

IV. Regulatory Flexibility Act Certification

47. The Regulatory Flexibility Act of 1980 (RFA) <sup>70</sup> generally requires a description and analysis of rulemakings that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business. <sup>71</sup> The Small Business Administration has established size standards, for the types of affected entities (noted in the table above), that range from a maximum of 250–1,000 employees for an entity and its affiliates to be considered small.

48. The Commission estimates the total industry reduction in burden for all entities (large and small) to be 42,907.44 hours (or approximately 18 hours (rounded) per response). The Commission believes that this will reduce burden and cost for all affected entities.

49. Based on the information above, the Commission certifies that the reductions will not have a significant impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required.

V. Environmental Analysis

50. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. <sup>72</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended. <sup>73</sup> The actions approved here fall within this categorical exclusion in the Commission's regulations.

VI. Document Availability

51. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

52. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading.

To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

53. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at [public.reference@ferc.gov](mailto:public.reference@ferc.gov).

VII. Effective Date and Congressional Notification

54. This final rule is effective December 14, 2020. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is being submitted to the Senate, House, and Government Accountability Office.

By direction of the Commission.

Issued: September 17, 2020.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Note:** the following Appendix will not appear in the *Code of Federal Regulations*.

Appendix  
Commenters

| Abbreviation             | Commenter   |
|--------------------------|---|
| NERC .....               | North American Electric Reliability Corporation.  |
| Trade Associations ..... | American Public Power Association, Edison Electric Institute, Large Public Power Council, National Rural Electric Cooperative Association, Transmission Policy Study Group. |
| Bonneville .....         | Bonneville Power Administration.  |
| WAPA .....               | Western Area Power Administration.  |
| Appelbaum .....          | Jonathan Appelbaum.   |

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1601 and 1626

RIN 3046-AB07

Procedural Regulations Under Title VII, ADA, and GINA; Procedures—Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC or Commission) is amending its procedural regulations to explicitly provide for digital transmissions of documents, to clarify the process for deferral to state and local agencies, to update no cause determination procedures, and to correct typographical and textual errors.

**DATES:** This final rule is effective on November 16, 2020.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Oram, Assistant Legal Counsel, (202) 663-4681 (voice) or

[kathleen.oram@eeoc.gov](mailto:kathleen.oram@eeoc.gov); Erin Norris, Senior Attorney, Office of Legal Counsel, (980) 296-1286 or [erin.norris@eeoc.gov](mailto:erin.norris@eeoc.gov).

**SUPPLEMENTARY INFORMATION:** On February 22, 2019 (84 FR 5624), the Equal Employment Opportunity Commission (EEOC) published a notice of proposed rulemaking (NPRM) in the **Federal Register** seeking public comment on proposed revisions to the EEOC's procedural regulations for charges of employment discrimination. The revisions are intended to serve several purposes: First, they recognize

<sup>70</sup> 5 U.S.C. 601-612.

<sup>71</sup> 13 CFR 121.101.

<sup>72</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486,

52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30.783 (1987).

<sup>73</sup> 18 CFR 380.4(a)(2)(ii).

the increased reliance upon technology by the EEOC and its stakeholders by explicitly providing for digital transmission of documents; second, they clarify procedures for deferral to state fair employment practices agencies in particular circumstances to alleviate confusion regarding filing deadlines; and third, they streamline the process for issuing dismissals of charges by providing for delegation of the authority to issue such dismissals, as well as clarifying the import of the dismissal determinations. The revisions also serve to correct errors and update terminology. Public comments were due in response to the NPRM on or before April 23, 2019.

The EEOC received 19 comments in response to the NPRM from individuals, stakeholder groups, and a union. The comments are available for review at the Federal eRulemaking Portal at <http://www.regulations.gov>. Some comments expressed general support for the proposed revisions. Others offered specific feedback on one or more of the proposed regulatory changes or suggested further revisions. A few were off-topic. Upon review and consideration of the comments, the EEOC has made some revisions to what was proposed and/or discussed in the NPRM, as discussed below.

#### **Digital Submissions of Charge Documents**

The revisions to the EEOC's procedural regulations are not creating a new system of digital transmission of charge-related documents. The system is already operational and is representative of the Commission's commitment to expanding its use of technology and improving its service to the public. This digital charge system was piloted in 2015, initially allowing respondents to submit certain documents and communicate with the EEOC through the online system. Since that time, additional functionality was gradually included in the digital system, through which parties are now able to communicate with the agency and submit documents. In November 2019, the EEOC was awarded \$4.4 million by the government's Technology Modernization Fund to further modernize the agency's charge and case management system.

