marketing its products to health care providers around the country. U's display of the pharmaceutical company's name and slogan constitutes acknowledgment of the sponsorship. However, the license granted to the pharmaceutical company to use U's logo is a substantial return benefit. Only that portion of the payment, if any, that U can demonstrate exceeds the fair market value of the license granted to the pharmaceutical company is a qualified sponsorship payment.

Example 10. V, a trade association, publishes a monthly scientific magazine for its members containing information about current issues and developments in the field. A textbook publisher makes a large payment to V to have its name displayed on the inside cover of the magazine each month. Because the monthly magazine is a periodical within the meaning of paragraph (b) of this section, the section 513(i) safe harbor does not apply. See § 1.512(a)–1(f).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–4848 Filed 2–29–00; 8:45 am]

BILLING CODE 4830–01–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AA57

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (the Commission or EEOC) proposes to amend its regulation governing federal sector equal employment opportunity to reflect the 1992 amendment of section 501 of the Rehabilitation Act of 1973. Congress amended section 501 in October 1992 to state that the nondiscrimination standards of Title I of the Americans with Disabilities Act apply to section 501 of the Rehabilitation Act.

DATES: Comments must be received by May 1, 2000.

ADDRESSES: Comments should be submitted to the Office of the Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507. Copies of comments submitted by the public will be available for review on weekdays, except federal holidays, at the Commission's library, Room 6502, 1801 L Street, N.W., Washington, D.C., between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, at (202) 663–4689 or TDD (202) 663–7026. This document is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this document in an alternative format should be made to the Publications Information Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: With the Rehabilitation Act Amendments of 1992, Public Law 102–569, 106 Stat. 4344 (1992 Amendments or Rehabilitation Act Amendments), Congress added a new subsection (g) to section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791 (section 501). Subsection (g) provides that the standards used to determine whether section 501 has been violated in a complaint alleging ''nonaffirmative action employment discrimination'' [1] are the standards of Title I of the Americans with Disabilities Act of 1990 (ADA), as well as sections 501 through 504, and 510 of the ADA, as such sections relate to employment.[2] This notice of proposed rulemaking (NPRM) sets forth proposed regulatory revisions to implement the Rehabilitation Act Amendments.

Summary of Proposal

The Commission promulgated its latest regulation under section 501 of the Rehabilitation Act in April, 1992, several months before Congress enacted the Rehabilitation Act Amendments in October, 1992. The Commission now proposes to update this section 501 regulation, found at 29 CFR 1614.203, by deleting all of the current provisions and adding a new paragraph (b)(1) that cross-references the ADA regulation at 29 CFR Part 1630. [3]

Effect of the ADA Standards

As a general matter, the ADA regulation is more extensive than the requirements in place under § 1614.203. [4] In other respects, however, the ADA regulation closely corresponds to provisions in § 1614.203. The following discussion compares each paragraph in § 1614.203 to the corresponding section(s) of the ADA regulation, and identifies major consequences of applying the ADA regulation to the federal sector.

Definitions: Change from Paragraph 1614.203(a) to 29 CFR 1630.2

Subparagraphs 1614.203(a)(1)—(a)(5)

The Commission proposes to delete 29 CFR 1614.203(a)(1)—(a)(5) because these sections are repetitive of ADA definitions at 29 C.F.R. 1630.2. For example, the definition of ''disability'' in the two regulations is virtually identical, referring in both instances to an impairment that substantially limits one or more major life activities, a record of such a substantially limiting impairment, or being regarded as having such a substantially limiting impairment.[5] The ADA regulation also defines several important terms that are not defined in § 1614.203, such as ''essential functions,'' ''qualification standards,'' and ''direct threat.''

Subparagraph 1614.203(a)(6): Safety Issues and ''Qualified Individual with [a Disability]''

The Commission proposes to delete 29 CFR 1614.203(a)(6) because it is inconsistent with the ADA's standard on safety issues. Under the ADA, an employer can disqualify an individual from employment if the employer shows that the individual poses a ''direct threat'' to health and safety, even after considering reasonable accommodation. The ADA regulation defines ''direct threat'' as a ''significant risk of substantial harm,'' and states that an employer must consider individualized medical or other objective evidence to decide if a particular individual poses a ''direct threat.'' 29 CFR 1630.2(r). By contrast, the old subparagraph 1614.203(a)(6) did not even use ''direct

[1] Accordingly, the 1992 Amendments do not alter affirmative action duties under section 501. For simplicity, the phrase ''employment discrimination'' will be used in this document in lieu of the statutory phrase ''nonaffirmative action employment discrimination.''

