

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.

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SUPPLEMENTARY INFORMATION: The Commission has identified seven items in this regulatory agenda. For this edition of EEOC's regulatory agenda, the most important significant regulatory action and a Statement of Regulatory Priorities are included in The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda.

Signed in Washington, DC, this 10th day of August 2007.

For the Commission.

NAME: Naomi C. Earp,
Chair.

The 7 Regulatory Agendas

Equal Employment Opportunity Commission - Proposed Rule

Title	Regulation Identifier Number
Disparate Impact and Reasonable Factors Other Than Age	3046-AA76
Revision of Race and Ethnicity Data Collection Method	3046-AA81
Nondiscrimination on the Basis of Disability in Programs and Activities Conducted by the Equal Employment Opportunity Commission and Accessibility in Electronic and Information Technology	3046-AA82

Equal Employment Opportunity Commission - Final Rule

Title	Regulation Identifier Number
Coordination of Retiree Health Benefits With Medicare and State Health Benefits	3046-AA72
Dismissal of Title VII and ADA Charges of Discrimination	3046-AA83

Equal Employment Opportunity Commission - Long-term Action

Title	Regulation Identifier Number
Federal Sector Equal Employment Opportunity Complaint Processing	3046-AA73

Equal Employment Opportunity Commission - Completed Action

Title	Regulation Identifier Number
Coverage Under the Age Discrimination in Employment Act	3046-AA78

Equal Employment Opportunity Commission (EEOC)**RIN:** 3046-AA76**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:** Undetermined**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	09/00/2008	

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

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	03/00/2008	

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-AA82

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: Proposed Rule

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
NPRM	01/00/2008	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Federalism: No

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Equal Employment Opportunity Commission (EEOC)

RIN: 3046-AA72

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: Final Rule

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	12/00/2007	

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

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: Final Rule

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	11/00/2007	

Regulatory Flexibility Analysis Required: No**Government Levels Affected:** No**Small Entities Affected:** No**Federalism:** No**Energy Affected:** No**Agency Contact:** Thomas J. Schlageter

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Equal Employment Opportunity Commission (EEOC)**RIN:** 3046-AA73**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-AA78

Title: Coverage Under the Age Discrimination in Employment Act

Abstract: In General Dynamics Land Systems v. Cline, 540 U.S. 581 (2004), the U.S. Supreme Court held that the Age Discrimination in Employment Act of 1967 (ADEA) only prohibits age-based discrimination against relatively older individuals. It rejected the Commission's position that the ADEA also prohibits age-based discrimination against relatively younger individuals who are age 40 or over. The Commission has revised relevant portions of its regulations to conform to the holding in Cline.

Priority: Other Significant

Agenda Stage of Rulemaking: Completed Action

Major: No

Unfunded Mandates: No

CFR Citation: 29 CFR 1625.2; 29 CFR 1625.4 to 1625.5 (To search for a specific CFR, visit the [Code of Federal Regulations](#))

Legal Authority: 29 USC 621 et seq

Legal Deadline: None

Timetable:

Action	Date	FR Cite
NPRM	08/11/2006	71 FR 46177
NPRM Comment Period End	10/10/2006	
Final Action	07/06/2007	72 FR 36873

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal; Local; State

Small Entities Affected: Business; Governmental Jurisdictions; Organizations

Federalism: No

Energy Affected: No

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