Several commenters expressed support for the revisions explicitly providing for digital submission of charge documents, noting benefits including ease of access, ease of communication, increased efficiency, and reduction of paper. Another commenter noted that the revisions merely update the regulations to reflect

the EEOC's current practice with respect to digital exchange of documents. While the remaining commenters also generally supported the use of digital technology, they expressed some concerns about implementation of the system and how it works in practice. A few of those concerns are addressed below.

Commenters raised concerns about the confidentiality and/or data security of the information transmitted to the EEOC through digital means. One commenter questioned the manner in which the EEOC may use such information, and another stressed the need for information received digitally to be kept confidential and protected from breach. The EEOC is committed to preserving the confidentiality of charge-related information, and is bound by the strict confidentiality requirements of Title VII of the Civil Rights Act of 1964 (Title VII), which make it unlawful for Commission employees to make public any charge-related information prior to the institution of a lawsuit involving the information.<sup>1</sup> Further, the EEOC ensures that its data security practices are in compliance with the Federal Information Security Modernization Act.<sup>2</sup> Information received through digital means in connection with an investigation of a charge of discrimination gets the same stringent confidentiality protections as does paper-based information, and the EEOC will continue to ensure that its digital charge system meets all federal data security standards.

The EEOC received a comment requesting information on whether the EEOC maintains records of when documents housed in the digital charge system are transmitted or accessed by the parties or EEOC staff. Documents are not transmitted via email. A charging party will receive an email notifying him or her that an important document is available in the digital charge system, and the charging party must access the system using his or her unique login information to retrieve that document. The system maintains a record of when a document is accessed, and the EEOC is able to identify whether a charging party has downloaded a particular document. If a charging party or respondent does not log in and access critical documents, such as notice of the charge within a reasonable period of time, the EEOC will mail a hard copy of the notice to the parties.

In response to a concern that not all charging parties have access to the technology necessary to avail

themselves of the digital charge system, or that the access they may have is limited to resources available at libraries or other public spaces, the agency notes that use of the digital charge system by charging parties is not compulsory. While the EEOC encourages parties to take advantage of the benefits of a digital charge system, we recognize that some may not be able to use a digital system. Potential charging parties may continue to file charges through the mail or in person at an EEOC office, even though the online system is the preferred and primary method for charge filing.

This final rule makes no changes to the above practice itself, but amends portions of the EEOC's regulations in parts 1601 and 1626 to account for the practice by explicitly providing for digital transmission of charge-related documents.

#### **Clarity of the Communication Closing an Investigation and Delegation**

The EEOC amends §§ 1601.18(a) and 1601.19(a) to serve two purposes: (1) To more clearly communicate to charging parties and respondents the import of the EEOC's decision to close a charge investigation; and (2) to bring greater efficiencies to charge closures by permitting further delegation. The agency received comments on both points.

#### *Clarity of Communication*

The EEOC received positive feedback on the proposed clarifications to the regulatory language on dismissals. Therefore, this final rule amends § 1601.18(a) to add language clearly communicating that a dismissal includes notice of the charging party's statutory right to file a lawsuit. This final rule also amends § 1601.19(a) to add language clarifying the meaning and import of the EEOC's issuance of a "no cause" determination that such a dismissal does not mean the claims have no merit.

To be clear, the regulation at § 1601.19 is titled: No cause determinations: Procedure and authority. The regulation at § 1601.19(a) refers to the Commission issuing a "letter of determination" after the Commission has found "that there is not reasonable cause to believe that an unlawful employment practice has occurred or is occurring . . . .". Further, the regulation provides that the letter of determination "shall inform the person claiming to be aggrieved . . . of the right to sue in Federal district court within 90 days of receipt of the letter of determination. To effectuate this "letter of determination" the EEOC uses a

<sup>1</sup> See 42 U.S.C. 2000e-8(e).

<sup>2</sup> See 44 U.S.C. 3541, *et seq.*

document called the “Dismissal and Notice of Rights,” also informally known as a Notice of Right to Sue. The complete language of the Dismissal and Notice of Rights document is not part of the regulation at § 1601.19(a).

The current Dismissal and Notice of Rights document contains the following reason (among others) for dismissal:

“The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.”

In common parlance, this reason for closure of an investigation is referred to as a “no cause determination.”

