

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: Peggy R. Mastroianni, Associate Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507; telephone (202) 663-4609.

SUPPLEMENTARY INFORMATION: The Commission has identified seven items in this regulatory agenda. Of these items, the most important significant regulatory actions are included in The Regulatory Plan. The Regulatory Plan also includes a Statement of Regulatory and Deregulatory Priorities. The Plan 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 20th day of August 2009.

For the Commission.

NAME: Stuart J. Ishimaru,
Acting Chairman.

The 7 Regulatory Agendas

Equal Employment Opportunity Commission - Proposed Rule

Title	Regulation Identifier Number
Federal Sector Equal Employment Opportunity Complaint Processing	3046-AA73
Revision of Race and Ethnicity Data Collection Method	3046-AA81
Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act	3046-AA87

Equal Employment Opportunity Commission - Final Rule

Title	Regulation Identifier Number
Disparate Impact Burden of Proof Under the Age Discrimination in Employment Act	3046-AA76
Genetic Information Nondiscrimination Act	3046-AA84
Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act	3046-AA85
Amendment of Procedural and Administrative Regulations To Include the Genetic Information Nondiscrimination Act of 2008 (GINA)	3046-AA88

Equal Employment Opportunity Commission (EEOC)

RIN: 3046-AA73

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Title: Federal Sector Equal Employment Opportunity Complaint Processing

Abstract: The Commission has been reviewing the existing Federal sector EEO complaint process and considering changes that would make it more efficient and effective. While that review continues, several corrections and changes to the existing process have been proposed. They concern agency compliance with EEOC directives, variances from part 1614, further notice to complainants, and other adjustments to the current process.

Priority: Other Significant

Agenda Stage of Rulemaking: Proposed Rule

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	09/00/2010	

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-AA81

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Title: Revision of Race and Ethnicity Data Collection Method

Abstract: The current rule still permits employers to gather race and ethnic data about employees by visual surveys of the workforce or from employment records. This NPRM would update the rule and make employee self-identification the preferred method for collecting race and ethnic data on employees to conform with current reporting instructions for the EEO-1 Report.

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	09/00/2010	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local; State

Small Entities Affected: Business; Governmental
Jurisdictions; Organizations

Federalism: No

Energy Affected: No

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Equal Employment Opportunity Commission (EEOC)

RIN: 3046-AA87

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Title: Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act

Abstract: On March 31, 2008, the EEOC published a Notice of Proposed Rulemaking (NPRM) concerning disparate impact under the Age Discrimination in Employment Act. 73 FR 16807 (March 31, 2008). In addition to requesting public comment on the proposed rule, the Commission asked whether regulations should provide more information on the meaning of "reasonable factors other than age" (RFOA) and, if so, what the regulations should say. After consideration of the public comments, and in light of the Supreme Court decisions in *Smith v. City of Jackson*, 544 U.S. 228 (2005), and *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. ___, 128 S. Ct. 2395 (2008), the Commission believes it is appropriate to issue a new NPRM to address the scope of the RFOA defense. Accordingly, before finalizing its regulations concerning disparate impact under the ADEA, the Commission intends to publish a new NPRM proposing to amend its regulations concerning RFOA.

Priority: Other Significant

Agenda Stage of Rulemaking: Proposed Rule

Major: No

Unfunded Mandates: No

CFR Citation: 29 CFR 1625.7(b),(c) (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 *Smith v. City of Jackson*, the 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 employer's defense against an impact claim. In *Meacham v. Knolls Atomic Power Lab.*, the Supreme Court ruled that the employer has the RFOA burden of persuasion. Current EEOC regulations do not define the meaning of "RFOA." The EEOC is revising its regulations to address the scope of the RFOA defense.

Legal Basis: The ADEA authorizes the EEOC "to issue such rules and regulations it may consider necessary or appropriate for carrying out this chapter...." 29 U.S.C. section 628.

Alternatives: The Commission will consider all alternatives offered by the public commenters.

