

AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008-0036, dated February 22, 2008; and BAE Systems (Operations) Limited Service Bulletin J41-32-086, dated June 27, 2007; for related information.

Issued in Renton, Washington, on May 7, 2009.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1601, 1602, 1603, 1607, 1610, 1611, 1614, 1625, and 1690

RIN 3046-AA88

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

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (“EEOC” or “Commission”) proposes to amend some of its existing regulations to include references to title II of the Genetic Information Nondiscrimination Act of 2008 (“GINA”), which prohibits employment discrimination based on genetic information.

DATES: Comments must be received on or before July 20, 2009.

ADDRESSES: Send written comments by mail to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Suite 6NE03F, Washington, DC 20507. Written comments of six or fewer pages may be faxed to the Executive Secretariat at (202) 663-4114. (There is no toll free FAX number.) Receipt of facsimile 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.) Instead of sending written comments to EEOC, comments may be submitted to EEOC electronically on the Federal eRulemaking Portal: <http://www.regulations.gov>. After accessing this Web site, follow its instructions for submitting comments.

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 by advance appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from July 20, 2009 until the Commission publishes the rule in final form. Persons who schedule an appointment in the EEOC Library 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, 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:

Thomas J. Schlageter, Assistant Legal Counsel, (202) 663-4668, or Erin N. Norris, Senior Attorney, (202) 663-4876, Office of Legal Counsel, 131 M Street, NE., Washington, DC 20507. Copies of this rule are available in the following alternate formats: large print, braille, electronic computer disk, and audiotape. Requests for this notice in an alternative format should be made to the Publications Center at 1-800-699-3362 (voice), 1-800-800-3302 (TTY), or 703-821-2098 (FAX—this is not a toll free number).

SUPPLEMENTARY INFORMATION: On May 21, 2008, President George W. Bush 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 will become effective on November 21, 2009. In a separate notice of proposed rulemaking, found at 74 FR 9056, EEOC issued 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.

Regulatory Procedures

Executive Order 12866

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This rule is not a “significant regulatory action” under section 3(f) of the Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order.

Paperwork Reduction Act

This regulation 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 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 only adds references and does not impose a burden on any business entities. For this reason, a regulatory flexibility analysis is not required.

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 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 Parts 1601, 1602, 1603, 1607, 1610, 1611, 1614, 1625, and 1690

Administrative practice and procedure, Equal employment opportunity.

For the Commission.

Dated: May 12, 2009.

Stuart J. Ishimaru,
Acting Chairman.

Accordingly, it is proposed to amend 29 CFR parts 1601, 1602, 1603, 1607, 1610, 1611, 1614, 1625, and 1690 as follows:

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 is revised to read as follows:

Authority: 42 U.S.C. 2000e to 2000e-17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff-11.

2. Section 1601.1 is revised to read as follows:

§ 1601.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity Commission for carrying out its responsibilities in the administration and enforcement of title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and the Genetic Information Nondiscrimination Act of 2008. Section 107 of the Americans with Disabilities Act and section 207 of the Genetic Information Nondiscrimination Act incorporate the powers, remedies and procedures set forth in sections 705, 706, 707, 709 and 710 of the Civil Rights Act of 1964. Based on its experience in the enforcement of title VII, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act, and upon its evaluation of suggestions and petitions for amendments submitted by interested persons, the Commission may from time to time amend and revise these procedures.

3. Section 1601.2 is revised to read as follows:

§ 1601.2 Terms Defined in Title VII of the Civil Rights Act, the Americans With Disabilities Act, and the Genetic Information Nondiscrimination Act.

The terms *person*, *employer*, *employment agency*, *labor organization*, *employee*, *commerce*, *industry affecting commerce*, *State* and *religion* as used in this part shall have the meanings set forth in section 701 of title VII of the Civil Rights Act of 1964. The term disability shall have the meaning set forth in section 3 of the Americans with Disabilities Act of 1990. The term *genetic information* shall have the meaning set forth in section 201 of the Genetic Information Nondiscrimination Act of 2008.