[2] See 42 U.S.C. 12101–12117, 12201–12213 (1994) (codified as amended).

[3] The fact that the ADA's definition of ''employer'' excludes the United States does not impact this proposal. See 42 U.S.C. 12111(5)(B)(i); 29 CFR 1630.2 (e)(2)(i). The NPRM does not state that the ADA regulation applies directly to the federal government as an employer. Rather, the NPRM simply implements the Rehabilitation Act Amendments by applying ADA employment discrimination standards through Section 501 to the federal sector.

[4] Under the 1992 Amendments, the federal sector is subject to all ADA employment discrimination standards through Section 501.

[5] Compare 29 CFR 1614.203(a)(1) with 29 CFR 1630.2(g). In a decision focused closely on the wording of the ADA definition of ''disability,'' the Supreme Court held in Sutton v. United Airlines, 119 S. Ct. 2139, 9 AD Cas. (BNA) 673 (1999), that the positive and negative effects of corrective or mitigating measures must be considered when judging whether an impairment substantially limits one or more of an individual's major life activities and, therefore, whether the individual is ''disabled'' under the first prong of the ADA's definition of ''disability.'' See also Murphy v. United Parcel Service, Inc., 119 S. Ct. 2133, 9 AD Cas. (BNA) 691 (1999); and Albertsons, Inc. v. Kirkingburg, 119 S. Ct. 2162, 9 AD Cas. (BNA) 694 (1999). The Court's decision in Sutton does not affect the text of the ADA regulation because the regulation does not address mitigating measures. The Sutton holding, however, alters the Commission's subregulatory ADA guidance to the extent such guidance sets forth a position on mitigating measures that is contrary to the Court's holding.

threat'' as a defined term, and instead, addressed safety concerns by requiring the employee to show that s/he could work without endangering health or safety as part of the larger showing that s/he was a ''qualified individual with a disability.''

The Commission has applied this ADA ''direct threat'' standard in federal sector decisions subsequent to the 1992 Amendments. See *Kahout* v. *USPS*, EEOC Appeal No. 01954900 (June 19, 1997); *Hobbs* v. *USPS*, EEOC Appeal No. 01944181 (January 26, 1996); *Robinson* v. *USPS*, EEOC Request No. 05940034 (September 16, 1994).

Paragraph 1614.203(b): Nondiscrimination Obligation and Model Employer

The Commission proposes to redesignate current paragraph (b) as new paragraph (a), and to replace the term ''handicaps'' with ''disabilities'' in its text.[6] Thus, new paragraph (a) sets forth the basic principle that federal agencies have an obligation not to discriminate in employment on the basis of disability. Moreover, paragraph (a) states that ''[t]he [f]ederal [g]overnment shall be a model employer of individuals with disabilities.'' Finally, this paragraph requires agencies to give full consideration to the hiring, placement, and advancement of qualified individuals with mental and physical disabilities.

Reasonable Accommodation and Undue Hardship: Change From Paragraph 1614.203(c) to 29 CFR 1630.2(o), (p) and 1630.9

The Commission proposes to delete 29 CFR 1614.203(c) and instead apply the pertinent ADA standards, thereby providing federal employers with more guidance about reasonable accommodation and undue hardship than the pre-ADA standards.[7] For example, the ADA regulation defines the phrase ''reasonable accommodation'' as ''a means by which barriers to the equal employment opportunity of an individual with a disability are removed or alleviated,'' and thereby articulates a basic principle that may help federal employers and employees to evaluate potential accommodations.[8] The ADA regulation also states that, if an employee requests reasonable accommodation but the most appropriate accommodation is not obvious, the employer needs ''to initiate an informal, interactive process with the qualified individual with a disability'' to identify an effective accommodation. *See* 29 C.F.R. 1630.2(o)(3). In terms of specific accommodations, the ADA regulation adds reassignment and ''modification of examinations, training materials, or policies'' to the familiar list included in the pre-ADA regulation. *See* 29 CFR 1630.2(o)(2).[9] Finally, the ADA regulation provides an extensive discussion of the employer defense of ''undue hardship,'' directing the employer to consider a range of financial and operational factors to evaluate whether a particular reasonable accommodation would impose an undue hardship on its operations.[10]

For the federal employer, the most notable change resulting from the 1992 Amendments is that reassignment is now treated as a reasonable accommodation pursuant to express language in the ADA. 42 U.S.C. 12111(9)(B). An employer's duty to provide reassignment is limited only by ''undue hardship.'' The change will be discussed in detail in the section titled ''Reassignment.''

