ANALYSIS

EEOC Regulation 29 C.F.R. § 1614.504(a) provides that any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. The Commission has held that a settlement agreement constitutes a contract between the employee and the Agency, to which ordinary rules of contract construction apply. See Herrington v. Dep't of Def., EEOC Request No. 05960032 (Dec. 9, 1996). The Commission has further held that it is the intent of the parties as expressed in the contract, not some unexpressed intention that controls the contract's construction. Eggleston v. Dep't of Veterans Affairs, EEOC Request No. 05900795 (Aug. 23, 1990). In ascertaining the intent of the parties with regard to the terms of a settlement agreement, the Commission has generally relied on the plain meaning rule. See Hyon O. v. United States Postal Serv., EEOC Request No. 05910787 (Dec. 2, 1991).

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<sup>3</sup> The Agency also contends that Complainant's breach allegation should be dismissed as untimely pursuant to 29 C.F.R. § 1614.504(a), because Complainant was aware of the Agency's failure to perform the terms of the Agreement over 30 days prior to notifying the Agency of the breach. The Agency failed to address timeliness in its Final Decisions, thereby depriving Complainant a fair opportunity to rebut this contention on appeal. Therefore the Commission will not dismiss this matter for untimely notice of breach.

This rule states that if the writing appears to be plain and unambiguous on its face, its meaning must be determined from the four corners of the instrument without resort to extrinsic evidence of any nature. See Montgomery Elevator Co. v. Building Eng'g Servs. Co., 730 F.2d 377 (5th Cir. 1984); Complainant v. United States Postal Serv., EEOC Appeal No. 0120140143 (Feb. 20, 2014).

### *Substantial Compliance and Cure*

The Commission has found substantial compliance with the terms of a settlement agreement where agencies have committed, in good faith, a technical breach of a provision of the agreement which did not undermine its purpose or effect. The Commission has also found that the failure to satisfy a time-frame specified in a settlement agreement does not prevent a finding of substantial compliance of its terms, especially when all required actions were subsequently completed. See Hoyland v. Dep't of the Navy, EEOC Appeal No. 0120103271 (Dec. 2, 2010) citations omitted.

Pursuant to EEOC Regulation 29 C.F.R. § 1614.504(b), an agency has 35 days from the receipt of a complainant's allegation of breach to resolve the matter. One purpose of requiring complainants to notify the agency of alleged noncompliance is to provide the agency with an opportunity to cure any breach that has occurred. See Grant v. Dep't of Health & Human Serv., EEOC Appeal No. 012000759 (Apr. 24, 2000).

The Agency found that even if it failed to comply with the 120 day time frame provided in the Agreement, it demonstrated substantial compliance with Stipulation 1 and Stipulation 2.

### Stipulation 1

The record does not specify when Supervisor designated the pinup board near the time clock for "information such as upcoming job details from daily service talks," per Stipulation 1. Assuming he failed to do so within the 120 day time frame provided in the Agreement, Supervisor demonstrated that he complied with Stipulation 1 by May 23, 2023, which is within 35 days of receipt of Complainant's breach notice.

Complainant has not identified a specific obligation within Stipulation 1 that the Agency failed to meet once it cured he breach.

To the extent Complainant alleges that the Agency breached the Agreement because Supervisor did not notify her about the location of the board in Stipulation 1, we find nothing in the plain language of the Agreement obligating the Agency to provide such notice. If Complainant interpreted Stipulation 1 as mandating that the Agency notify her when and where Supervisor designated the board, such interpretation should have been reduced to writing as part of the Agreement, and in the absence of a writing cannot be enforced. See Carter v. Dep't of the Army, EEOC Appeal No. 01985009 (Jul. 2, 1999) citing Jenkins-Nye v. Gen. Servs. Admin., EEOC Appeal No. 019851903 (Mar. 4, 1987).

The Agency demonstrated substantial compliance with Stipulation 1, because in addition to curing the breach within 35 days of notice, Complainant has not shown that she suffered harm from the Agency's delay in compliance. See Choudhary v. United States Postal Serv., EEOC Appeal No. 0120071396 (July 25, 2007). Additionally, Complainant has not provided evidence to support her assertion that Supervisor acted in bad faith by deliberately delaying compliance with Stipulation 1.