4. Section 1601.3 is amended by revising paragraph (a) to read as follows:

§ 1601.3 Other definitions.

(a) For the purposes of this part, the term *title VII* shall mean title VII of the Civil Rights Act of 1964; the term *ADA* shall mean the Americans with Disabilities Act of 1990; the term *GINA* shall mean the Genetic Information Nondiscrimination Act of 2008; the term *Commission* shall mean the Equal Employment Opportunity Commission or any of its designated representatives; *Washington Field Office* shall mean the Commission’s primary non-Headquarters office serving the District of Columbia and surrounding Maryland and Virginia suburban counties and jurisdictions; the term *FEP agency* shall mean a State or local agency which the Commission has determined satisfies the criteria stated in section 706(c) of title VII; and the term *verified* shall mean sworn to or affirmed before a notary public, designated representative of the Commission, or other person duly authorized by law to administer oaths and take acknowledgements, or supported by an unsworn declaration in writing under penalty of perjury.

* * * * *

5. Section 1601.28 is amended as follows:

a. In paragraphs (a)(3) and (b)(1), remove the words “title VII or the ADA” and add in their place the words “title VII, the ADA, or GINA” wherever they appear;

b. Revise paragraph (e)(1) to read as follows:

§ 1601.28 Notice of right to sue: Procedure and authority.

* * * * *

(e) * * *

(1) Authorization to the aggrieved person to bring a civil action under title VII, the ADA, or GINA pursuant to section 706(f)(1) of title VII, section 107 of the ADA, or section 207 of GINA

within 90 days from receipt of such authorization;

* * * * *

§§ 1601.6, 1601.7, 1601.10, 1601.11, 1601.13, 1601.18, 1601.21, 1601.22, 1601.24, 1601.25, 1601.26, 1601.30, 1601.70, and 1601.79 [Amended]

6. Remove the words “title VII or the ADA” and add in their place the words “title VII, the ADA, or GINA” wherever they appear in the following places:

- a. § 1601.6(a);
- b. § 1601.7(a);
- c. § 1601.10;
- d. § 1601.11(b);
- e. § 1601.13(a)(3)(i), (a)(4)(i);
- f. § 1601.18(a);
- g. § 1601.21(a), (e)(2)(iii);
- h. § 1601.22, third sentence;
- i. § 1601.24(c);
- j. § 1601.25;
- k. § 1601.26(a);
- l. § 1601.30(a);
- m. § 1601.70(d);
- n. § 1601.79.

§§ 1601.16, 1601.17, 1601.30, and 1601.34 [Amended]

7. Remove the words “title VII and the ADA” and add in their place the words “title VII, the ADA, and GINA” wherever they appear in the following places:

- a. § 1601.16(a);
- b. § 1601.17(a);
- c. § 1601.30(a);
- d. § 1601.34.

8. In the first sentence of § 1601.22 remove the words “the ADA or title VII” and add in their place the words “title VII, the ADA, or GINA” wherever they appear.

PART 1602—RECORDKEEPING AND REPORTING REQUIREMENTS UNDER TITLE VII, THE ADA, AND GINA

9. The authority citation for part 1602 is revised to read as follows:

Authority: 42 U.S.C. 2000e-8, 2000e-12; 44 U.S.C. 3501 *et seq.*; 42 U.S.C. 12117; 42 U.S.C. 2000ff-6.

10. The heading for part 1602 is revised to read as set forth above.

11. Section 1602.1 is revised to read as follows:

§ 1602.1 Purpose and scope.

Section 709 of title VII (42 U.S.C. 2000e), section 107 of the Americans with Disabilities Act (ADA) (42 U.S.C. 12117), and section 207(a) of the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff-6) require the Commission to establish regulations pursuant to which employers, labor organizations, joint labor-management committees, and employment agencies subject to those Acts shall make and

preserve certain records and shall furnish specified information to aid in the administration and enforcement of the Acts.

