



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D. C. 20506

MAR - 6 1980

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OFFICE OF THE CHAIR

MEMORANDUM

TO: Heads of Agencies

FROM: Eleanor Holmes Norton *EHN*  
Chair

RE: Proposed Final Regulations for Interagency Coordination of Federal Equal Employment Issuances Under Executive Order 12067

This is a 15 working day notice of EEOC's intent to publish the enclosed regulation as final in the Federal Register. The regulation, (Interagency Coordination of Federal Equal Employment Issuances) was developed pursuant to EEOC's obligation and authority under Sections 1-303 and 1-304 of Executive Order 12067 (Providing for Coordination of Federal Equal Employment Opportunity Programs).

This proposed regulation was previously circulated to heads of agencies and was published in the Federal Register for comment on September 28, 1979. Comment was received from three major agencies: the Departments of Labor and Health, Education and Welfare and the Office of Personnel Management. The Equal Employment Advisory Council also responded.

We have also enclosed a preamble which contains an analysis of the comments received and notes those significant comments which were adopted.

Your comments are invited and should be sent to:

Francesta E. Farmer, Director  
Office of Interagency Coordination  
Equal Employment Opportunity Commission  
Room 2534  
2401 E Street, N. W.  
Washington, D. C. 20506

You may also contact Horace T. Harris (OIC) at 254-3036 if there are questions concerning the regulation or the coordination process.

Enclosure

REPOSITORY DOE- FARRESTAL

COLLECTION MARKEY FILES

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FOLDER CONSENTS FILED REPORTS

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR 1690

Coordination of Federal Equal Employment Opportunity Programs

AGENCY: Equal Employment Opportunity Commission

ACTION: Final Regulations

SUMMARY: These regulations implement the obligations outlined in Sections 1-303 and 1-304 of Executive Order 12067 (Providing for Coordination of Federal Equal Employment Opportunity Programs) which require that Federal agencies consult and coordinate with EEOC in the development of rules, regulations, policies, procedures or orders dealing with equal employment opportunity. These regulations outline the means by which the consultation and coordination shall occur between the EEOC and Federal agencies and departments which are authorized to enforce Federal law in support of equal employment opportunity.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT:

Francesta E. Farmer, Director, Office of Interagency Coordination, Room 2534  
Equal Employment Opportunity Commission, 2401 "E" Street, N.W., Washington,  
D.C. 20506

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1979, (44 F.R. 55907) the Office of Interagency Coordination at EEOC published proposed regulations to implement the obligations outlined in Section 1-303 and 1-304 of E.O. 12067 (43 F.R. 28967) and invited

"Policy Intent"

One comment that cautioned against violation of the Trade Secrets and Privacy Acts is well taken. However, the comment does not affect these E.O. 12067 regulations since interagency coordination, and indeed, intra-agency policy development normally do not involve sharing of trade secrets or privileged information about individuals. Nevertheless, we will take cognizance of these comments in appropriate circumstances.

"Internal Management and Administration"

The commenting agencies have suggested that it would be burdensome for EEOC to obligate itself to make the determination that issuances are exempt from coordination because they are internal management and administration documents. Therefore, we have modified the appropriate definition by giving the agencies more guidance for identifying those agency issuances that must be submitted to EEOC (see Definitions, Section 7 - new Section 1690.1000-106(f)). One comment concerned the possible impact of a proposed regulation on another agency's internal EEO or personnel programs. Therefore, Section 9(c), (new Section 1690.1000-303) has been changed to provide that initiating agencies shall consult with other agencies which claim that their internal EEO or personnel programs are affected by proposed issuances otherwise related to external EEO efforts.

"Definitions"

Another comment called for eliminating the distinction between "issuance" and "significant issuance." Section 1-305 of the Executive Order requires that "before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments

Further, the argument that S. 755 (Regulation Reform Act of 1979), if enacted, will impose such restrictions is not persuasive. The bill merely requires that agencies report their own estimates of the time required for intra-agency development of issuances and does not impose time limits on the coordination process. The purposes of Executive Order 12067 will not be served by arbitrary cloture on discussions of unresolved policy or procedural inconsistencies.