Employment Criteria: Change from Paragraph 1614.203(d) to 29 CFR 1630.10 and 1630.11

The Commission proposes to eliminate paragraph (d), which governed the use of tests and selection criteria, and instead apply the ADA standards at 29 CFR 1630.10 and 1630.11. Under the ADA, it is unlawful to use qualification standards, tests, or other selection criteria that screen out or tend to screen out individuals with disabilities, based on disability, unless the standards or criteria are shown to be job-related and consistent with business necessity. 29 CFR 1630.10. Consideration must be given to whether an individual with a disability can satisfy a qualification standard or other selection criteria with reasonable accommodation. *See* 29 CFR 1630.15.

Moreover, an individual with a disability must not be excluded from employment simply because his/her disability prevents him/her from taking a test, or negatively influences the results of a test. The Interpretive Guidance appended to the ADA regulation states that employment tests must be administered using accessible test sites and formats, and in a way that measures ability rather than disability. 29 CFR part. 1630 app. 1630.11.

Preemployment Inquiries: Change from Paragraph 1614.203(e) to 29 C.F.R. 1630.13 and 1630.14

The Commission proposes to delete paragraph (e) and apply the pertinent ADA standards at 29 CFR 1630.13 and 1630.14. Under the ADA standards, a federal agency employer remains prohibited from making inquiries as to whether an applicant is an individual with a disability, or as to the nature or severity of such disability, and may not conduct a pre-offer medical examination. *See* 29 CFR 1630.13(a). To the extent that an employer wants to determine if an applicant's medical condition will prevent him/her from performing a job, the ADA only permits a few specified preemployment inquiries.[11] By contrast, the preemployment inquiry provision in old paragraph 1614.203(e) gave agencies broader discretion to ask applicants

[6] The term ''handicaps'' is changed to ''disabilities'' throughout this document.

[7] For a discussion of reasonable accommodation and undue hardship, see 29 CFR 1630.2(o), (p) (defining reasonable accommodation and undue hardship, respectively) and 29 CFR 1630.9 (discussing failure to provide reasonable accommodation as a discriminatory practice). The Commission issued guidance on reasonable accommodation and undue hardship in its ''EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act,'' 8 FEP Manual (BNA) 405:7601(1999) [hereinafter ''Guidance on Reasonable Accommodation and Undue Hardship'']. The analysis in this Enforcement Guidance applies to federal sector employment discrimination complaints arising under section 501 of the Rehabilitation Act. *See id.*

[8] *See* 29 CFR part 1630 app. 1630.9.

[9] A reasonable accommodation that has increasing significance in the federal workplace is providing accessible electronic and information technology to make facilities and services readily accessible to individuals with disabilities. *See* 29 CFR 1630.2(o)(2)(i) (it is a reasonable accommodation to make ''existing facilities used by employees readily accessible to and usable by individuals with disabilities''); *id.* at 1630.2(o)(2)(ii) (''other similar accommodations for individuals with disabilities'' may be required).

[10] A reasonable accommodation imposes an ''undue hardship'' on an employer's operation when it results in ''significant difficulty or expense.'' 42 U.S.C. 12111(10). In assessing undue hardship, an employer should consider several factors including: (1) The nature and net cost of the accommodation; (2) the overall financial resources of the facility or facilities involved in making the accommodation; (3) the overall financial resources of the covered entity; (4) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce, and the geographic separateness and the administrative and fiscal relationship of the facility or facilities in question to the covered entity; and (5) the impact of the accommodation on the operation of the facility. *See* 42 U.S.C. 12111(10)(B); 29 C.F.R. 1630.2(p)(2).