§§ 1602.11, 1602.12, 1602.19, 1602.26, 1602.37, 1602.45, and 1602.54 [Amended]

12. Remove the words "title VII or the ADA" and add in their place the words "title VII, the ADA, or GINA"; and remove the words "section 709(c) of title VII or section 107 of the ADA" and add in their place the words "section 709(c) of title VII, section 107 of the ADA, or section 207(a) of GINA" wherever they appear in the following places:

- a. § 1602.11;
b. § 1602.12;
c. § 1602.19;
d. § 1602.26;
e. § 1602.37;
f. § 1602.45;
g. § 1602.54.

PART 1603—PROCEDURES FOR PREVIOUSLY EXEMPT STATE AND LOCAL GOVERNMENT EMPLOYEE COMPLAINTS OF EMPLOYMENT DISCRIMINATION UNDER SECTION 321 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

13. The authority citation for part 1603 is revised to read as follows:

Authority: 42 U.S.C. 2000e-16c; 42 U.S.C. 2000ff-6(b).

14. Section 1603.102(a) is revised to read as follows:

§ 1603.102 Filing a complaint.

(a) Who may make a complaint. Individuals referred to in § 1603.101 who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or genetic information, or retaliated against for opposing any practice made unlawful by Federal laws protecting equal employment opportunity or for participating in any stage of administrative or judicial proceedings under Federal laws protecting equal employment opportunity may file a complaint not later than 180 days after the occurrence of the alleged discrimination.

* * * * *

PART 1607—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

15. The authority citation for part 1607 continues to read as follows:

Authority: Secs. 709 and 713, Civil Rights Act of 1964 (78 Stat. 265) as amended by the Equal Employment Opportunity Act of 1972 (Pub. L. 92-261); 42 U.S.C. 2000e-8, 2000e-12.

16. In § 1607.2(D), remove the word "handicap" and add in its place the word "disability."

PART 1610—AVAILABILITY OF RECORDS

17. The authority citation for part 1610 continues to read as follows:

Authority: 42 U.S.C. 2000e-12(a), 5 U.S.C. 552 as amended by Public Law 93-502, Public Law 99-570, and Public Law 105-231; for § 1610.15, non-search or copy portions are issued under 31 U.S.C. 9701.

18. Section 1610.7(a)(4) is revised to read as follows:

§ 1610.7 Where to make request; form.

(a) * * *

(4) Materials in office investigative files related to charges under: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206(d)); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); or the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff et seq.).

* * * * *

19. Section 1610.17(f) is revised to read as follows:

§ 1610.17 Exemptions.

* * * * *

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) and Section 207(a) of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff-6) explicitly adopt the powers, remedies, and procedures set forth in sections 706 and 709 of title VII. Accordingly, the prohibitions on disclosure contained in sections 706 and 709 of title VII as outlined in paragraphs (b), (c), (d), and (e) of this section, apply with equal force to requests for information related to charges and executed statistical reporting forms filed with the Commission under the Americans with Disabilities Act or the Genetic Information Nondiscrimination Act.

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PART 1611—PRIVACY ACT REGULATIONS

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

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

21. Section 1611.13 is amended by revising the introductory text, the first sentence of paragraph (a), and the first sentence of paragraph (c) to read as follows:

§ 1611.13 Specific Exemptions—Charge and complaint files.

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC-1 (Age and Equal Pay Act Discrimination Case Files), EEOC-3 (Title VII, Americans with Disabilities Act, and GINA Discrimination Case Files), EEOC-15 (Internal Harassment Inquiries) and EEOC/GOVT-1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of harassment inquiries, and investigations of charges and complaints that violations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans with Disabilities Act, the Rehabilitation Act, and the Genetic Information Nondiscrimination Act have occurred.

* * *

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(c) Subject individuals of the files in EEOC-1 (Age and Equal Pay Act Discrimination Case Files), EEOC-3 (Title VII, Americans with Disabilities Act, and GINA Discrimination Case Files), and EEOC/GOVT-1 (Equal Employment Opportunity Complaint Records and Appeal Records) have been provided a means of access to their records by the Freedom of Information Act.

* * * * *

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

22. The authority citation for part 1614 is revised to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e-16 and 2000ff-6(e); 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.

23. Section 1614.101 is revised to read as follows:

§ 1614.101 General policy.