"EEOC Approval Prior to Public Comment"

For the reasons stated above, we conclude that the EEOC should approve all proposed issuances before they are published for public comment. Although one commentator has suggested that unresolved differences among the agencies may be resolved prior to publication of the final issuance, our view is that the process envisioned by the Executive Order requires consistency in Federal policy from the earliest publication. Where appropriate, the EEOC will ensure that the preamble to the final document notes significant disputes and the basis on which they were resolved.

"Agency Review of Public Comments"

Another commentator suggested that the second 15 working day review period is unnecessary in that the agencies will have an opportunity to comment along with the public. We reject this notion because there have been instances in which the proposing agency has made substantial revisions to its original draft based on public comments. These revisions may give rise to inconsistencies which did not infect the original proposal. Therefore, we have decided that it is important to allow the EEOC and affected agencies an opportunity to comment on the proposed final rule.

"OMB Review"

One commentor's concern was the absence of any requirement for OMB review of proposed issuances prior to final publication. EEOC's position is that no approval or review by OMB is required for these issuances. Executive Order 12067 makes the EEOC the lead Federal agency for EEO matters and specifically authorizes EEOC to "issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its responsibilities under this Order" (emphasis added). Of course, where there are competing oversight authorities, EEOC will consult with OMB to ensure that any inconsistencies between EEOC and OMB are resolved before publication.

This regulation is the first in a series of such issuances under EEOC's Executive Order 12067 authority. As experience dictates, we will issue additional written interpretations or amendments of these Executive Order regulations. Accordingly, the EEOC is adding 29 C.F.R. Part 1690 as set forth below.

Signed at Washington, D.C., this      day of      1980.

For the Commission.

ELEANOR HOLMES NORTON

Chair

programs. This goal is to be achieved with the maximum participation and review on both an informal and formal basis by the relevant Federal agencies and departments and, finally, by the public.

1690.1000-106 SCOPE. These procedures apply to Federal departments and agencies having EEO responsibilities for their own Federal employees or applicants for employment. Its provisions do not apply to issuances related to internal management or administration of the department or agency. However, it shall be the responsibility of the EEOC to determine the extent to which a particular issuance is covered by this exemption.

1690.1000-107 DEFINITIONS.

(a) "Affected Agency" means any agency as defined below, whose programs, policies, procedures, authority or other statutory mandates (including coverage of groups of employers, unions, State and local governments or other organizations mandated by statute or Executive Order) indicate that the agency may have an interest in the proposed issuance.

(b) "Agency Component" means a discrete office, program, division, subdivision, or any group of these offices, programs, divisions or sub-agencies, having policy-making authority and /or statutory responsibility for EEO.

(c) "Consultation" means the exchange of advice and opinions on a subject occurring among the EEOC and affected agencies before formal submission of the issuance.

(d) "Departments" and "Agencies" means those Executive and independent agencies, agency components, regulatory commissions, and advisory bodies having

(h) "Order" means Executive Order 12067 (Providing for Coordination of Federal Equal Employment Opportunity Programs).

(i) "Public Announcement" means the publication of a document in final form in the Federal Register or to any other promulgation for general agency or public reference.

(j) "Significant Issuance" means any issuance which the public must be afforded an opportunity to comment upon. In determining whether an issuance is significant, the EEOC shall apply the following criteria:

a. The type and number of individuals, businesses, organizations, employers, unions and State and local governments affected;

b. The compliance and reporting requirements likely to be involved;

c. The impact on the identification and elimination of discrimination in employment;

d. The relationship of the proposed issuance to those of other programs and agencies.

#### SUBPART B - RESPONSIBILITIES

##### 1690.1000-201 RESPONSIBILITIES.

(a) All Federal departments and agencies shall advise and offer to consult with the EEOC during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity.

(b) The Equal Employment Opportunity Commission shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity.