In the NPRM, in addition to the amendment of the regulation at § 1601.19(a), the EEOC specifically sought comment on a proposed change to the above language of the Notice. The EEOC proposed to revise the reason for dismissal in the Notice as follows:

“The EEOC issues the following determination: Based on its investigation, the EEOC has sufficient information to conclude that further investigation is not likely to result in a cause finding. This does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any issues that might be construed as having been raised by this charge.”

Several commenters criticized the current and proposed language that said “Based on its investigation” as “misleading” given the wide variation in the extent of EEOC investigations prior to closure. Others criticized the statement that the EEOC “has sufficient information” and asserted that many investigations are closed based only on review of a charge. One commenter noted that the proposed changes would cause charging parties not to seek legal assistance because of the EEOC’s conclusion that further investigation would be futile. Commenters recommended clearer language to communicate that the EEOC had decided not to proceed further with its investigation and was dismissing the charge without commenting on the merits of the charge or on what further investigation could reveal. One commenter favored the proposed language, viewing it as clarification that the dismissal does not mean that the Commission has made a determination in favor of the employer.

The EEOC appreciates these thoughtful comments and has decided

to revise its Dismissal and Notice of Rights to address these concerns. The revised notice will say:

“The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.”

These revisions make the language of the Dismissal and Notice of Rights consistent with the amendment to § 1601.19(a). These revisions to the rule and the Dismissal and Notice of Rights are intended to ensure that charging parties, respondents, and courts understand that even after the EEOC has decided not to proceed further with its investigation, private proceedings or litigation may lead to court findings of discrimination or settlements for the charging parties.

Following the publication of this rule, the EEOC’s Office of Field Programs will implement the changes to the Dismissal and Notice of Rights.

#### *Delegation of Authority To Issue “Dismissal and Notice of Rights”*

The EEOC received several comments expressing concern or seeking clarification as to what EEOC employees could serve as designees under the new delegation authority for issuance of the “Dismissal and Notice of Rights.” Commenters suggested that allowing investigators to issue Dismissal notices may eliminate independent review of a charge by more senior officials. The EEOC is mindful of this concern and will maintain internal controls to ensure that EEOC personnel selected as designees for this purpose have the requisite experience to perform this function. Following publication of this rule, the EEOC’s Office of Field Programs expects to issue guidance to the field offices on this issue.

#### **Miscellaneous Updates**

Two commenters questioned the revisions proposed in section 1626.8, asking for an explanation of the rationale behind the changes. The EEOC notes that the changes, which describe the required contents for a charge to be made on behalf of another person provide that the aggrieved individual on whose behalf the charge is made may request that his or her identity remain confidential, do not deviate from established Commission policy. Section

1626.3 of the EEOC’s regulations have expressly defined “charge” to include a statement filed with the EEOC “on behalf of an aggrieved person” since that section of the regulations were originally adopted in 1983. Section 2–V.B. of the Threshold Issues section of the EEOC’s Compliance Manual also notes that charges under the statutes the EEOC enforces, including the ADEA, may be made on behalf of another person, which allows the aggrieved individual to remain anonymous while the EEOC is investigating the charge.<sup>3</sup> The revisions to section 1626.8 are meant to reflect this longstanding policy and to make the EEOC’s procedural regulations in parts 1601 and 1626 consistent with each other.

While no changes were made to the proposed revisions based upon the public comments received in response to the NPRM, the final rule does reflect a few additional corrections, minor wording changes, and terminology updates that do not affect the substantive requirements of the regulation. These changes are located in the following sections: § 1601.3(a) and (b) Other definitions; § 1601.8 Where to make a charge; § 1601.16(b)(1) Access to and production of evidence; testimony of witnesses; procedure and authority; § 1601.18(b) Dismissal: Procedure and authority; § 1601.19(b) No cause determinations: Procedure and authority; § 1601.20(a) Negotiated settlement; § 1601.21(b) and (d) Reasonable cause determination: Procedure and authority; § 1601.24(b) Conciliation: Procedure and authority; § 1601.28(d) Notice of right to sue: Procedure and authority; § 1601.30(a) Notices to be posted; § 1601.70(b) and (e) FEP agency qualifications; § 1601.71(c) FEP agency notification; § 1601.75(b)(2) Certification of designated FEP agencies; § 1601.92 Contents of request; where to file; § 1626.5 Where to submit complaints and charges; § 1626.20(a) and (c) Procedure for requesting an opinion letter; and § 1626.21 Effect of opinions and interpretations of the Commission.

