

established by the Chairman of the Commission.

§ 2.23 Delegation to hearing examiners.

(d) A recommendation of a hearing examiner panel shall become an effective Commission decision upon review and docketing at the Regional Office, unless action is initiated by the Regional Commissioner pursuant to § 2.17 or 2.24.

Note.—There is no change in regard to those paragraphs of §§ 2.17 and 2.23 not set forth in this publication.

Dated: May 14, 1980.

Cecil C. McCall,

Chairman, United States Parole Commission.

(FR Doc. 80-15320 Filed 5-19-80; 8:45 am)

BILLING CODE 4410-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations: 706 Designation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: On August 21, 1979, the Equal Employment Opportunity Commission published proposed revisions to its procedural regulations for notice and comment by the public. 44 FR 48987. The procedural regulations §§ 1601.70 and 1601.71 had provided strict requirements for designating State or local fair employment practices agencies as deferral agencies under § 706(c) of Title VII of the Civil Rights Act of 1964, as amended. The Commission has revised its procedural regulations to provide for the deferral of charges to all agencies that meet the less stringent requirements of the revised § 1601.70.

EFFECTIVE DATE: May 20, 1980.

FOR FURTHER INFORMATION CONTACT:

Constance L. Dupre, Associate General Counsel, EEOC, 2401 E Street, NW., Washington, D.C. 20506, telephone (202) 634-6595.

SUPPLEMENTAL INFORMATION: On August 21, 1979, the Equal Employment Opportunity Commission published a proposed revision to its procedural regulations. Sections 1601.70 and 1601.71. Section 1601.71 set forth the procedures by which the Commission designated a State or local agency under § 706(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(c). The regulations had

provided that only those agencies which notify the Commission of their qualifications under § 706(c) of Title VII and § 1601.70 and request designation as a "706 Agency" would be eligible for such designation. The regulations also required the establishment of an agency to process charges filed under State fair employment practice law.

Pursuant to the *en banc* decision of the U.S. Court of Appeals for the Fifth Circuit in the case of *White v. Dallas Independent School District*, 581 F.2d 556 (5th Cir. 1978), the Commission voted to revise Commission regulations § 1601.70 and § 1601.71 to conform with that decision.

The *White* decision held that all charges against employers must be deferred in jurisdictions where there are provisions for the enforcement of laws prohibiting discrimination in employment. Enforcement may include criminal penalties for violations. Also, because of the *White* decision the performance and decertification standards of § 1601.72 are no longer applicable and, therefore, § 1601.72 is revoked and reserved. However, as will be noted, a deferral agency will be given an opportunity to respond to a proposed Commission decision to withdraw its 706 status.

Revised § 1601.70 continues to request certain materials and information from an agency for designation as a 706 Agency. However, § 1601.70 is amended to allow for the deferral of charges to a qualified agency or authority even though the agency or authority has made no request for 706 designation. Revised § 1601.70 is also amended to allow for the automatic deferral of charges to a newly established State or local authority or an already existing State or local authority empowered to address employment practices found to be unlawful.

Revised § 1601.71 is amended to conform with the changes made to § 1601.70. In addition, based on the automatic deferral status envisioned in the *White* decision, there is no requirement for publishing in the *Federal Register* for notice and comment the Commission's designation of a 706 Agency; therefore, revised § 1601.71 includes no provision for notice and comment in the *Federal Register*. The Commission has decided, however, to provide in new § 1601.70(e) that the Attorney General of a concerned State (and Corporation Counsel, of a local government if appropriate) will be provided an opportunity to advise EEOC concerning aspects of State or local law which might affect the apparent qualification of any proposed or recently recognized agency.

Five comments were received regarding the proposed rule change. They generally fell into three major areas of concern.

