

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION****29 CFR Ch. XIV****Semiannual Regulatory Agenda**

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC or Commission) is publishing its semiannual regulatory agenda pursuant to Executive Order 12866, 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. chapter 6. The agenda lists all regulations that are scheduled for review or development during the next 12 months or that have been finalized since the publication of the last agenda.

**FOR FURTHER INFORMATION CONTACT:** Reed L. Russell, Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20507; telephone (202) 663-4610.

**SUPPLEMENTARY INFORMATION:** The Commission has identified six items in this regulatory agenda.

Signed in Washington, DC, this 20<sup>th</sup> day of February 2008.

For the Commission.

**NAME: Naomi C. Earp,**  
*Chair.*

## The 6 Regulatory Agendas

**Equal Employment Opportunity Commission - Proposed Rule**

Title	Regulation Identifier Number
Disparate Impact and Reasonable Factors Other Than Age	<a href="#">3046-AA76</a>
Revision of Race and Ethnicity Data Collection Method	<a href="#">3046-AA81</a>

**Equal Employment Opportunity Commission - Long-term Action**

Title	Regulation Identifier Number
Federal Sector Equal Employment Opportunity Complaint Processing	<a href="#">3046-AA73</a>
Nondiscrimination on the Basis of Disability in Programs and Activities Conducted by the Equal Employment Opportunity Commission and Accessibility in Electronic and Information Technology	<a href="#">3046-AA82</a>

**Equal Employment Opportunity Commission - Completed Action**

Title	Regulation Identifier Number
Coordination of Retiree Health Benefits With Medicare and State Health Benefits	<a href="#">3046-AA72</a>
Dismissal of Title VII and ADA Charges of Discrimination	<a href="#">3046-AA83</a>

**Equal Employment Opportunity Commission ( EEOC )**

RIN: 3046-AA76

 [View Related Documents](#)**Title:** Disparate Impact and Reasonable Factors Other Than Age**Abstract:** In *Smith v. City of Jackson*, 544 U.S. 228 (2005), the U.S. Supreme Court affirmed that disparate impact is a cognizable theory of discrimination under the ADEA but indicated that "reasonable factors other than age," not "business necessity," is the appropriate model for the employers' defense against an impact claim. Accordingly, the Commission intends to revise its regulation on disparate impact, currently codified at 29 CFR section 1625.7(d).**Priority:** Other Significant**Agenda Stage of Rulemaking:** Proposed Rule**Major:** No**Unfunded Mandates:** No**CFR Citation:** 29 CFR 1625.7(d) (To search for a specific CFR, visit the [Code of Federal Regulations](#) )**Legal Authority:** 29 USC 628**Legal Deadline:** None**Timetable:**

Action	Date	FR Cite
NPRM	03/31/2008	73 FR 16807
NPRM Comment Period End	05/30/2008	

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** Federal; Local**Small Entities Affected:** Business; Governmental Jurisdictions; Organizations**Federalism:** No

**Energy Affected:** No

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**Equal Employment Opportunity Commission ( EEOC )**

RIN: 3046-AA81

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**Title:** Revision of Race and Ethnicity Data Collection Method

**Abstract:** This NPRM will conform the Commission's rules to a key change for the revised EEO-1. EEOC will propose to make employee self-identification the preferred method for collecting race and ethnic data on employees. The current rule permits employers to gather this data from revised surveys or from employment records.

**Priority:** Substantive, Nonsignificant**Agenda Stage of Rulemaking:** Proposed Rule**Major:** No**Unfunded Mandates:** No**CFR Citation:** 29 CFR 1602.13 (To search for a specific CFR, visit the [Code of Federal Regulations](#) )**Legal Authority:** 42 USC 2000e-8(c); 42 USC 2000e-12(a)**Legal Deadline:** None**Timetable:**

Action	Date	FR Cite
NPRM	03/00/2009	

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** Local; State; Tribal**Small Entities Affected:** Business; Governmental Jurisdictions; Organizations**Federalism:** No**Energy Affected:** No

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**Equal Employment Opportunity Commission ( EEOC )**

RIN: 3046-AA73

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**Title:** Federal Sector Equal Employment Opportunity Complaint Processing

**Abstract:** The existing process has been criticized as time-consuming, costly, and self-serving. The Commission is reviewing the process, considering alternatives, and consulting stakeholders about possible reforms that would make the Federal EEO process more efficient and effective, consistent with the President's Strategic Management of Human Capital initiative.

**Priority:** Other Significant

**Agenda Stage of Rulemaking:** Long-term Action

**Major:** No

**Unfunded Mandates:** No

**CFR Citation:** 29 CFR 1614 (To search for a specific CFR, visit the [Code of Federal Regulations](#) )

**Legal Authority:** 29 USC 206(d), 633a, 791, and 794; 42 USC 2000e-16; EO 10577, 11222, 11478, and 12106; Reorganization Plan No. 1 of 1978

**Legal Deadline:** None

**Timetable:**

Action	Date	FR Cite
NPRM	00/00/0000	

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** Federal

**Small Entities Affected:** No

**Federalism:** No

**Energy Affected:** No

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## Equal Employment Opportunity Commission ( EEOC )

RIN: 3046-AA82

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**Title:** Nondiscrimination on the Basis of Disability in Programs and Activities Conducted by the Equal Employment Opportunity Commission and Accessibility in Electronic and Information Technology

**Abstract:** The Equal Employment Opportunity Commission proposes to amend its regulation at 29 CFR part 1615 to establish that all complaints under section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794d(f)(2) (section 508), whether filed by members of the public or EEOC employees, will be processed under the procedures in 29 CFR section 1615.170 (d-m) (procedures for section 504 public complaints). This NPRM also would update terminology in 29 CFR part 1615, which outlines how EEOC enforces section 504 of the Rehabilitation Act with respect to its own programs and activities.

