

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

RIN 3046-AA96

List of Fair Employment Practice Agencies

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This final rule amends our regulations to include a footnote stating that the designations of Fair Employment Practice Agencies are based on available information at the time of listing and are subject to modification based on changes in the state or local law; and revise the description of the type of charges for which the Commonwealth of Puerto Rico Department of Labor is a designated Fair Employment Practice Agency.

DATES: *Effective Date:* October 7, 2013.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Colleen Adams Jackson, Attorney, Office of Legal Counsel, (202) 663-4640 (voice) or (202) 663-7026 (TTY). Copies of this final rule are available in the following alternative format: large print, Braille, electronic computer disk, and audio-tape. Requests for this notice in an alternative format should be made to the Publications Center at 1-800-699-3362 (voice), 1-800-800-3302 (TTY), or 703-821-2098 (FAX—this is not a toll free number).

SUPPLEMENTARY INFORMATION: Title VII of the Civil Rights Act of 1964 provides all individuals at least 180 days from the occurrence of an alleged unlawful employment practice to file a charge with EEOC. In most states, because the state has its own law prohibiting the conduct alleged and an agency with authority to grant or seek relief for such violation, subsection 706(e) of Title VII extends the EEOC charge-filing period to 300 days after the alleged unlawful employment practice occurred. 42 U.S.C. 2000e-5(e)(1). Section 706 also requires EEOC to accord substantial weight to the findings of such agencies. 42 U.S.C. 2000e-5. The EEOC regulations refer to the state or local fair employment practice agencies to which the extended EEOC filing period and substantial weight apply as “FEP Agencies.” 29 CFR 1601.70(a). However, where the Commission has determined that a state or local agency does not qualify under section 706 as a fair employment practice agency, the EEOC deems such agency a “Notice Agency.”

29 CFR 1601.71(b). A “Notice Agency” simply receives a copy of the charge from EEOC. Id. EEOC does not accord substantial weight to a Notice Agency’s determination on the charge. In such cases, the extended 300-day filing period does not apply.

The list of FEP Agencies in 29 CFR 1601.74(a) is derived from the enactment or amendment of state or local authorizing statutes. Because of changes in state or local laws, the listings must be updated from time to time. EEOC has put in place a process for FEP Agencies to report changes in state or local laws that determine designation as a “FEP Agency” or as a “Notice Agency.” This final rule adds a footnote to the title of section 1601.74 alerting the public that the list is subject to change and that they can contact the FEPA to confirm the statutory coverage of the agency.

In addition, this final rule revises the description of the type of charges for which the Commonwealth of Puerto Rico Department of Labor is designated as a FEP Agency. The Commonwealth of Puerto Rico Department of Labor is currently listed solely as a Notice Agency with respect to “all charges alleging violations of sec. 704(a) o[f] title VII.” 29 CFR 1601.74(a) n.5. Section 704(a) refers to Title VII’s anti-retaliation provision which prohibits employers from discriminating against employees or applicants for employment for opposing an unlawful employment practice or participating in a proceeding under Title VII. 42 U.S.C. 2000e-3(a).

The designation of the Commonwealth of Puerto Rico Department of Labor as solely a Notice Agency with respect to all charges alleging retaliation in violation of Title VII is being changed as a result of Puerto Rico’s enactment of Law 17, 29 L.P.R.A. §§ 155, 155h, which prohibits employers from retaliating against an employee for (a) opposing any practice that Law 17 makes unlawful, or (b) participating in a sexual harassment complaint proceeding under Law 17. Consequently, the Commonwealth of Puerto Rico Department of Labor is a FEP Agency with respect to charges alleging retaliation for having opposed unlawful sexual harassment or participated in a sexual harassment complaint proceeding and is a Notice Agency for all other charges alleging retaliation under Title VII. This rulemaking amends 29 CFR 1601.74(a) n.5 to reflect this.

Regulatory Procedures

The Administrative Procedures Act (APA)

The Administrative Procedure Act (APA) provides an exception to its notice and comment procedures for interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(3)(A). This revised rule, which is located in 29 CFR Part 1601, “Procedural Regulations,” advises the public which state and local agencies are designated as Fair Employment Practice Agencies. The designation affects whether EEOC accords substantial weight to the state or local agencies findings, as well as the time limit for filing a charge with the EEOC. Thus, this rule pertains to EEOC’s organization, procedure, or practice. Accordingly, this revised regulation is issued as a final rule without notice and comment.

Executive Order 12866 and 13563

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review. This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, and therefore does not require an assessment of potential costs and benefits under section 6(a)(3)(B)(ii) of the Order.

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).