1. It has been suggested that notwithstanding the revocation of § 1601.72, there should be included an express provision delineating the manner in which a 706 Agency's status is to be withdrawn if it no longer meets the *White* criteria. Considerations of fairness dictate that the affected 706 Agency should be given the opportunity to rebut a Commission finding that it no longer meets the requirements of a 706 Agency, especially since the Commission will occasionally become cognizant of deferral problems through third parties. Accordingly, a new paragraph (c) is added to § 1601.71 to reflect the foregoing.

2. Several of the comments were reflective of a general concern that under the *White* rationale the Commission will be required to defer charges to relatively ineffective agencies. The Commission was aware of this issue when the new regulations were drafted. Ineffective agencies will be monitored as before since evaluation occurs whenever a State or local 706 Agency decision is reviewed pursuant to 706(b) of Title VII, 42 U.S.C. 2000e-5(b). Additionally, under § 1601.70 (b) and (c) the Commission can request from an agency seeking 706 status a copy of its fair employment practice law as well as any rules, regulations and guidelines issued pursuant thereto. Further, a review of § 1601.70(d) indicates that the Commission possesses broad discretion in deciding which agencies should process charges when there are several eligible ones in a particular State. To alleviate any remaining concerns regarding the Commission's commitment to defer charges, whenever possible, to the most effective 706 Agency in a particular State, the second sentence of § 1601.70(d) has been amended to read as follows:

"However, where there exist agencies of concurrent jurisdiction, the Commission may defer to the 706 Agency which would best serve the purposes of the Act, or to both."

3. It was suggested that there may exist a problem when deferral is made to an agency authorized only to institute criminal proceedings. That is, deferral to a State or local agency under these circumstances may force a change in Title VII by requiring a showing of intent which the U.S. Supreme Court in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) held was not required.

The response to this comment can be found in *White* where the court ordered deferral to a prosecutor's office which

only had authority to institute criminal proceedings. The court noted:

"[T]he availability of a criminal misdemeanor action under state law and procedure does not deprive a litigant of the opportunity to vindicate back pay and reinstatement claims in federal court once the deferral period has ended. Section 706(b) requires that the states be given an opportunity to handle the matters; it does not require a state to 'clone' federal remedies." *White v. Dallas Independent School District*, *supra*, 581 F.2d at 561.

By virtue of the authority vested in the Commission under § 713 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-12, the Equal Employment Opportunity Commission, pursuant to a vote at a duly constituted Commission meeting, hereby publishes the following revisions to its procedural regulations to be effective May 20, 1980. Sections 1601.70 and 1601.71 are revised as set forth below. Sections 1601.72 and 1601.73 are revoked and reserved.

Signed at Washington, D.C. this 14th day of May, 1980.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

1. In 29 CFR Part 1601, §§ 1601.70 and 1601.71 are revised to read as follows:

§ 1601.70 706 Agency Qualifications.

(a) State and local fair employment practice agencies or authorities which qualify under section 706(c) of Title VII and this section shall be designated as "706 Agencies." The qualifications for designation under section 706(c) are as follows:

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

(2) That the State or political subdivision has either established a State or local authority or authorized an existing State or local authority that is empowered with respect to employment practices found to be unlawful, to do one of three things: To grant relief from the practice; to seek relief from the practice; or to institute criminal proceedings with respect to the practice.

(b) Any State or local agency or authority seeking 706 designation should submit a written request to the Director, State and Local Division, Office of Field Services (OFS). However, if the Commission is aware that an agency or authority meets the above criteria for 706 designation, the Commission shall defer charges to such agency or authority even though no request for 706 designation has been made.

(c) A request for 706 designation should include a copy of the agency's fair employment practices law and any rules, regulations and guidelines of general interpretation issued pursuant thereto. Submission of such data will allow the Commission to ascertain which employment practices are made unlawful and which bases are covered by the State or local entity. Agencies or authorities are requested, but not required, to provide the following helpful information:

(1) A chart of the organization of the agency or authority responsible for administering and enforcing said law;

(2) The amount of funds made available to or allocated by the agency or authority for fair employment purposes;

(3) The identity and telephone number of the agency (authority) representative whom the Commission may contact with reference to any legal or other questions that may arise regarding designation;

(4) A detailed statement as to how the agency or authority meets the qualifications of paragraph (a) (1) and (2) of § 1601.70.