(c) Except as provided in Section 1690.1000-307 below, in no instance shall there be formal submission to the EEOC or the affected agencies without prior consultation pursuant to Section 1-304 of the Order. The requirement for consultation applies equally and to the same extent whether or not the agency plans to publish the issuance in the Federal Register for public comment.

(d) Where an agency issuance is related to the internal management or administration of the agency, that issuance is exempt from the consultation process under the Order. The EEOC will consider any justification offered by an agency in support of an EEOC determination that an issuance would be exempt and shall determine upon receipt the extent to which a particular issuance is covered by the exemption.

1690.1000-302 ISSUANCES PROPOSED BY EEOC. Whenever the EEOC proposes to develop a significant issuance or any issuance requiring consultation, the procedure outlined in these regulations, shall also apply, as set forth in Section 1-303 of the Order. The EEOC shall advise and consult with other affected agencies whenever it develops an issuance, in the same manner and to the same extent as other agencies are required to do so in Section 1690.1000-301 above and in other sections below.

1690.1000-303 CONSULTATION WITH AFFECTED AGENCIES. At the start of consultation, the EEOC shall determine which other agencies would be affected by the proposed issuance, and the initiating agency shall consult with such agencies. Initiating agencies shall also consult with other agencies which claim that their internal EEO or personnel programs are affected by proposed issuances otherwise directed at external EEO efforts. Agencies may consult with any other

an early and meaningful opportunity to participate in the development of regulations.

(b) Procedure for publication of final issuance. After the period for public comment has closed, the initiating agency shall then incorporate the changes it deems appropriate and forward to EEOC for review, a copy of the document as published, a copy of the document as amended, any staff analysis, and a list of commentors. EEOC or affected agencies may review and copy the comments received. The time needed to review these materials shall be agreed on by the EEOC and the initiating agency. After completion of this review, the initiating agency shall formally submit the proposed final issuance to all affected agencies for at least 15 working days prior to publication.

1690.1000-305 NONDISCLOSURE OF INTERIM DRAFTS. In the interest of encouraging full interagency discussion of these matters and expediting the coordination process, the EEOC will not disclose to the public any drafts other than those which are to be published for comment without the permission of the proposing agency.

1690.1000-306 FORMAL SUBMISSION IN ABSENCE OF CONSULTATION. If an initiating agency has an issuance which was already under development on or before July 1, 1978, when Executive Order 12067 became effective, and on which there has been no consultation, the agency shall immediately notify the EEOC of the existence of such proposals and the following procedure shall apply :

(a) EEOC shall confer with the initiating agency and shall determine whether the proposal should be the subject of informal consultation and/or formal submission to other affected Federal departments and agencies pursuant to

1690.1000-308 NOTICE OF UNRESOLVED DISPUTES.

(a) If, after receipt of the notice of intent to publicly announce an issuance within 15 working days, the Commission or a Federal department or agency believes that there exists a dispute between them concerning the promulgation of a final issuance and it's determined that further good faith efforts on the part of the Commission and the department or agency involved would be ineffective in achieving a resolution of the dispute, the agency or department involved shall send written notification to the EEOC of the dispute and the reasons therefor with copies to the other affected departments and agencies before any steps are taken to refer the dispute to the Executive Office of the President.

(b) Only in extraordinary circumstances, after substantial efforts have been made during the course of the full coordination process may referral occur where the dispute has not been resolved within a reasonable time. Such references to the Executive Office of the President shall be made not later than 15 working days following receipt of the initiating agency's notice of intent to publicly announce the disputed issuance and may be made by the Chair of the EEOC or the head of the Federal department or agency. If no reference is made within 15 working days, the decision of the agency which initiated the proposed issuance will become effective.

1690.1000-309 INTERPRETATION OF THE ORDER. Subject to the dispute resolution procedures set forth above and in accordance with the objectives set forth in 1-201 and the procedures in 1-303 of the Order, the EEOC shall interpret the meaning and intent of the order. EEOC also will issue procedural changes under the Order, as appropriate, after advice and consultation with affected agencies as provided for in these procedures.