[11] For a detailed discussion of pertinent ADA requirements, see the Appendix to 29 CFR 1630.14, and ''ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations,'' 8 FEP Manual(BNA) 405:7191 (1995) [hereinafter ''Guidance on Preemployment Inquiries'']. Note that the ADA also permits pre-offer disability-related inquiries that are necessary for affirmative action purposes. *See* Guidance on Preemployment Inquiries, 8 FEP Manual (BNA) at 405:7196–97 (1995). The proposed deletion of paragraph (e) will not affect federal sector affirmative action efforts.

about their medical conditions, expressly permitting agencies to inquire ''into an applicant's ability to meet the essential functions of the job, or the medical qualification requirements if applicable, with or without reasonable accommodation, * * * i.e. the minimum abilities necessary for safe and efficient performance of the duties of a position.''

The ADA allows medical inquiries or examinations after a conditional offer of employment but before work begins, assuming all individuals in the same job category are subjected to the same inquiries or examinations regardless of disability. *See* 29 CFR 1630.14(b). An employer may ask specific individuals for more follow-up information if the request is medically related to the previously obtained information.[12] Under the ADA, however, an employer who withdraws a conditional offer of employment based on disability-related information obtained during a post-offer inquiry or examination can defend against a charge of discrimination only by showing: (1) that it used exclusionary criteria that were job-related and consistent with business necessity; and (2) that it considered reasonable accommodation but the person could not have performed the essential job functions even with reasonable accommodation. *See* 29 C.F.R. 1630.14(b)(3).

The ADA also prohibits employers from making disability-related inquiries or requiring medical examinations of *employees* unless those inquiries or examinations are job-related and consistent with business necessity. 42 USC 12112(d)(4); 29 CFR part. 1630, app. 1630.14(c).[13] Finally, the federal employer should note that part 1630 imposes confidentiality restrictions on all medical information obtained from employees and applicants. *See* 29 CFR 1630.14 (b)(1) and (c)(1).

Physical Access to Buildings: Change from Paragraph 1614.203(f) to 29 CFR part 1630

The Commission proposes to delete paragraph 1614.203(f), concerning physical access to buildings. If an applicant or employee is denied equal employment opportunity because she cannot obtain physical access to a building, then the nondiscrimination standards of part 1630 control.

As a practical matter, federal agencies' obligations in this area are not expected to change significantly. Under the old paragraph 1614.203(f), an agency may not have an inaccessible facility. Additionally, federal agencies already must comply with the Architectural Barriers Act of 1968 and the ADA's accessibility requirements. By adopting the ADA's employment nondiscrimination standards, the NPRM would require agencies to provide reasonable accommodation if an applicant or employee would be denied equal employment opportunity because she could not obtain physical access to a building.

Reassignment: Change From Paragraph 1614.203(g) to New Paragraph 1614.203(b)(2)

The Commission proposes to delete paragraph 1614.203(g) and to add a new paragraph 1614.203(b)(2) stating the ADA's requirement of reasonable accommodation as it pertains to reassignment. In the ADA, Congress listed ''reassignment to a vacant position'' as a form of reasonable accommodation. 42 U.S.C. 12111(9)(B). The ADA treats reasonable accommodation as a nondiscrimination obligation.[14] An employer's duty to provide reassignment, like any reasonable accommodation, is limited by ''undue hardship.'' By applying the ADA standard to reassignment, federal employees will now benefit from the same protections provided employees in the private sector.

The Obligation To Reassign

Reassignment to a vacant position is the reasonable accommodation of last resort and is required only if: (1) There are no effective accommodations that will enable the employee to perform the essential functions of his/her position, or (2) all other reasonable accommodations would impose an undue hardship. *See* S. Rep. No. 101–116, at 31 (1989); H.R. Rep. No. 101–485, pt. 2 at 63 (1990); *Smith* v. *Midland Brake, Inc.*, 180 F.3d 1154, 9 AD Cas. (BNA) 738 (10th Cir. 1999) (*en banc*); *Aka* v. *Washington Hosp. Ctr.*, 156 F.3d 1284, 8 AD Cas. (BNA) 1093 (D.C. Cir. 1998) (*en banc*); *Stone* v. *City of Mount Vernon*, 118 F.3d 92, 100–01, 6 AD Cas. (BNA) 1685, 1693 (2d Cir. 1997), cert. denied, 118 S. Ct. 1044 (1998); *Kitaura* v. *USPS*, EEOC Petition No. 03980089 (March 11, 1999); but *see, e.g., Foreman* v. *Babcock & Wilcox Co.*, 117 F.3d 800, 7 AD Cas. (BNA) 331 (5th Cir. 1997), cert denied, 118 S. Ct. 1050 (1998). Reassignment means that the employee receives the vacant[15] position if s/he is qualified for it. Cf. Smith, *supra* (stating that ''the reassignment obligation must mean something more than merely allowing a disabled person to compete equally with the rest of the world for a vacant position'').