**Priority:** Substantive, Nonsignificant

**Agenda Stage of Rulemaking:** Long-term Action

**Major:** No

**Unfunded Mandates:** No

**CFR Citation:** 29 CFR 1615.101; 29 CFR 1615.102; 29 CFR 1615.103; 29 CFR 1615.135; 29 CFR 1615.140; 29 CFR 1615.170 (To search for a specific CFR, visit the [Code of Federal Regulations](#) )

**Legal Authority:** 29 USC secs 794, 794(f)(2)

**Legal Deadline:** None

**Timetable:**

Action	Date	FR Cite
Next Action Undetermined		
NPRM	02/19/2008	73 FR 9065
NPRM Comment Period End	04/21/2008	

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** Federal

**Federalism:** No

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## Equal Employment Opportunity Commission ( EEOC )

RIN: 3046-AA72

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**Title:** Coordination of Retiree Health Benefits With Medicare and State Health Benefits

**Abstract:** The Commission proposes to exempt from the prohibitions of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq. (ADEA or Act), the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or comparable State retiree health benefits.

**Priority:** Other Significant

**Agenda Stage of Rulemaking:** Completed Action

**Major:** No

**Unfunded Mandates:** No

**CFR Citation:** 29 CFR 1625 (To search for a specific CFR, visit the [Code of Federal Regulations](#) )

**Legal Authority:** 29 USC 628

**Legal Deadline:** None

**Regulatory Plan:**

**Statement of Need:** In August 2001, the Commission announced that it would consider the relationship between the ADEA and employer-sponsored retiree health benefit plans that alter, reduce, or eliminate benefits upon eligibility for Medicare or a comparable State-sponsored retiree health benefits program. There has been a decline in the number of employers providing retiree health benefits over the last 10 years. Various factors have contributed to this erosion, including the increased cost of health care coverage, an increased demand for such coverage as large numbers of workers near retirement age, and changes in the way accounting rules treat the long-term costs of providing retiree health benefits. Another factor has been employer concern about the potential application of the ADEA to employer-sponsored retiree health benefits. The Commission is proposing a narrowly drawn ADEA exemption that permits the practice of coordinating employer-provided retiree health coverage with eligibility for Medicare or a State-sponsored retiree health benefits program, so that the ADEA does not discourage employers from providing, or continuing to provide, health benefits to their retirees.

**Legal Basis:** Pursuant to section 9 of the ADEA, the Commission is authorized to establish reasonable exemptions to and from any or all provisions of the Act as it may find necessary and proper in the public interest.

**Alternatives:** The Commission considered various alternatives in developing this proposal. The Commission considered all alternatives offered by the public commenters.

**Costs and Benefits:** The Commission recognizes that while employers are under no legal obligation to offer retiree health benefits, some employers choose to do so in order to maintain a competitive advantage in the marketplace, using these and other benefits to attract and retain the best talent available to work for their organizations. The proposed rule will ensure that the application of the ADEA does not discourage employers from providing, or continuing to provide, health benefits to their retirees who otherwise would have to obtain such coverage in the private individual marketplace at significant personal expense. The Commission believes that it is in the best interest of both employers and employees for the Commission to pursue a policy that permits employers to offer these benefits to the greatest extent possible.

**Risks:** The proposed regulatory action will reduce the risks of liability for noncompliance with the statute by exempting certain employer practices from regulation. This proposal does not address risks to public safety or the environment.

**Timetable:**

Action	Date	FR Cite
NPRM	07/14/2003	68 FR 41542
NPRM Comment Period End	09/12/2003	
Final Action	12/26/2007	72 FR 72938

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** Federal; Local; State

**Small Entities Affected:** No

**Federalism:** No

**Energy Affected:** No

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**Equal Employment Opportunity Commission ( EEOC )**

**RIN:** 3046-AA83

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**Title:** Dismissal of Title VII and ADA Charges of Discrimination

**Abstract:** This final rule would delete subsections (b) to (d) of 29 CFR 1601.18.

**Priority:** Substantive, Nonsignificant

**Agenda Stage of Rulemaking:** Completed Action

**Major:** No

**Unfunded Mandates:** No

**CFR Citation:** 29 CFR 1601.18 (To search for a specific CFR, visit the [Code of Federal Regulations](#) )

**Legal Authority:** 42 USC 2000e to 2000e-17; 42 USC 12111 to 12117

**Legal Deadline:** None

**Timetable:**

Action	Date	FR Cite
Final Action	01/18/2008	73 FR 3387

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** No

**Small Entities Affected:** No

**Federalism:** No

**Energy Affected:** No

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