#### **Regulatory Procedures**

##### *Executive Orders 12866 and 13771*

This is not a “significant regulatory action” within the meaning of section 3 of Executive Order 12866. This proposed rule is also not subject to Executive Order 13771, Reducing Regulation and Controlling Regulatory Cost. Pursuant to guidance issued by the

<sup>3</sup> See *EEOC Compliance Manual Section II, Threshold Issues* Sec. 2–V.B. and FN 226. Threshold Issues is available at <https://www.eeoc.gov/policy/docs/threshold.html#2-V-B>.

Office of Management and Budget's Office of Information and Regulatory Affairs (April 5, 2017), an "E.O. 13771 regulatory action" is defined as "[a] significant regulatory action as defined in Section 3(f) of E.O. 12866 . . . ."

#### *Paperwork Reduction Act*

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

#### *Regulatory Flexibility Act*

The Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it primarily affects the EEOC. To the extent that it affects small entities by allowing for electronic transmission of documents, it will save resources of those entities.

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

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Congressional Review Act*

This action concerns agency organization, procedure, or practice that 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 Parts 1601 and 1626**

Administrative practice and procedure, Equal Employment Opportunity.

For the Commission.

**Janet Dhillon,**  
*Chair.*

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission amends 29 CFR parts 1601 and 1626 as follows:

#### **PART 1601—PROCEDURAL REGULATIONS**

■ 1. The authority citation for part 1601 continues to read as follows:

**Authority:** 42 U.S.C. 2000e to 2000e-17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff-11.

■ 2. Amend § 1601.2 by revising the second sentence to read as follows:

**§ 1601.2 Terms defined in title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act.**

\* \* \* The term *disability* shall have the meaning set forth in section 3 of the Americans with Disabilities Act, as amended. \* \* \*

■ 3. Amend § 1601.3

■ a. In paragraph (a) by removing the words "term *Commission*" and adding in their place "terms *EEOC* or *Commission*" and by removing the words "and surrounding Maryland";

■ b. By redesignating paragraph (b) as paragraph (c); and

■ c. By adding a new paragraph (b).

The addition reads as follows:

**§ 1601.3 Other definitions.**

\* \* \* \* \*

(b) For the purposes of this part, the terms *file*, *serve*, *submit*, *receive*, *transmit*, *present*, *send*, *issue*, and *notify* shall include all forms of digital transmission.

\* \* \* \* \*

■ 4. Revise § 1601.4 to read as follows:

**§ 1601.4 Vice Chair's functions.**

The member of the Commission designated by the President to serve as Vice Chair shall act as Chair in the absence or incapacity of the Chair or in the event of a vacancy in that office.

■ 5. Amend § 1601.5 by revising the section heading and the sixth and eighth sentences to read as follows:

**§ 1601.5 District; field; area; local authority.**

\* \* \* The term "field director" shall refer to that person designated as the Commission's chief officer in each field office. \* \* \* The term "area director" shall refer to that person designated as the Commission's chief officer in each area office. \* \* \*

■ 6. Amend § 1601.7 by revising the fourth sentence of paragraph (a) and revising paragraph (b) to read as follows:

**§ 1601.7 Charges by or on behalf of persons claiming to be aggrieved.**

(a) \* \* \* The person making the charge, however, must provide the Commission with the name and contact information of the person on whose behalf the charge is made. \* \* \*

(b) The person claiming to be aggrieved has the responsibility to provide the Commission with notice of any change in contact information so

that the Commission may communicate with him or her during the Commission's consideration of the charge.

■ 7. Revise § 1601.8 to read as follows:

**§ 1601.8 Where to make a charge.**

A charge may be made using the EEOC's designated digital systems, in person, by facsimile, or by mail to any EEOC office or to any designated representative of the Commission. The addresses of the EEOC's offices appear at [www.eeoc.gov](http://www.eeoc.gov).

■ 8. Amend § 1601.12 by revising paragraphs (a)(1) and (2) to read as follows:

**§ 1601.12 Contents of charge; amendment of charge.**

(a) \* \* \*

(1) The full name and contact information of the person making the charge except as provided in § 1601.7;

(2) The full name and contact information of the person against whom the charge is made, if known (hereinafter referred to as the respondent);

\* \* \* \* \*

■ 9. Amend § 1601.13:

■ a. By revising paragraphs (a)(2), (a)(3) introductory text, (a)(4) introductory text, and (a)(4)(i)(A) and (B);

■ b. In the second sentence of paragraph (a)(4)(ii)(B) by removing the word "filing" and adding in its place the word "filed"; and

■ c. In paragraph (b)(2)(iii) by removing the word "certified" and adding in its place the word "registered".