The Employee Must Be Qualified

Probationary Employee

A probationary employee with a disability is eligible for reassignment to a new position as long as s/he adequately performed the essential functions of her/his original position, with or without reasonable accommodation, before the need for reassignment arose. The longer a newly hired probationary employee has adequately performed the essential functions of the original job, with or without reasonable accommodation, the more likely it is that reassignment is appropriate when the employee becomes unable to continue performing such functions due to a disability.[16]

Employee Qualified for New Job

An employee is ''qualified'' for the new position if s/he: (1) Satisfies the requisite skill, experience, education, and other job-related requirements of that position; and (2) can perform the essential functions of the position, with or without reasonable accommodation. *See Stone* v. *Mount Vernon*, 118 F.3d 92, 100–01, 6 AD Cas. (BNA) 1685, 1693 (2d Cir. 1997), cert. denied, 118 S. Ct. 1044 (1998). The employer is not obliged to provide training so that an employee can acquire new skills for a particular reassignment. However, the employer must provide any training routinely given to other individuals

[12] *See supra* note 11, Guidance on Preemployment Inquiries, 8 FEP Manual (BNA) at 405:7197–99 (1995).

[13] For a discussion of this standard, see ''EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities,'' at question 14, 8 FEP Manual (BNA) 405:7461,7467–70 (1997).

[14] Consequently, the Commission now considers reassignment a reasonable accommodation rather than affirmative action for purposes of Section 501. Cf. 57 Fed. Reg. 12634, 12637–12638 (April 10, 1992) (preamble to regulation at 29 CFR 1614.203(g), which was issued before the 1992 Amendments, stated that reassignment was affirmative action).

[15] A position is ''vacant'' if it is available when the employee asks for reasonable accommodation, or if it is expected to become available within a reasonable amount of time. See 29 CFR part 1630 app. § 1630.2(o). In the federal government, a position is vacant for purposes of reassignment if it is funded and not yet encumbered, even if the agency has already posted a notice advertising the position. *See Schuetter* v. *DOD*, EEOC Petition No. 03970140 (January 15, 1999). An employer is not obligated to create a new position to implement a reassignment. *See Mitchell* v. *DOD*, EEOC Petition No. 03930164 (January 21, 1994).

[16] See Guidance on Reasonable Accommodation and Undue Hardship, *supra* note 7, 8 FEP Manual (BNA) at 405:7622–23 (1999). Applicants are not entitled to reassignment. An applicant for a position must be qualified for, and be able to perform with or without reasonable accommodation, the essential functions of the position s/he seeks. See 29 CFR part 1630 app. § 1630.2(o).

hired for, or transferred into, the same job. *See Quintana* v. *Sound Distribution Corp.*, 6 AD Cas. (BNA) 842, 846 (S.D.N.Y. 1997). *See also Schuetter* v. *DOD*, EEOC Petition No. 03970140 (January 15, 1999).

The Interactive Process

As with reasonable accommodation generally, the federal employer and the individual with a disability who has requested reassignment may need to engage in an interactive process to identify an appropriate position. The employer may not know about all of the individual's skills, and the individual may not be aware of the range of available positions. *See Mengine* v. *Runyon*, 114 F.3d 415 (3d Cir. 1997). The interactive process need not be onerous. The aim is to identify the employee's qualifications, potential new jobs, and the employee's willingness to accept a particular transfer, through a flexible process involving a two-way dialogue between the employer and the qualified individual with a disability.

