

(15) Proceed generally east on the unnamed road known locally as Bayne's Road 2 miles to its intersection with North Carolina State Highway 119 at Baynes in Caswell County; then

(16) Proceed generally south-southeast along North Carolina State Highway 119 approximately 1.7 miles to its intersection with the Caswell County line; then

(17) Proceed straight east along the Caswell County line 4.3 miles to the beginning point.

Signed: March 1, 2008.

John J. Manfreda,

Administrator.

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BILLING CODE 4810-31-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission is proposing to revise its regulations at 29 CFR Part 1611, which implement the Privacy Act of 1974, to exempt one of its systems of records from one of the Act's requirements.

DATES: Written comments on the proposed rule must be received on or before May 30, 2008. The Commission proposes to consider any comments received and thereafter adopt final regulations.

ADDRESSES: Written comments should be submitted to Stephen Llewellyn, Executive Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663-4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTD). (These are not toll-free telephone numbers.) You may also submit comments and attachments electronically at [http://](http://www.regulations.gov)

www.regulations.gov, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. Copies of comments submitted by the public will be available to review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m. or can be reviewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, at (202) 663-4640 (voice) or (202) 663-7026 (TTY). Copies of this final rule are also available in the following alternate formats: large print, braille, audiotape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publication Center at 1-800-669-3362 (voice) or 1-800-800-3302 (TTY).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission proposes to add a new section 1611.15 to its Privacy Act regulations to exempt records contained in EEOC-22, EEOC Personnel Security Files, from the accounting and disclosure provisions of the Privacy Act in accordance with section k(5) of the Act, but only to the extent that an accounting of disclosures or a disclosure itself identifies witnesses promised confidentiality as a condition of providing information during the course of a background investigation. The Commission also proposes to amend sections 1611.5(a)(5) and 1611.5(b) to conform them to the addition of the new exemption.

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Regulatory Flexibility Act

The Commission, in accordance with the Regulatory Flexibility Act (5 U.S.C.

606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action concerns agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1611

Privacy Act.

Dated: March 25, 2008.

For the Commission,

Naomi C. Earp,

Chair.

Accordingly, it is proposed to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1611—PRIVACY ACT REGULATIONS

1. The authority citation for part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. In § 1611.5, revise paragraphs (a)(5) and (b) to read as follows:

§ 1611.5 Disclosure of requested information to individuals.

(a) * * *

(5) The Commission shall not deny any request under § 1611.3 concerning the existence of records about the requester in any system of records it maintains, or any request for access to such records, unless that system is exempted from the requirements of 5 U.S.C. 552a in §§ 1611.13, 1611.14, or 1611.15.

* * * * *

(b) Upon request, the appropriate Commission official shall make available an accounting of disclosures pursuant to 5 U.S.C. 552a(c)(3), unless that system is exempted from the

requirements of 5 U.S.C. 552a in §§ 1611.13, 1611.14, or 1611.15.

* * * * *

3. Section 1611.15 is added to read as follows:

§ 1611.15 Exemption—EEOC Personnel Security Files.

EEOC's system of records entitled EEOC Personnel Security Files contains records that document and support decisions regarding suitability, eligibility and fitness for service of applicants for EEOC employment and contract positions. The records include background investigation records. Pursuant to section (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), this system of records is exempt from the provisions of sections (c)(3) and (d)(1) of the Privacy Act, 5 U.S.C. 552a(c)(3) and (d)(1), but only to the extent that the accounting of disclosures or the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence.

[FR Doc. E8-6551 Filed 3-28-08; 8:45 am]

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

RIN 3046-AA76

Disparate Impact Under the Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission ("EEOC" or "Commission") is issuing this notice of proposed rulemaking ("NPRM") to address issues related to the United States Supreme Court's decision in *Smith v. City of Jackson*. The Court ruled that disparate impact claims are cognizable under the Age Discrimination in Employment Act ("ADEA") but that liability is precluded when the impact is attributable to a reasonable factor other than age. Current EEOC regulations interpret the ADEA as prohibiting an employment practice that has a disparate impact on individuals within the protected age group unless it is justified as a business necessity.

DATES: Comments must be received on or before May 30, 2008. The Commission will consider any comments received on or before the closing date and thereafter adopt final regulations. Comments received after

the closing date will be considered to the extent practicable.

ADDRESSES: You may submit comments by any of the following methods:

- By mail to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

- By facsimile ("FAX") machine to (202) 663-4114. (There is no toll free FAX number). Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTY). (These are not toll free numbers).

- By the Federal eRulemaking Portal: <http://www.regulations.gov>. After accessing this web site, follow its instructions for submitting comments.

Instructions: All comment submissions must include the agency name and docket number or the Regulatory Information Number (RIN) for this rulemaking. Comments need be submitted in only one of the above-listed formats, not all three. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information you provide. Copies of the received comments also will be available for inspection in the EEOC Library, FOIA Reading Room, by advanced appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from May 30, 2008 until the Commission publishes the rule in final form. Persons who schedule an appointment in the EEOC Library, FOIA Reading Room, and need assistance to view the comments will be provided with appropriate aids upon request, such as readers or print magnifiers. To schedule an appointment to inspect the comments at the EEOC Library, FOIA Reading Room, contact the EEOC Library by calling (202) 663-4630 (voice) or (202) 663-4641 (TTY). (These are not toll free numbers).

FOR FURTHER INFORMATION CONTACT: Dianna B. Johnston, Assistant Legal Counsel, or Lyn J. McDermott, Senior Attorney-Advisor, at (202) 663-4638 (voice) or (202) 663-7026 (TTY). (These are not toll free numbers). This notice also is available in the following formats: large print, Braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at 1-

800-669-3362 (voice) or 1-800-800-3302 (TTY).

SUPPLEMENTARY INFORMATION: In *Smith v. City of Jackson*, 544 U.S. 228 (2005), the United States Supreme Court held that the ADEA authorizes recovery for disparate impact claims of discrimination. This holding validated the Commission's longstanding rule that disparate impact analysis applies in ADEA cases. The Court also held that the "reasonable factors other than age" ("RFOA") test, rather than the business-necessity test, is the appropriate standard for determining the lawfulness of a practice that disproportionately affects older individuals. This ruling differs from the EEOC's position that an employment practice that had a disparate impact on individuals within the protected age group could not be a reasonable factor other than age unless it was justified as a business necessity. The Commission proposes to amend its regulation to reflect the Supreme Court's decision.

Smith v. City of Jackson

The *Smith* plaintiffs, senior police and public safety officers, alleged that the defendant City's pay plan had a disparate impact on older workers because it gave proportionately larger pay increases to newer officers than to more senior officers. Older officers, who tended to hold senior positions, on average received raises that represented a smaller percentage of their salaries than did the raises given to younger officers. The City explained that, after a survey of salaries in comparable communities, it raised the junior officers' salaries to make them competitive with those for comparable positions in the region. 544 U.S. at 241-42.

The Fifth Circuit Court of Appeals dismissed the plaintiffs' disparate impact claim on the ground that such claims "are categorically unavailable under the ADEA." *Id.* at 231. The Supreme Court disagreed and ruled that plaintiffs may challenge facially neutral employment practices under the ADEA. *Id.* at 233-40. The Court also ruled, however, that the "scope of disparate-impact liability under the ADEA is narrower than under Title VII" of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*¹ 544 U.S. at 240.

¹ Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin. In *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), the Supreme Court first recognized the disparate impact theory of discrimination under Title VII. The Court held that Title VII prohibits not only intentional discrimination but also employment practices that, because they have a

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