The revisions read as follows:

**§ 1601.13 Filing; deferrals to State and local agencies.**

(a) \* \* \*

(2) A jurisdiction having a FEP agency without jurisdiction over the statutory basis alleged in the charge (e.g., an agency that does not have enforcement authority over sex discrimination) is equivalent to a jurisdiction having no FEP agency. Charges over which a FEP agency has no jurisdiction over the statutory basis alleged are filed with the Commission upon receipt and are timely filed if received by the Commission within 180 days from the date of the alleged violation.

(3) Charges arising in jurisdictions having a FEP agency with jurisdiction over the statutory basis alleged in the charge are to be processed in accordance with the Commission's deferral policy set in paragraphs (a)(3)(i) through (iii) and the procedures in paragraph (a)(4) of this section.

\* \* \* \* \*

(4) The following procedures shall be followed with respect to charges which arise in jurisdictions having a FEP agency with jurisdiction over the statutory basis alleged in the charge:

(i) \* \* \*

(A) The document shall reflect the date and time it was received by the EEOC.

(B) The original document shall be transmitted by registered mail, return receipt requested, to the appropriate FEP agency, or by any other means acceptable to the FEP agency. State or local proceedings are deemed to have commenced on the date such document is transmitted.

\* \* \* \* \*

■ 10. Amend § 1601.14 by revising the first two sentences of paragraph (a) to read as follows:

**§ 1601.14 Service of charge or notice of charge.**

(a) Within ten days after the filing of a charge in the appropriate Commission office, the Commission shall serve respondent the charge by digital transmission, by mail, or in person, except when it is determined that providing the charge would impede the law enforcement functions of the Commission. Where the charge is not provided, the respondent will be served with a notice of the charge within ten days after the filing of the charge. \* \* \*

\* \* \* \* \*

■ 11. Amend § 1601.16:

■ a. By revising paragraph (b)(1); and  
■ b. In paragraph (d) by removing the word “Council” wherever it appears and adding in its place the word “Counsel”.

The revision reads as follows:

**§ 1601.16 Access to and production of evidence; testimony of witnesses; procedure and authority.**

\* \* \* \* \*

(b)(1) Any person served with a district director-issued subpoena who intends not to comply shall petition the issuing director to seek its revocation or modification. Any person served with a Commissioner-issued subpoena who intends not to comply shall petition the General Counsel to seek its revocation or modification. Petitions must be transmitted digitally or mailed to the issuing director at the address stated on the subpoena (or, if the subpoena was issued by a Commissioner, to the General Counsel) within five days (excluding Saturdays, Sundays, and Federal legal holidays) after service of the subpoena. Petitions to the General Counsel pertaining to subpoenas issued by a Commissioner may be transmitted digitally or mailed to 131 M Street NE,

Washington, DC 20507 and a copy of the petition shall also be served upon the issuing Commissioner.

\* \* \* \* \*

■ 12. Amend § 1601.18:

■ a. In the first sentence of paragraph (b) by removing “§ 1601.28(b)(2)” and adding in its place “§ 1601.28(b)(3)(ii)”;

■ b. By adding a sentence after the first sentence in paragraph (b); and

■ c. In the second sentence of paragraph (c) by adding “, or their designees,” after “Local Directors”.

The addition reads as follows:

**§ 1601.18 Dismissal: Procedure and authority.**

\* \* \* \* \*

(b) \* \* \* The dismissal shall include a notice of rights informing the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in Federal district court within 90 days of receipt of the determination. \* \* \*

\* \* \* \* \*

■ 13. Revise § 1601.19 to read as follows:

**§ 1601.19 No cause determinations: Procedure and authority.**

(a) Where the Commission completes its investigation of a charge and finds that there is not reasonable cause to believe that an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination, the Commission shall issue a determination to all parties to the charge indicating the finding. This determination does not mean the claims in the charge have no merit. The Commission’s determination shall be the final determination of the Commission, unless a final determination of no reasonable cause is vacated pursuant to § 1601.19(b). The determination shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in Federal district court within 90 days of receipt of the determination. The Commission hereby delegates authority to the Director of the Office of Field Programs, or upon delegation to the Director of Field Management Programs, and District Directors or upon delegation to Field Directors, Area Directors, or Local Directors, or their designees, except in those cases involving issues currently designated by the Commission for priority review, to issue no cause determinations.