### Stipulation 2

Complainant's contentions on appeal amount to an argument that Supervisor negotiated and/or implemented the Agreement in bad faith. Specifically, she argues that Supervisor's failure to meet the 120 day deadline in Stipulation 2 was "deliberate" and caused her harm (continued assignment to Dock Tech duties). Further, Supervisor's failure to meet the 120 day deadline undermined the purpose or effect of the Agreement because Supervisor continues to assign Complainant to Dock Tech work even when other mailhandlers with less seniority are available.

The Commission has previously found breach for bad faith where an agency's implementation of a settlement agreement "undermined the purpose or effect of the Agreement." See Verdell A. v. Dep't of Homeland Sec., EEOC Appeal No. 0120152922 (Feb. 23, 2016) (bad faith found where the complainant was transferred, per a settlement agreement, her supervisors were transferred to the same office shortly afterward, and the evidence showed that the "parties to the negotiation were aware that Complainant's only purpose in entering the Agreement was to leave the chain of command of her supervisors" and the Agency likely knew or should have known at the time of the negotiation that complainant's supervisors might be transferred to her new office) citing Dupuich v. Dep't of the Army, EEOC Appeal No. 0120073901 (Nov. 2, 2007) (where settlement agreement

language required Agency to expunge documents from personnel files, but did not specifically prohibit the Agency from retaining copies, the Commission found that leaving copies of the documents out on a desk "defeated the purpose of the agreement and is evidence of bad faith"), Todd v. Soc. Sec. Admin., EEOC Request No. 05950169 (Jun. 12, 1997).

Nothing in the plain language of the Agreement prohibits Supervisor from assigning Complainant to work as Dock Tech. However, the "purpose or effect" of Stipulation 2 was to qualify mailhandlers with less seniority than Complainant to work as Dock Techs, so that Complainant would no longer be assigned Dock Tech responsibilities when another mailhandler with less seniority was available. Supervisor, as a party to the Agreement was aware of this purpose, as Complainant's underlying complaint alleged that he consistently assigned her Dock Tech work despite her seniority and the availability of junior mailhandlers.

We cannot determine whether the Agency substantially complied with Stipulation 2 because the Agency has not provided sufficient evidence that it took all of the required actions under Stipulation 2. See Dina F. v. United States Postal Serv., EEOC Appeal No. 2021001488 (Mar. 5, 2021) (substantial compliance not established where the agency failed to provide evidence that it conducted or scheduled safety talks and bi-weekly meetings per a settlement agreement). Moreover, Complainant has raised concerns about bad faith that cannot be resolved by the evidence provided.

### *Inadequate Record*

Although it is ultimately Complainant's burden to prove that a breach has occurred, the Commission has held that the "agency has the burden of providing evidence and/or proof to support its final decisions." O'Malley v. United States Postal Serv., EEOC Appeal No. 0120064540 (Mar. 12, 2008) citing Ericson v. Dep't of the Army, EEOC Request No. 05920623 (Jan. 14, 1993). Thus, a FAD addressing a complainant's allegation of breach must be supported by persuasive independent evidence in the record. O'Malley. Such evidence must address, in detail, the complainant's specific allegations, and explain why and how the agency reached its conclusion that no breach occurred. Id., Ziton v. United States Postal Serv. EEOC Appeal No. 0120103435 (May 16, 2012) (breach claim remanded for supplemental investigation where the agency did not provide any documentary evidence to support its finding that no breach occurred, and failed to address the complainant's specific arguments).