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. The rule corrects the listing of the Commonwealth of Puerto Rico Department of Labor as a FEP Agency with respect to charges of retaliation for participating in a sexual harassment complaint proceeding under the statute. The rule will not have a substantial impact on small entities because the Commonwealth of Puerto Rico Department of Labor has already been processing these particular types of charges pursuant to Law 17, even though EEOC had not updated its regulation. The revision will simply provide updated information to the public. For this reason, a regulatory

flexibility analysis is not required. Moreover, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, only requires a regulatory flexibility analysis when the agency is required to issue the rule after notice and comment by the Administrative Procedure Act or any other law. The EEOC has concluded that notice and comment are not required (see APA above).

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 are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This is not a major rule under the Congressional Review Act. The Commission has otherwise complied with the Act's requirements by submitting this final rule to Congress prior to its effective date.

List of Subjects in 29 CFR Parts 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

For the Commission.

Dated: August 29, 2013.

Jacqueline A. Berrien,
Chair.

Accordingly, the Equal Employment Opportunity Commission amends 29 CFR part 1601 as follows:

PART 1601—PROCEDURAL REGULATIONS

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

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

■ 2. In § 1601.74, redesignate footnotes 2 through 12 as 3 through 13, add an introductory paragraph, and revise newly redesignated footnote 6 to read as follows:

§ 1601.74 Designated and notice agencies.

The Commission has made the following designations²:

* * * * *

² State and local laws may change and that can affect the timeliness of a claim. It is advisable for individuals to contact the FEP agency to confirm coverage, or otherwise determine that the above designation reflects the current status of the agency under state and local law.

⁶The Commonwealth of Puerto Rico Department of Labor has been designated as a FEP agency for all charges except charges alleging a "labor union" has violated title VII; charges alleging an "employment agency" has violated title VII; and charges alleging violations of title VII by agencies or instrumentalities of the Government of Puerto Rico when they are not operating as private businesses or enterprises. For these types of charges it shall be deemed a "Notice Agency," pursuant to 29 CFR 1601.71(b). With respect to charges alleging retaliation under section 704(a) of Title VII, the Commonwealth of Puerto Rico Department of Labor is a FEP agency for charges alleging retaliation for having opposed unlawful sexual harassment or participated in a statutory sexual harassment complaint proceeding and a "Notice Agency" for all other charges alleging violation of section 704(a) of Title VII.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AO32

Disease Associated With Exposure to Certain Herbicide Agents: Peripheral Neuropathy

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as a final rule its proposal to amend its adjudication regulations by clarifying and expanding the terminology regarding presumptive service connection for acute and subacute peripheral neuropathy associated with exposure to certain herbicide agents. This amendment implements a decision by the Secretary of Veterans Affairs based on findings from the National Academy of Sciences (NAS) Institute of Medicine report, *Veterans and Agent Orange: Update 2010*. It also amends VA's regulation governing retroactive awards for certain diseases associated with herbicide exposure as required by court orders in the class action litigation of *Nehmer v. U.S. Department of Veterans Affairs*.

DATES: *Effective Date:* This rule is effective September 6, 2013.

Applicability Date: This final rule shall apply to claims received by VA on or after September 6, 2013 and to claims pending before VA on that date.

Additionally, VA will apply this rule in readjudicating certain previously denied claims as required by court orders in *Nehmer v. Department of Veterans Affairs*.

FOR FURTHER INFORMATION CONTACT: Dr. Nick Olmos-Lau, Medical Officer, Regulations Staff (211D), or Nancy Copeland, Consultant, Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: As required by the Agent Orange Act of 1991, codified in part at 38 U.S.C. 1116, the Department of Veterans Affairs (VA) asks the National Academy of Sciences (NAS) to evaluate scientific literature regarding possible associations between the occurrence of a disease in humans and exposure to an herbicide agent. Congress mandated that NAS to the extent possible determine (1) Whether there is a statistical association between exposure to herbicide agents and the illness, taking into account the strength of the scientific evidence and the appropriateness of the scientific methodology used to detect the association; (2) the increased risk of illness among individuals exposed to herbicide agents during service in the Republic of Vietnam during the Vietnam era; and (3) whether a plausible biological mechanism or other evidence of a causal relationship exists between exposure to the herbicides and the illness. That statute provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (i.e., the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between an illness and exposure to herbicide agents in an herbicide used in support of U.S. military operations in the Republic of Vietnam, the Secretary will publish regulations establishing presumptive service connection for that illness. On August 10, 2012, VA published a proposed rule in the **Federal Register** (77 FR 47795), to amend its adjudication regulations regarding presumptive service connection for acute and subacute peripheral neuropathy associated with exposure to certain herbicide agents. Specifically, based on findings from the September 29, 2010 NAS report titled, *Veterans and Agent Orange: Update 2010* (hereinafter "Update 2010"), which concluded that early-onset peripheral neuropathy associated with herbicide exposure is not necessarily a transient condition, we