(a) It is the policy of the Government of the United States to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, disability, or genetic information and to

promote the full realization of equal employment opportunity through a continuing affirmative program in each agency.

(b) No person shall be subject to retaliation for opposing any practice made unlawful by title VII of the Civil Rights Act (title VII) (42 U.S.C. 2000e *et seq.*), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Rehabilitation Act (29 U.S.C. 791 *et seq.*), or the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff *et seq.*) or for participating in any stage of administrative or judicial proceedings under those statutes.

24. Section 1614.102(a)(4) is revised to read as follows:

§ 1614.102 Agency program.

(a) * * *

(4) Communicate the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age, disability, or genetic information, and solicit their recruitment assistance on a continuing basis;

* * * * *

25. Section 1614.103(a) is revised to read as follows:

§ 1614.103 Complaints of discrimination covered by this part.

(a) Individual and class complaints of employment discrimination and retaliation prohibited by title VII (discrimination on the basis of race, color, religion, sex and national origin), the ADEA (discrimination on the basis of age when the aggrieved individual is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of disability), the Equal Pay Act (sex-based wage discrimination), or GINA (discrimination on the basis of genetic information) shall be processed in accordance with this part. Complaints alleging retaliation prohibited by these statutes are considered to be complaints of discrimination for purposes of this part.

* * * * *

26. Section 1614.105(a) is revised to read as follows:

§ 1614.105 Pre-complaint processing.

(a) Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or genetic information must consult a Counselor prior to filing a complaint in

order to try to informally resolve the matter.

* * * * *

27. Section 1614.204(a)(1) is revised to read as follows:

§ 1614.204 Class complaints.

(a) * * *

(1) A class is a group of employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by an agency personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age, disability, or genetic information.

* * * * *

28. Section 1614.302(a) is revised to read as follows:

§ 1614.302 Mixed case complaints.

(a) *Definitions*—(1) *Mixed case complaint*. A mixed case complaint is a complaint of employment discrimination filed with a federal agency based on race, color, religion, sex, national origin, age, disability, or genetic information related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address.

(2) *Mixed case appeals*. A mixed case appeal is an appeal filed with the MSPB that alleges that an appealable agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability, age, or genetic information.

* * * * *

29. Section 1614.304(b)(3) is revised to read as follows:

§ 1614.304 Contents of petition.

* * * * *

(b) * * *

(3) A statement of the reasons why the decision of the MSPB is alleged to be incorrect, in whole or in part, only with regard to issues of discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information;

* * * * *

30. Section 1614.601 is amended as follows:

a. Remove the word “handicap” and add in its place the word “disability” wherever it appears in paragraphs (f) and (g);

b. Remove the word “handicaps” and add in its place the word “disabilities” wherever it appears in paragraph (f);

c. Remove the word “handicap(s)” and add in its place the word “disability” in paragraph (a).

31. Section 1614.702(j) is revised to read as follows:

§ 1614.702 Definitions.

* * * * *

(j) The term *basis of alleged discrimination* refers to the individual's protected status (*i.e.*, race, color, religion, reprisal, sex, national origin, Equal Pay Act, age, disability, or genetic information). Only those bases protected by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, the Equal Pay Act of 1963, 29 U.S.C. 206(d), the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.*, and the Genetic Information Nondiscrimination Act, 42 U.S.C. 2000ff *et seq.*, are covered by the Federal EEO process.

* * * * *

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

32. The authority citation for part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10–68; Secretary's Order No. 11–68; sec. 12, 29 U.S.C. 631, Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

33. In § 1625.31(a), remove the word “handicapped” and add in its place the phrase “individuals with disabilities.”

PART 1690—PROCEDURES ON INTERAGENCY COORDINATION OF EQUAL EMPLOYMENT OPPORTUNITY ISSUANCES

34. The authority citation for part 1690 continues to read as follows:

Authority: Sec. 715 of title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–14); Reorganization Plan No. 1 of 1978, 43 FR 19807; E.O. 12067, 43 FR 28967.

35. In § 1690.102, remove the word “handicap” and add in its place the word “disability.”

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