(b) The Commission may on its own initiative reconsider a final determination of no reasonable cause and a director of the issuing office may,

on his or her own initiative, reconsider a final determination of no reasonable cause. If the Commission or the director of the issuing office decides to reconsider a final no cause determination, a notice of intent to reconsider shall promptly issue to all parties to the charge. If such notice of intent to reconsider is issued within 90 days of receipt of the final no cause determination, and the person claiming to be aggrieved or the person on whose behalf a charge was filed has not filed suit and did not request and receive a notice of right to sue pursuant to § 1601.28(a)(1) or (2), the notice of intent to reconsider shall vacate the determination and shall revoke the charging party’s right to bring suit within 90 days. If the 90-day suit period has expired, the charging party has filed suit, or the charging party has requested a notice of right to sue pursuant to § 1601.28(a)(1) or (2), the notice of intent to reconsider shall vacate the determination but shall not revoke the charging party’s right to sue within 90 days. After reconsideration, the Commission or a director of the issuing office shall issue a new determination. In those circumstances where the charging party’s right to bring suit within 90 days was revoked, the determination shall include notice that a new 90-day suit period shall begin upon the charging party’s receipt of the determination. Where a member of the Commission has filed a Commissioner charge, he or she shall abstain from making a determination in that case.

**§ 1601.20 [Amended]**

■ 14. Amend § 1601.20 by removing the word “theother” in paragraph (a) and adding in its place the words “the other”.

**§ 1601.21 [Amended]**

■ 15. Amend § 1601.21:

■ a. In paragraph (b) introductory text by removing the word “Except” and adding in its place the word “except”;

■ b. In the third sentence of paragraph (b)(1) by removing the words “had requested” and adding in their place the words “has requested”;

■ c. In paragraph (b)(1) by removing the words “90 day period” and adding in their place the words “90-day period”;

■ d. In paragraph (d) introductory text by removing the words “a copy of the determination” and adding in their place the words “the determination”; and

■ e. In paragraph (d)(1) by removing the words “90 day period” and adding in their place the words “90-day period” and by removing the words “had

received” and adding in their place the words “has received”.

#### § 1601.24 [Amended]

■ 16. Amend § 1601.24 by removing the word “processings” in paragraph (b) and adding in its place the word “proceedings”.

■ 17. Amend section 1601.28:

■ a. By removing footnote 1 from paragraph (c);

■ b. In the paragraph (d) subject heading by removing the words “right-of-sue” and adding in their place the words “right to sue” and in paragraph (d) introductory text by removing the word “subdivision” and adding in its place the word “subdivision”; and

■ c. By revising paragraph (e)(3).

The revision reads as follows:

#### § 1601.28 Notice of right to sue: Procedure and authority.

\* \* \* \* \*

(e) \* \* \*

(3) The charge;

\* \* \* \* \*

#### § 1601.30 [Amended]

■ 18. Amend § 1601.30 by removing the word “cusomarily” in paragraph (a) and adding in its place the word “customarily.”

■ 19. Amend § 1601.70:

■ a. By revising paragraph (a)(1); and

■ b. In paragraphs (b) and (e) by removing the word “Chairman” and adding in its place the word “Chair”.

#### § 1601.70 FEP agency qualifications.

(a) \* \* \*

(1) That the state or political subdivision has a fair employment practice law which makes unlawful employment practices based upon race, color, religion, sex, national origin, disability, or genetic information; and

\* \* \* \* \*

#### § 1601.71 [Amended]

■ 20. Amend § 1601.71 by removing the word “Chairman” wherever it appears in paragraph (c) and adding in its place the word “Chair”.

■ 21. Amend § 1601.75:

■ a. By revising paragraph (b)(2); and

■ b. In paragraph (c) by removing the word “cetification” and adding in its place the word “certification”.

The revision reads as follows:

#### § 1601.75 Certification of designated FEP agencies.

\* \* \* \* \*

(b) \* \* \*

(2) That the State or local designated FEP agency’s work product has been evaluated within the past 12 months by

State, Local, and Tribal Programs, Office of Field Programs, and found to be in conformance with the Commission’s Substantial Weight Review Procedures; and

\* \* \* \* \*

#### § 1601.76 [Amended]

■ 22. Amend § 1601.76 by removing the words “(EEOC Order 916)”.