The Commission has also required the agency to submit supporting evidence with respect to how it performs its obligations under a settlement agreement. See Ruiz v. United States Postal Serv., EEOC Appeal No. Appeal No. 0120091682 (Jun. 9, 2010). Evidence that would allow for a determination on whether a breach occurred may include, *but is not limited to*, affidavits from relevant personnel who can address the breach allegation in detail, and clearly explain how the agency determined that it was not in breach. *Id.*

Although the Agency explained why and how it reached its conclusion that no breach occurred, the Agency based its conclusion entirely on Supervisor's testimony. The plain language of Stipulation 2 states that Management agreed to "devise a plan to complete the implementation of the *local memorandum*...within 120 days." Emphasis added. The Agency has not provided a copy of this memorandum in the record. Without information about the requirements on the memorandum, we cannot make a reasoned determination about Supervisor's performance of the Agreement.

Moreover, Supervisor's testimony itself fails to fully address Stipulation 2. Supervisor does not identify "all mailhandlers" as referenced in the plain language of the Agreement, nor does he provide the training status and seniority for these mailhandlers. As Complainant aptly noted on appeal, whether the employee is a "junior" mail handler is relevant to demonstrating compliance with the Agreement. Despite these evidentiary deficiencies, the Agency failed to provide alternative or supporting evidence, such as a list of the mailhandlers subject to the Agreement, their training status and expected completion date. We cannot discern from the information provided the extent to which Supervisor completed his obligation under Stipulation 2 of the Agreement without more explanation for the term "all mailhandlers."

On appeal, Complainant set forth sufficient explanation, particularly her assertion about Supervisor's "misleading" responses, to call into question the Agency's unsupported conclusion that Supervisor did not act intentionally (or in bad faith). Further investigation is necessary regarding Supervisor's role in the Agency's failure to comply with the 120 day time frame in Stipulation 2. See Todd v. Soc. Sec. Admin., EEOC Request No. 05950169 (Jun. 12, 1997), Dupuich v. Dep't of the Army, EEOC Appeal No. 0120073901 (Nov. 2, 2007). For instance, to what extent was Supervisor responsible for scheduling Dock Tech training, notifying mailhandlers about the training, locating or certifying Dock Tech trainers, and determining the requirements for a mailhandler to be considered Dock Tech "qualified."

In addition, the evidence gives rise to questions of whether Supervisor performed his obligation under the Agreement in a manner that undermined the purpose or effect of Stipulation 2. In other words did the performance of the Agreement result in a decrease in the number of instances Complainant was assigned Dock Tech duties when junior mail handlers were available. If not, was it due to the manner in which Supervisor performed his obligation under the Agreement (bad faith). At this time, the record lacks sufficient evidence that would establish whether Supervisor *reasonably* performed his obligations under Stipulation 2 within a reasonable amount of time to constitute substantial compliance.

### *Subsequent Acts of Discrimination*

Pursuant to 29 C.F.R. § 1614.504(c), allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints. "Subsequent acts of discrimination" include incidents that are not expressly addressed within the settlement agreement, or allegations of retaliation for EEO activity related to or arising from the settlement agreement. See Davina W. v. Soc. Sec. Admin., EEOC Appeal No. 2022003512 (Oct. 19, 2022).

As previously discussed, the Agency properly identified Complainant's allegations that Management singled her out, targeted her, disregarded her seniority, and continued to approach her to perform Dock Tech duties, as new claims of discrimination. As such, they cannot be adjudicated in this decision. To pursue a new claim of discrimination, Complainant must contact an EEO Counselor pursuant to 29 C.F.R. § 1614.105.

### CONCLUSION

Accordingly, the Commission AFFIRMS the Agency's finding of substantial compliance for Stipulation 1 only.

The Agency's decision finding substantial compliance for Stipulation 2 is REVERSED. We hereby REMAND this matter to the Agency for further processing in accordance with this Decision and the order below.

ORDER (E0224)

Within **forty-five (45) calendar days** from the date this decision is issued, the Agency shall supplement the record with evidence regarding whether Supervisor/Management substantially complied with Stipulation 2 of the January 27, 2022 Agreement, and issue a new final determination, with appeal rights to this Commission, on the settlement breach claim.

A copy of the additional evidence obtained pursuant to this Order and a copy of the new final decision on the breach claim, with appeal rights to the Commission, shall be sent to the Compliance Officer as referenced herein.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(f).

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0124)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by their full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

#### RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.**

The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director  
Office of Federal Operations

February 10, 2025

Date