The Extent of the Agency's Duty to Search for Another Position

The Federal Employer Must Search for Vacant Positions

The federal employer must search for available vacancies. The employee does not have the burden of identifying open positions without the employer's assistance. *Taylor* v. *Phoenixville School District*, 1999 WL 649376 (3d Cir. August 18, 1999). Of course, the employee should assist the employer in identifying appropriate positions, to the extent s/he can gather such information.[17]

The employer first should search for vacant positions that are equivalent to the current position in terms of pay, status, and other relevant factors (*e.g.*, geographical location or benefits), and for which the individual is qualified. When it is not possible to identify a vacant position that is substantially equivalent to the original job, the federal employer needs to broaden its search. During interagency coordination, a question was raised about when a job technically becomes ''vacant'' and therefore available for reassignment in the federal government. The Commission solicits comment on this point.

The ADA does not limit the obligation to reassign to positions within the same appointing authority or commuting area as the original job.[18] Indeed, reassignment to a different component of the same department may now be required, barring undue hardship. See Kitaura *supra.* If an employee is being reassigned to a different geographical area, s/he must pay for any relocation expenses unless the employer routinely pays such expenses when granting other employees' requests for transfers.[19]

The Undue Hardship Defense

Because Congress deemed reassignment to be a reasonable accommodation, a federal employer can deny a request for reassignment if it poses an undue hardship. See 42 U.S.C. 12111(10)(B); 29 CFR 1630.2(p). See *supra* note 10. The Commission evaluates undue hardship on a case-by-case basis. For example, if a federal employer claims that it would be an undue hardship to search for vacancies at different facilities in the same department, the Commission would examine the administrative and financial links between the department and its separate facilities to determine whether such a search would, in fact, impose ''significant difficulty or expense'' on the federal employer. Reassignment outside of the department—to a different department in the federal government—will be presumed to be an undue hardship at this time. Under current procedures, one federal department cannot compel another to accept a transferred employee, even as a reasonable accommodation.

Proposal To Delete Paragraph 1614.203(h): Exclusion From Definition of ''Individual(s) With [Disabilities]''

This paragraph is deleted because it is duplicative of equivalent provisions in part 1630. Deletion of this paragraph does not change the nondiscrimination standards applicable to federal employers.

Effective Date of a Finalized Rule After Public Comment

This regulation would be effective 30 days after publication of a final rule in the **Federal Register**. Like the recently-finalized procedural changes to part 1614, the current NPRM would apply to all pending Section 501 discrimination complaints.

Additional Amendment

The Commission proposes to delete the provision in § 1614.102(a)(9) which refers to reassignment pursuant to § 1614.203(g).

The Commission invites comment on these proposed changes. The Commission will consider all comments received in conjunction with this NPRM.

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has coordinated this final rule with the Office of Management and Budget. Under section 3(f)(1) of 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 or local tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This regulation contains no 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

In addition, the Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, because it applies exclusively to employees and agencies and departments of the federal government. For this reason, a regulatory flexibility analysis is not required.

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Equal employment opportunity, Government employees, Individuals with disabilities.

[17] Additionally, in a unionized workplace, the employer and the union, as a collective bargaining representative, must negotiate in good faith over a variance to the collective bargaining agreement (CBA) if no reasonable accommodation exists that avoids violating the CBA. See Guidance on Reasonable Accommodation and Undue Hardship, *supra* note 7, 8 FEP Manual (BNA) at 405: 7633 (1999).

[18] *See Gile* v. *United Airlines, Inc.*, 95 F.3d 492, 5 AD Cas. (BNA) 1466 (7th Cir. 1996) (stating that lower court erroneously limited a plaintiff's request for documents since plaintiff should be able to present evidence about reassignment possibilities in other departments); *Malabarba* v. *Chicago Tribune Co.*, 149 F.3d 690, 8 AD Cas. (BNA) 1505 (7th Cir. 1998) (stating that company conducted conscientious intra-company search for position, even though its efforts could not result in reassignment); *see Kitaura supra*; *but see Riley* v. *Weyerhaeuser Paper Co.*, 898 F. Supp. 324 (W.D.N.C. 1995), 5 AD Cas. (BNA) 325, aff'd 77 F.3d 470, 8 AD Cas. (BNA) 1536 (4th Cir. 1996).

[19] If an employee freely states that s/he would not move to a different geographical area, the federal employer need not continue its search for a position in that geographic area.

For the Commission.

Ida L. Castro,

Chairwoman.