#### § 1601.78 [Amended]

■ 23. Amend § 1601.78 in the introductory text by removing the words “(EEOC Order 916)”.

#### § 1601.92 [Amended]

■ 24. Amend § 1601.92 in the introductory text by removing the word “Chairman” and adding in its place the word “Chair”.

### PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

■ 25. The authority citation for part 1626 continues to read as follows:

**Authority:** Sec. 9, 81 Stat. 605, 29 U.S.C. 628; sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR 1978 Comp., p. 321.

■ 26. Amend § 1626.3:

■ a. By designating the text as paragraph (a);

■ b. In newly designated paragraph (a) by removing the words “For purpose of this part” and adding in their place the words “For the purposes of this part” and by removing the words “the Commission” and adding in their place the words “EEOC or Commission”; and

■ c. By adding paragraph (b).

The addition reads as follows:

#### § 1626.3 Other definitions.

\* \* \* \* \*

(b) For the purposes of this part, the terms *file*, *serve*, *submit*, *receive*, *transmit*, *present*, *send*, *issue*, and *notify* shall include all forms of digital transmission.

■ 27. Revise § 1626.5 to read as follows:

#### § 1626.5 Where to submit complaints and charges.

Complaints and charges may be made through the EEOC’s designated digital systems, in person, by telephone, by facsimile, or by mail to any EEOC office or any designated representative of the Commission. The current addresses of the EEOC’s offices appear at [www.eeoc.gov](http://www.eeoc.gov).

■ 28. Amend § 1626.7 by redesignating paragraphs (b)(1) through (3) as paragraphs (b)(2) through (4) and adding a new paragraph (b)(1) to read as follows:

#### § 1626.7 Timeliness of charge.

\* \* \* \* \*

(b) \* \* \*

(1) Charges filed digitally: Date of transmission;

\* \* \* \* \*

■ 29. Amend § 1626.8 by revising paragraphs (a)(1) and (2) and adding paragraphs (d) and (e) to read as follows:

#### § 1626.8 Contents of charge; amendment of charge.

(a) \* \* \*

(1) The full name and contact information of the person making the charge except as provided in § 1626.8(d) below;

(2) The full name and contact information of the person against whom the charge is made, if known (hereinafter referred to as the respondent);

\* \* \* \* \*

(d) A charge that any person has engaged in or is engaging in an unlawful employment practice within the meaning of the ADEA may be made by or on behalf of any person claiming to be aggrieved. A charge on behalf of a person claiming to be aggrieved may be made by any person, agency, or organization. The written charge need not identify by name the person on whose behalf it is made. The person making the charge, however, must provide the Commission with the name and contact information of the person on whose behalf the charge is made. During the Commission investigation, Commission personnel shall verify the authorization of such charge by the person on whose behalf the charge is made. Any such person may request that the Commission shall keep his or her identity confidential. However, such request for confidentiality shall not prevent the Commission from disclosing the identity to Federal, State or local agencies that have agreed to keep such information confidential. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests for such information.

(e) The person claiming to be aggrieved has the responsibility to provide the Commission with notice of a change in contact information so that he or she can be contacted when necessary during the Commission’s consideration of the charge.

■ 30. Amend § 1626.15:

■ a. By revising the last sentence of paragraph (c); and

■ b. In paragraph (e) by removing the words “the Field Directors” and adding in their place the words “Field

Directors, Area Directors, and Local Directors”.

The revision reads as follows:

**§ 1626.15 Commission enforcement.**

\* \* \* \* \*

(c) \* \* \* The signed agreement shall be sent to all the signatories thereto.

\* \* \* \* \*

**§ 1626.16 [Amended]**

■ 31. Amend § 1626.16 by removing the words “the Field Directors” in paragraph (b) and adding in their place the words “Field Directors, Area Directors, and Local Directors”.

**§ 1626.17 [Amended]**

■ 32. Amend § 1626.17 by removing the words “Title VII or the Americans with Disabilities Act (ADA),” in paragraph (a)(2) and adding in their place the words “title VII, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA)” and by removing the words “Title VII or the ADA” and adding in their place the words “title VII, the ADA, or GINA”.

