



Federal Register

**Monday,
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Part XXV

Equal Employment Opportunity Commission

Semiannual Regulatory Agenda

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

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, 1801 L Street NW., Washington, DC 20507; telephone (202) 663-4637.

SUPPLEMENTARY INFORMATION: The Commission has identified eight items in this regulatory agenda. For this

edition of EEOC's regulatory agenda, the most important significant regulatory action is included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entry is listed in the table of contents below and is denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Signed in Washington, DC, this 26th day of July 2006.

For the Commission.

Cari M. Dominguez,
Chair.

Equal Employment Opportunity Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3375	Disparate Impact and Reasonable Factors Other Than Age	3046-AA76
3376	Revision of Race and Ethnicity Data Collection Method	3046-AA81

Equal Employment Opportunity Commission—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3377	Coverage Under the Age Discrimination in Employment Act	3046-AA78

Equal Employment Opportunity Commission—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
3378	Coordination of Retiree Health Benefits With Medicare and State Health Benefits (Reg Plan Seq No. 134A)	3046-AA72
3379	Federal Sector Equal Employment Opportunity Complaint Processing	3046-AA73
3380	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—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3381	Posting Requirements Under the Notification and Federal Employee Antidiscrimination and Retaliation Act	3046-AA74
3382	Repositioning of Commission Field Offices	3046-AA80

Equal Employment Opportunity Commission (EEOC)

Proposed Rule Stage

3375. DISPARATE IMPACT AND REASONABLE FACTORS OTHER THAN AGE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 628

CFR Citation: 29 CFR 1625.7(d)

Legal Deadline: None

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).

Timetable:

Action	Date	FR Cite
NPRM	06/00/07	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, Local

Agency Contact: Dianna B. Johnston, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507

Phone: 202 663-4638

TDD Phone: 202 663-4074

Fax: 202 663-4639

Email: dianna.johnston@eeoc.gov

RIN: 3046-AA76

3376. • REVISION OF RACE AND ETHNICITY DATA COLLECTION METHOD

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2000e-8(c); 42 USC 2000e-12(a)

CFR Citation: 29 CFR 1602.13

Legal Deadline: None

Abstract: This NPRM will conform the Commission's rules to a key change for the revised EEO-1 for reporting years

starting in 2007. 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.

Timetable:

Action	Date	FR Cite
NPRM	02/00/07	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Tribal

Agency Contact: Thomas J. Schlageter, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507

Phone: 202 663-4668

TDD Phone: 202 663-4074

Fax: 202 663-4639

Email: thomas.schlageter@eeoc.gov

RIN: 3046-AA81

Equal Employment Opportunity Commission (EEOC)

Final Rule Stage

3377. COVERAGE UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT

Priority: Other Significant

Legal Authority: 29 USC 621 et seq

CFR Citation: 29 CFR 1625.2; 29 CFR 1625.4 to 1625.5

Legal Deadline: None

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 is therefore revising relevant portions of its regulations to conform to the holding in *Cline*.

Timetable:

Action	Date	FR Cite
NPRM	08/11/06	71 FR 46177
NPRM Comment Period End	10/10/06	
Final Action	09/00/07	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, Local, State

Agency Contact: Dianna B. Johnston, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507

Phone: 202 663-4638

TDD Phone: 202 663-7026

Fax: 202 663-4639

Email: dianna.johnston@eeoc.gov

RIN: 3046-AA78

3378. COORDINATION OF RETIREE HEALTH BENEFITS WITH MEDICARE AND STATE HEALTH BENEFITS

Regulatory Plan: This entry is Seq. No. 134A in part II of this issue of the *Federal Register*.

RIN: 3046-AA72

Equal Employment Opportunity Commission (EEOC)

Long-Term Actions

3379. FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESSING**Priority:** Other Significant**CFR Citation:** 29 CFR 1614**Timetable:**

Action	Date	FR Cite
NPRM	To Be	Determined

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

Phone: 202 663-4668

TDD Phone: 202 663-4074

Fax: 202 663-4639

Email: thomas.schlageter@eeoc.gov

RIN: 3046-AA73**3380. • NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS AND ACTIVITIES CONDUCTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND ACCESSIBILITY IN ELECTRONIC AND INFORMATION TECHNOLOGY****Priority:** Substantive, Nonsignificant**Legal Authority:** 29 USC secs 794, 794(f)(2)**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**Legal Deadline:** None**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.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis**Required:** No**Government Levels Affected:** Federal**Agency Contact:** Carol R. Miaskoff, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507

Phone: 202 663-4645

TDD Phone: 202 663-4074

Fax: 202 663-4639

Email: carol.miaskoff@eeoc.gov

RIN: 3046-AA82

Equal Employment Opportunity Commission (EEOC)

Completed Actions

3381. POSTING REQUIREMENTS UNDER THE NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT**Priority:** Other Significant**CFR Citation:** 29 CFR 1614.701 et seq**Completed:**

Reason	Date	FR Cite
Final Action	08/02/06	71 FR 43643

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

Phone: 202 663-4668

TDD Phone: 202 663-4074

Fax: 202 663-4639

Email: thomas.schlageter@eeoc.gov

RIN: 3046-AA74**3382. REPOSITIONING OF COMMISSION FIELD OFFICES****Priority:** Substantive, Nonsignificant**CFR Citation:** 29 CFR 1601; 29 CFR 1603; 29 CFR 1610; 29 CFR 1615; 29 CFR 1621; 29 CFR 1626**Completed:**

Reason	Date	FR Cite
Final Action	05/09/06	71 FR 26827

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None**Agency Contact:** Thomas J. Schlageter

Phone: 202 663-4668

TDD Phone: 202 663-4074

Fax: 202-663-4639

Email: thomas.schlageter@eeoc.gov

RIN: 3046-AA80

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