(d) Where both State and local 706 Agencies exist, the Commission reserves the right to defer to the State 706 Agency only. However, where there exist Agencies of concurrent jurisdiction, the Commission may defer to the 706 Agency which would best serve the purposes of the Act, or to both.

(e) The Director, State and Local Division, OFS, will provide to the Attorney General of the concerned State (and corporation counsel of a concerned local government, if appropriate) an opportunity to comment upon aspects of State or local law which might affect the qualifications of any new agency in that State otherwise cognizable under this section.

§ 1601.71 706 Agency Notification.

(a) When the Director, State and Local Division, OFS, determines that an agency or authority meets the criteria outlined in § 706(c) of Title VII and § 1601.70, he or she shall so notify the agency by letter and shall notify the public by publication in the *Federal Register* of an amendment to § 1601.74.

(b) Where the Director, State and Local Division, OFS, determines that an agency or authority does not come within the definition of a 706 Agency for purposes of a particular basis of discrimination or where the agency or authority applies for designation as a Notice Agency, the Director, State and Local Division, OFS, shall notify that agency or authority of the filing of charges for which the agency or authority is not a 706 Agency. For such

purposes that State or local agency will be deemed a Notice Agency.

(c) Where the Director, State and Local Division, OFS, becomes aware of events which lead him or her to believe that a deferral Agency no longer meets the requirements of a 706 Agency and should no longer be considered a 706 Agency, such Director will so notify the affected Agency and give it 15 days in which to respond to the preliminary findings. If the Director deems necessary, he or she may convene a hearing for the purpose of clarifying the matter. The Director shall render a final determination regarding continuation of the Agency as a 706 Agency.

§§ 1601.72 and 1601.73 [Reserved]

2. In 29 CFR Part 1601, §§ 1601.72 and 1601.73 are revoked and reserved.

(FR Doc. 80-15355 Filed 5-19-80; 8:45 am)

BILLING CODE 6570-06-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2702

Regulations Implementing the Freedom of Information Act

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Adoption of rules and procedures for implementing the Freedom of Information Act, 5 U.S.C. 552.

SUMMARY: The Federal Mine Safety and Health Review Commission hereby adopts rules and procedures for the guidance of those wishing to obtain information from the Commission under the Freedom of Information Act, 5 U.S.C. 552. The rules will supersede the interim implementation procedures published in the *Federal Register* on May 22, 1979 (44 FR 29666).

The Commission is a recently-created independent agency with authority to adjudicate contests arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* It is the intent of the Commission members promptly to comply with the Freedom of Information Act and by these rules and procedures to make all designated information readily available to the public. However, to ensure the opportunity for participation by the public, proposed rules and procedures were initially published for comment in the *Federal Register* on Thursday, March 20, 1980. No comments having been received during the 30-day period provided, the rules and procedures which were originally proposed are hereby adopted.

EFFECTIVE DATE: Effective May 20, 1980.

FOR FURTHER INFORMATION CONTACT:

Dan R. DeLacy, (202) 653-5656.

Dated: May 12, 1980.

Marian Pearlman Nease,

Commissioner/Acting Chairman, Federal Mine Safety and Health Review Commission.

Under the authority of section 113 of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-165 (30 U.S.C. 801 *et seq.*), the Federal Mine Safety and Health Review Commission hereby amends Title 29 of the Code of Federal Regulations by revoking and deleting existing Part 2702—"Interim Implementation Procedures", and adding as a new Part 2702 formal rules and procedures for implementing the Freedom of Information Act as follows:

PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Sec.

- 2702.1 Purpose and scope.
- 2702.2 Location of offices.
- 2702.3 Requests for information.
- 2702.4 Materials available.
- 2702.5 Fees for production of material.

Authority: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95-165 (30 U.S.C. 801 *et seq.*).

§ 2702.1 Purposes and scope.