**§ 1626.20 [Amended]**

■ 33. Amend § 1626.20:

■ a. In paragraph (a) introductory text by removing the word “Chairman” and adding in its place the word “Chair”; and

■ b. In paragraph (c) by removing “§ 1626.18” and adding in its place “§ 1626.21” and by removing “§ 1626.18(a)(1)” and adding in its place “§ 1626.21(a)(1)”.

**§ 1626.21 [Amended]**

■ 34. Amend section 1626.21 by removing “§ 1626.17” in paragraph (c) and adding in its place “§ 1626.20”.

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## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2200

#### Rules of Procedure

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Technical amendments.

**SUMMARY:** This document makes technical amendments to the final rule published by the Occupational Safety and Health Review Commission in the *Federal Register* on April 10, 2019, and corrected on August 30, 2019, and on October 4, 2019. That rule revised the procedural rules governing practice before the Occupational Safety and Health Review Commission.

**DATES:** Effective on October 15, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ron Bailey, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606-5410, by email at [rbailey@oshrc.gov](mailto:rbailey@oshrc.gov), or by mail at: 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.

**SUPPLEMENTARY INFORMATION:** OSHRC published revisions to its rules of procedure in the *Federal Register* on April 10, 2019 (84 FR 14554), and published corrections on August 30, 2019 (84 FR 45654), and October 4, 2019 (84 FR 53052). This document makes further technical amendments to the final rule.

#### List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

Accordingly, 29 CFR part 2200 is amended by making the following technical amendments:

#### PART 2200—RULES OF PROCEDURE

■ 1. The authority citation for part 2200 continues to read as follows:

**Authority:** 29 U.S.C. 661(g), unless otherwise noted.

Section 2200.96 is also issued under 28 U.S.C. 2112(a).

■ 2. Amend § 2200.7 by adding paragraph (c)(5) and revising paragraphs (o)(1) and (2) to read as follows:

#### § 2200.7 Service, notice, and posting.

\* \* \* \* \*

(c) \* \* \*

(5) *Non-E-Filed Documents.*

Documents required to be served upon other counsel or parties but that are not filed with the Commission in the Commission’s E-File System (such as discovery documents served pursuant to § 2200.52(j)) may be served by any means agreed to by all parties in writing.

\* \* \* \* \*

(o) \* \* \*

(1) *Service on parties and intervenors using Commission’s E-File System.*

Service of show cause orders shall be deemed completed by service through the Commission’s E-File System on a representative who has entered an appearance for a party or intervenor under § 2200.23 or on a self-represented party or intervenor who has not been exempted from using the Commission’s E-File System. *See also* § 2200.101(a).

(2) *Service on self-represented parties or intervenors exempted from using the Commission’s E-File System.* In addition to the service methods permitted by § 2200.7(c), the Commission or the

Judge shall serve a show cause order on a self-represented party or intervenor who has been exempted from using the Commission’s E-File System by certified mail or by any other method (including commercial delivery service) that provides confirmation of delivery to the addressee’s record address provided under § 2200.6.

■ 3. Amend § 2200.8 by revising paragraphs (c)(1) and (2) to read as follows:

#### § 2200.8 Filing.

\* \* \* \* \*

(c) \* \* \*

(1) *Mandatory e-filing.* All parties and intervenors must file documents electronically in the Commission’s E-File System by following the instructions on the Commission’s website ([www.oshrc.gov](http://www.oshrc.gov)), unless a self-represented party or intervenor is able to claim that complying with this paragraph will place an undue burden upon that party or intervenor under paragraph (c)(2) of this section or the documents are exempt from e-filing under paragraph (c)(5) of this section. Documents may not be filed with the Commission or the Judge via email.

(2) *Undue burden.* Self-represented parties or intervenors may submit a written statement to the Judge requesting an exemption from the mandatory e-filing requirement on the grounds that it would place an undue burden on them to comply with the requirement. If the Judge grants an exemption, exempted self-represented parties or intervenors must file documents by postage-prepaid first class or higher class U.S. Mail, commercial delivery service, personal delivery, or facsimile transmission as described in paragraph (d) of this section.

\* \* \* \* \*

■ 4. Amend § 2200.100 by revising the third sentence of paragraph (c) to read as follows:

#### § 2200.100 Settlement.

\* \* \* \* \*

(c) \* \* \* The parties shall also file a draft order terminating the proceedings for adoption by the Judge or, if the Judge’s report has been issued, by the Commission. \* \* \*

**James J. Sullivan, Jr.,**  
*Chairman.*

[FR Doc. 2020-21012 Filed 10-14-20; 8:45 am]

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