For the reasons set forth in the preamble, EEOC proposes to amend Chapter XIV of Title 29 of the Code of Federal Regulations as follows:

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

1. the authority citation for part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633(a), 791 and 794a; 42 U.S.C. 2000e–16; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR 1978 Comp., p. 321.

§ 1614.102 [Amended]

2. Section 1614.102 is amended by removing paragraph (a)(9) and redesignating paragraphs (a)(10) through (a)(14) as paragraphs (a)(9) through (a)(13), respectively.

3. Section 1614.203 is revised to read as follows:

§ 1614.203 Rehabilitation Act.

(a) *Model employer.* The Federal Government shall be a model employer of individuals with disabilities. Agencies shall not discriminate against qualified individuals with disabilities. Agencies shall give full consideration to the hiring, placement, and advancement of qualified individuals with disabilities.

(b) *ADA standards.* (1) The standards used to determine whether section 501 of the Rehabilitation Act of 1973 has been violated in a complaint alleging nonaffirmative action employment discrimination under this part shall be the standards applied under Titles I and V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12102, 12111–12117, 12201–12213) as such sections relate to employment. These standards are set forth in the Commission's ADA regulations at 29 CFR part 1630.

(2) Agencies must provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability, unless the agency can demonstrate that the accommodation would impose an undue hardship. Reasonable accommodation may include reassignment to a vacant position. Reassignment is the reasonable accommodation of last resort and is required only after it has been determined either that:

(i) There are no effective accommodations that will enable the employee to perform the essential functions of his/her current position; or

(ii) All other accommodations would impose an undue hardship.

[FR Doc. 00–4596 Filed 2–29–00; 8:45 am]

BILLING CODE 6570–01–P

POSTAL SERVICE

39 CFR Part 20

International Postal Rates; Proposed Changes

AGENCY: Postal Service.

ACTION: Proposed changes in international postal rates.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is proposing changes in international postal rates for certain surface mail categories. As required under the Postal Reorganization Act, the proposed changes will result in international postal rates that do not apportion the costs of the service so as to impair the overall value of the service to the users, are fair and reasonable, and are not unduly or unreasonably discriminatory or preferential.

DATES: Comments on the proposed changes must be received on or before March 31, 2000.

ADDRESSES: Written comments should be sent to the Manager, International Pricing, International Business, U.S. Postal Service, 475 L'Enfant Plaza SW Room 370–IBU, Washington DC 20260–6500. Copies of all written comments will be available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in International Business, 10th Floor, 901 D Street SW, Washington DC.

FOR FURTHER INFORMATION CONTACT: John Alepa, (202) 268–4071.

SUPPLEMENTARY INFORMATION: The proposed international rates, shown in the tables below, are needed by the Postal Service to accommodate changes in the cost of providing international mail service.

The Postal Service is proposing to change only the rates contained in the charts below. These rates include the surface rates for regular printed matter and small packets to Mexico; the publishers' periodicals surface rates for Mexico and all other countries except Canada; and the books and sheet music surface rates for Mexico and all other countries except Canada. No other rates are changed at this time. Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service proposes to adopt the following rates and to amend the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual will be amended to incorporate the following postage rates:

MEXICO—REGULAR PRINTED MATTER AND SMALL PACKETS (SURFACE)

Weight not over— Lb.	Oz.	Rate
0	1	$0.72
0	2	0.96
0	3	1.27
0	4	1.50
0	5	1.80
0	6	1.80
0	7	2.22
0	8	2.22
0	9	2.63
0	10	2.63
0	11	2.96
0	12	2.96
0	13	3.37
0	14	3.37
0	15	3.77
1	0	3.77
1	2	4.12
1	4	4.46
1	6	4.81
1	8	5.16
1	10	5.50
1	12	5.84
1	14	6.19
2	0	6.54
3	0	8.84
4	0	11.15
Each additional pound or fraction of a pound		2.30

(**Note:** Maximum weight is 4 pounds for small packets and 11 pounds for regular printed matter.)

PUBLISHERS' PERIODICALS (SURFACE)

Weight not over— Lb.	Oz.	Mexico	All other [1]
0	1	$0.48	$0.44
0	2	0.60	0.55
0	3	0.78	0.71
0	4	0.90	0.83
0	5	1.13	1.05
0	6	1.13	1.05
0	7	1.36	1.27