The Federal Mine Safety and Health Review Commission is an independent agency with authority to adjudicate contests between the Mine Safety and Health Administration of the U.S. Department of Labor and private parties, as well as certain disputes solely between private parties, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* The purpose of these rules is to establish procedures for implementing the Freedom of Information Act, 5 U.S.C. 552; to provide guidance for those seeking to obtain information from the Commission; and to make all designated information readily available to the public. The scope of these rules may be limited to requests for information that is not presently the subject of litigation before the Commission and that is not otherwise governed by the Commission's Procedural Rules at 29 CFR 2700.

§ 2702.2 Location of offices.

The Federal Mine Safety and Health Review Commission maintains its central office at Suite 600, 1730 K Street NW., Washington, D.C. 20006. It has two regional offices for Administrative Law

Judges, one at Skyline Towers No. 2, Tenth Floor, 5203 Leesburg Pike, Falls Church, Virginia 22041, and the other at Suite 320, 333 West Colfax, Denver, Colorado 80204.

§ 2702.3 Requests for information.

All requests for information should be in writing and should be mailed or delivered to Executive Director, Federal Mine Safety and Health Review Commission, 6th Floor, 1730 K Street NW., Washington, D.C. 20006. The words "Freedom of Information Act Request" should be printed on the face of the envelope. A determination whether to comply with the request will be made by the Executive Director, with the consent of a majority of the Commissioners. Except in unusual circumstances, the determination will be made within 10 working days of receipt. Appeals of adverse decisions may be made to the Chairman of the Commission, at the same address, within 10 working days. Determination of appeals will be made by the Chairman within 20 working days of receipt.

§ 2702.4 Materials available.

Materials which may be made promptly available from the Commission include, but are not limited to:

- Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- Quarterly indices providing identifying information as to the opinions described in the preceding paragraph which may be relied upon, used, or cited as precedent;
- Any statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register.

§ 2702.5 Fees for production of material.

The usual fee for production of materials requested under the FOIA shall be the cost of duplication, not to exceed 10 cents per page. In appropriate circumstances, a reasonable standard charge for document search, not to exceed the direct cost of such search, may be imposed. Documents may be furnished without charge or at a reduced charge where the Commission determines that waiver or reduction of the fee is in the public interest.

[FR Doc. 80-15202 Filed 5-19-80; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1487-8]

Approval and Promulgation of State Implementation Plans; Approval of the Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to approve, in part, and to approve conditionally the remainder of the State Implementation Plan revision submitted by the Commonwealth of Pennsylvania on April 24, June 7, 8, 12, and 13, 1979. This revised plan was for those areas in Pennsylvania designated as not attaining the National Ambient Air Quality Standards for Total Suspended Particulate, Ozone, and Carbon Monoxide. The plan addresses attainment of the standards for those pollutants and includes revisions required to meet the requirements of Part D of Title I of the Clean Air Act as amended in 1977.

EPA assessed the approvability of the revised Pennsylvania State Implementation Plan by reviewing the plan revision in connection with the requirements for an approvable nonattainment SIP which are described in a Federal Register notice of April 4, 1979, 44 FR 20372, and the requirements of Section 110 and Part D of the Clean Air Act. On June 11, 1979, EPA published a Notice of Availability of the Pennsylvania SIP revision, 44 FR 33438. EPA evaluated the comments received during the public comment period in its assessment of the final approval status of Pennsylvania's revised SIP. It is EPA's conclusion that the revised Pennsylvania plan for those areas not attaining the National Ambient Air Quality Standards for Total Suspended Particulates, Ozone, and Carbon Monoxide, should be approved in part with portions conditionally approved. Approval of those portions conditionally approved will be contingent upon the satisfactory accomplishment of the conditions contained herein.

Elsewhere in today's Federal Register, EPA is inviting public comment on the acceptability of deadlines for complying with the conditions of approval.

In this notice the Pennsylvania State Implementation Plan is summarized, issues resulting in this conditional