

**List of Subjects in 29 CFR Part 1625**

Advertising, Age, Employee benefit plans, Equal employment opportunity, Retirement.

Dated: March 7, 2012.

For the Commission.

**Jacqueline A. Berrien,**

*Chair.*

For the reasons set forth in the preamble, the Equal Employment Opportunity Commission 29 CFR chapter XIV part 1625 is amended as follows:

**PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT**

■ 1. 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. 9, 81 Stat. 605; 29 U.S.C. 628; 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.

**Subpart A—Interpretations**

■ 2. In § 1625.7, revise paragraphs (b) through (e) to read as follows:

**§ 1625.7 Differentiations based on reasonable factors other than age (RFOA).**

\* \* \* \* \*

(b) When an employment practice uses age as a limiting criterion, the defense that the practice is justified by a reasonable factor other than age is unavailable.

(c) Any employment practice that adversely affects individuals within the protected age group on the basis of older age is discriminatory unless the practice is justified by a “reasonable factor other than age.” An individual challenging the allegedly unlawful practice is responsible for isolating and identifying the specific employment practice that allegedly causes any observed statistical disparities.

(d) Whenever the “reasonable factors other than age” defense is raised, the employer bears the burdens of production and persuasion to demonstrate the defense. The “reasonable factors other than age” provision is not available as a defense to a claim of disparate treatment.

(e)(1) A reasonable factor other than age is a non-age factor that is objectively reasonable when viewed from the position of a prudent employer mindful of its responsibilities under the ADEA under like circumstances. Whether a differentiation is based on reasonable factors other than age must be decided on the basis of all the particular facts and circumstances surrounding each individual situation. To establish the

RFOA defense, an employer must show that the employment practice was both reasonably designed to further or achieve a legitimate business purpose and administered in a way that reasonably achieves that purpose in light of the particular facts and circumstances that were known, or should have been known, to the employer.

(2) Considerations that are relevant to whether a practice is based on a reasonable factor other than age include, but are not limited to:

(i) The extent to which the factor is related to the employer's stated business purpose;

(ii) The extent to which the employer defined the factor accurately and applied the factor fairly and accurately, including the extent to which managers and supervisors were given guidance or training about how to apply the factor and avoid discrimination;

(iii) The extent to which the employer limited supervisors' discretion to assess employees subjectively, particularly where the criteria that the supervisors were asked to evaluate are known to be subject to negative age-based stereotypes;

(iv) The extent to which the employer assessed the adverse impact of its employment practice on older workers; and

(v) The degree of the harm to individuals within the protected age group, in terms of both the extent of injury and the numbers of persons adversely affected, and the extent to which the employer took steps to reduce the harm, in light of the burden of undertaking such steps.

(3) No specific consideration or combination of considerations need be present for a differentiation to be based on reasonable factors other than age. Nor does the presence of one of these considerations automatically establish the defense.

\* \* \* \* \*

[FR Doc. 2012–5896 Filed 3–29–12; 8:45 am]

**BILLING CODE 6570–01–P**

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[Docket ID: DOD–2012–OS–0031]

**32 CFR Part 322****Privacy Act; Implementation; Correction**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Direct final rule with request for comments; correction.

**SUMMARY:** On March 16, 2012 (77 FR 15595–15596), Department of Defense published a direct final rule titled Privacy Act; Implementation. This rule corrects the paragraph identification in the added text.

**DATES:** This rule is effective on May 25, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Patricia Toppings, (571) 372–0485.

**SUPPLEMENTARY INFORMATION:** On March 16, 2012, Department of Defense published a direct final rule titled Privacy Act; Implementation.

Subsequent to the publication of that direct final rule, Department of Defense discovered that paragraphs (l)(2) through (l)(5) in § 322.7 should have read paragraphs (l)(1) through (l)(4).

**Correction**

In the direct final rule (FR Doc. 2012–6170) published on March 16, 2012 (77 FR 15595–15596), make the following corrections:

**§ 322.7 [Corrected]**

On page 15596, in § 322.7, in the second column, paragraphs (l)(2) through (l)(5) are corrected to read paragraphs (l)(1) through (l)(4).

Dated: March 26, 2012.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2012–7596 Filed 3–29–12; 8:45 am]

**BILLING CODE 5001–06–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG–2012–0121]

RIN 1625–AA87

**Security Zone; USCGC STRATTON Commissioning Ceremony, Alameda, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone in the navigable waters of the San Francisco Bay, Alameda, CA within the San Francisco Captain of the Port (COTP) Zone. The security zone is necessary to ensure the safety of the USCGC STRATTON commissioning ceremony.