Costs and Benefits: Preliminary estimates of anticipated costs and benefits have not been determined at this time. The Commission will explore options for conducting a cost benefit analysis for this regulatory action if necessary. This revision to EEOC's regulation, informed by the comments of stakeholders, will be beneficial to courts, employers, and employees seeking to interpret, understand, and comply with the ADEA.

Risks: The proposed regulation will reduce the risks of liability for noncompliance with the statute by clarifying the RFOA defense. The proposal does not address risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	02/00/2010	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Business; Governmental Jurisdictions; Organizations

Energy Affected: No

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Government Levels Affected: Federal; Local; State; Tribal

Federalism: No

Equal Employment Opportunity Commission (EEOC)

RIN: 3046-AA76

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Title: Disparate Impact Burden of Proof Under the Age Discrimination in Employment Act

Abstract: Prior to the Supreme Court's decision in *Smith v. City of Jackson*, Commission regulations interpreted the ADEA to require employers to prove that actions that had an age-based disparate impact were justified as a business necessity. Although the Court, in *Smith*, agreed with the EEOC that disparate impact claims were cognizable under the ADEA, it held that the defense was not business necessity but reasonable factors other than age (RFOA). The *Smith* Court did not specify whether the employer or employee bore the burden of proof on the RFOA defense. Accordingly, on March 31, 2008, the Commission issued an NPRM to conform Commission ADEA regulations to *Smith*, also taking the position that the employer bore the burden of proving the defense. Subsequently, the Supreme Court held in *Meacham v. Knolls Atomic Laboratory*, that employers bore the burden of proof. Thus, the EEOC is revising this regulation to conform to both *Smith* and *Meacham*. In the March 2008 NPRM, the Commission also asked whether its ADEA regulation should provide more information on the meaning of RFOA and, if so, what the regulations should say. After consideration of the public comments, and in light of the Supreme Court decisions in *Smith* and *Meacham*, the Commission believes it is appropriate to issue a separate NPRM to address the scope of the RFOA

defense. This new NPRM will be titled "Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act." A Final Rule to be issued in October 2010, will cover the issues addressed in both NPRMs.

Priority: Substantive, Nonsignificant

Agenda Stage of Rulemaking: Final 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	
Final Action	10/00/2010	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal; Local; State; Tribal

Small Entities Affected: Business; Governmental Jurisdictions; Organizations

Federalism: No

Energy Affected: No

Related RINs: Related to 3046-AA87

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Equal Employment Opportunity Commission (EEOC)

RIN: 3046-AA84

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Title: Genetic Information Nondiscrimination Act

Abstract: Section 211 of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. section 2000ff-10, requires the Equal Employment Opportunity Commission to issue regulations implementing title II of the Act. Title II prohibits the use of genetic information in making employment decisions and limits employer access to genetic information. The Act also imposes confidentiality obligations on employers and other covered entities (employment agencies, labor unions, and training programs) that possess genetic information.

Priority: Other Significant

Agenda Stage of Rulemaking: Final Rule

Major: No

Unfunded Mandates: No

CFR Citation: 29 CFR 1635 (To search for a specific CFR, visit the [Code of Federal Regulations](#).)

Legal Authority: 42 USC sec 2000ff-10

Legal Deadline:

Action	Source	Description	Date
Other	Statutory	As set forth in section 211 of the Genetic Information Nondiscrimination Act	05/21/2009

Timetable:

Action	Date	FR Cite
NPRM	03/02/2009	74 FR 9056
NPRM Comment Period End	05/01/2009	
Final Action	12/00/2009	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Energy Affected: No

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Government Levels Affected: Federal; Local; State

Federalism: No

Equal Employment Opportunity Commission (EEOC)

RIN: 3046-AA85

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Title: Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act

Abstract: The Americans With Disabilities Act Amendments Act of 2008 ("the Amendments Act") was signed into law on September 25, 2008, with a statutory effective date of January 1, 2009. EEOC proposes to revise its Americans With Disabilities Act (ADA) regulations and accompanying interpretative guidance (29 CFR part 1630 and accompanying appendix) in order to implement the ADA Amendments Act of 2008. Pursuant to the 2008 amendments, the definition of disability under the ADA shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the ADA, and the determination of whether an individual has a disability should not demand extensive analysis. The Amendments Act rejects the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

Priority: Other Significant

Agenda Stage of Rulemaking: Final Rule

Major: No

Unfunded Mandates: No

CFR Citation: 29 CFR 1630 (To search for a specific CFR, visit the [Code of Federal Regulations](#).)

Legal Authority: 42 USC sec 12116 and sec 506 as redesignated under the ADA Amendments Act of 2008

Legal Deadline: None

Regulatory Plan:

Statement of Need: This regulation is necessary to bring the Commission's regulations into compliance with the ADA Amendments Act of 2008, which became effective January 1, 2009, and explicitly invalidated certain provisions of the existing regulations. The Amendments Act retains the terminology of the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways, therefore necessitating revision of the existing regulations and interpretive guidance contained in the accompanying "Appendix to Part 1630--Interpretive Guidance on Title I of the Americans With Disabilities Act," which are published at 29 CFR part 1630. The proposed revisions to the title I regulations and appendix are intended to enhance predictability and consistency between judicial interpretations and executive enforcement of the ADA as now amended by Congress.

Legal Basis: Section 506 of the Amendments Act, 42 U.S.C. section 2000ff-10, gives the EEOC the authority to issue regulations implementing the definitions of disability in section 12102 of this title (including rules of construction) and the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008.

Alternatives: None: Congress mandated issuance of regulations.

Costs and Benefits: For those employers that have 15 or more employees and are therefore covered by Amendments Act, the potential economic impact stems from the likelihood that due to the broader interpretation of "substantially limited in a major life activity," more employees will be covered under the first two prongs of the definition of disability, and thus potentially entitled to reasonable accommodations that do not pose an undue hardship. However, the Amendments Act does not change the scope of the accommodation obligation itself, or the definition of the "undue hardship" defense as "significant difficulty or expense." The Amendments Act also reverses at least three courts of appeals decisions that previously permitted individuals who were merely "regarded as" individuals with disabilities to potentially be entitled to reasonable accommodation. This change narrows the financial impact of the ADA on employers. While many individuals with disabilities do not request or need a reasonable accommodation, statistical studies have repeatedly shown that when reasonable accommodation is required by an individual with a disability, it is far less expensive than many employers suspect.

Risks: The proposed rule imposes no new or additional risk to employers. The proposal does not address risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	09/23/2009	74 FR 48431
NPRM Comment Period End	11/23/2009	
Final Action	07/00/2010	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal; 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-AA88

 [View Related Documents](#)

Title: Amendment of Procedural and Administrative Regulations To Include the Genetic Information Nondiscrimination Act of 2008 (GINA)

Abstract: On May 21, 2008, the President signed the Genetic Information Nondiscrimination Act of 2008 ("GINA") into law. Title II of GINA protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. Title II of GINA's coverage corresponds with that of title VII of the Civil Rights Act of 1964, as amended, covering employers with 15 or more employees, employment agencies, labor unions, and joint labor-management training programs, as well as Federal sector employers. Title II became effective on November 21, 2009. In a separate notice of proposed rulemaking found at 74 FR 9056, EEOC proposed interpretive regulations under GINA. In the current rulemaking, EEOC is proposing to amend its procedural and administrative regulations to add references to GINA. In addition, EEOC is taking the opportunity to replace the outdated terms "handicap" and "handicaps" with the terms "disability" and "disabilities" throughout its regulations in chapter XIV of title 29 of the Code of Federal Regulations.

Priority: Info./Admin./Other

Agenda Stage of Rulemaking: Final Rule

Major: No

Unfunded Mandates: No

CFR Citation: 29 CFR 1601, 1602, 1603, 1607, 1610, 1611 (To search for a specific CFR, visit the [Code of Federal Regulations](#).)

Legal Authority: 42 USC 2000ff

Legal Deadline: None

Timetable:

Action	Date	FR Cite
NPRM	05/20/2009	74 FR 23674
NPRM Comment Period End	07/20/2009	
Final Action	12/00/2009	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: No

Small Entities Affected: No

Federalism: No

Energy Affected: No

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