**DATES:** This rule is effective from 12 p.m. on March 30, 2012 to 4 p.m. on March 31, 2012.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0121 and are available online by going to <http://www.regulations.gov>, inserting USCG–2012–0121 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at [D11-PF-MarineEvents@uscg.mil](mailto:D11-PF-MarineEvents@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delay would be contrary to the public interest. The event will occur before a notice-and-comment rulemaking could be completed, thereby jeopardizing the safety and security of the commissioning ceremony.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delay would be contrary to the public interest. Delaying the effective date would be contrary to the security zone’s intended objectives of mitigating potential terroristic acts and enhancing public and maritime safety and security. Immediate action is necessary to ensure the safety and security of the commissioning ceremony. The COTP finds that this temporary security zone needs to be effective by March 30, 2012, to ensure the safety of the commissioning ceremony taking place

on Coast Guard Island near Alameda, California.

**Background and Purpose**

From March 30, 2012, through March 31, 2012, a security zone will take effect around Coast Guard Island near Alameda, California for the USCGC STRATTON Commissioning Ceremony. This area is located adjacent to U.S. navigable waters in the San Francisco Captain of the Port Zone. The Coast Guard is establishing this security zone to ensure the safety and security of the commissioning ceremony.

**Discussion of Rule**

This temporary final rule will be enforced from 12 p.m. on March 30, 2012 through 4 p.m. on March 31, 2012. The security zone area is located within the San Francisco Captain of the Port Zone (See 33 CFR 3.55–20) and covers all the U.S. navigable waters in the San Francisco Bay from the surface of the water to the ocean floor. This security zone will include the navigable waters around Coast Guard Island near position 37°46’56” N, 122°14’58” W (NAD 83).

This temporary security zone will cover the waters surrounding the Dennison Street Bridge connecting Coast Guard Island to Oakland, CA from the surface of the water to the ocean floor within 100 yards of the bridge from 12 p.m. on March 30 until 4 p.m. on March 31, 2012. This temporary security zone will also cover the waters surrounding Coast Guard Island from the surface of the water to the ocean floor within 100 yards of Coast Guard Island from 5 a.m. until 4 p.m. on March 31, 2012.

In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel will be permitted to transit into or remain in the security zone except for authorized support vessels, aircraft and support personnel, or other vessels authorized by the Captain of the Port. Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the security zone. Vessels, aircraft, or persons in violation of this rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes and executive orders.

**Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule restricts access to the waters encompassed by the security zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the security zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard 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. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to operate in the impacted section of the San Francisco Bay during times when this rule is being enforced.

This rule is most likely to affect owners and operators of pleasure craft engaged in recreational activities and sightseeing.

This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the areas off San Francisco, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this security zone via Broadcast Notice to Mariners.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a security zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

### ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

- 2. Add temporary § 165.T11–480 to read as follows:

#### § 165.T11–480 Security zone; USCGC STRATTON Commissioning Ceremony, Alameda, CA

(a) *Location.* The following area, within the San Francisco Captain of the Port Zone (See 33 CFR 3.55–20), from the surface of the water to the ocean floor is a temporary security zone: All waters within 100 yards of Coast Guard Island near Alameda, CA in position 37°46'56" N, 122°14'58" W (NAD 83) and all waters within 100 yards of the Dennison Street Bridge connecting Coast Guard Island to Oakland, CA.

(b) *Definitions.* As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general regulations in § 165.33 of this title, entry into or remaining in this security zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The security zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the security zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the security zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the security zone on VHF-16 or through the 24-hour Command Center at telephone (415) 399-3547.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zones by Federal, State, and local agencies.

(d) *Notice of Enforcement.* The Captain of the Port San Francisco will cause notice of the enforcement of the security zone described in this section to be made by verbal broadcasts and written notice to mariners and the general public.

(e) *Enforcement Period.* This security zone will be enforced around the Dennison Street Bridge from 12 p.m. on March 30 until 4 p.m. on March 31, 2012 and around Coast Guard Island from 5 a.m. until 4 p.m. on March 31, 2012.

Dated: March 14, 2012.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2012-7624 Filed 3-29-12; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2009-0783; FRL-9653-8]

#### Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky; Regional Haze State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and a limited disapproval of two revisions to the Kentucky state implementation plan (SIP) submitted by

the Commonwealth of Kentucky through the Kentucky Energy and Environment Cabinet, Division of Air Quality (KYDAQ), on June 25, 2008, and May 28, 2010. Kentucky's June 25, 2008, and May 28, 2010, SIP revisions address regional haze for the first implementation period. Specifically, these revisions address the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program"). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is finalizing a limited approval of Kentucky's June 25, 2008, and May 28, 2010, SIP revisions to implement the regional haze requirements for Kentucky on the basis that these revisions, as a whole, strengthen the Kentucky SIP. Also in this action, EPA is finalizing a limited disapproval of these same SIP revisions because of the deficiencies in the Commonwealth's regional haze SIP revisions arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR).

**DATES:** *Effective Date:* This rule will be effective April 30, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2009-0783. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are

Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Michele Notarianni can be reached at telephone number (404) 562-9031 and by electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. What is the background for this final action?

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and in some cases, ammonia and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter (PM<sub>2.5</sub>) which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. PM<sub>2.5</sub> can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution" as a national goal. On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., "reasonably attributable visibility impairment." See 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze