

Services are inapplicable. For purposes of such appeals:

\* \* \* \* \*

■ 16. Revise § 1000.430 to read as follows:

**§ 1000.430 Who handles appeals regarding reassumption for imminent jeopardy?**

Appeals regarding reassumption of Title I-eligible PFSAs are handled by the IBIA under the procedures in 25 CFR 900.171 through 900.176. Appeals regarding reassumption of PFSAs that are not Title I-eligible are handled by the CBCA under the procedures in 48 CFR part 6101.

■ 17. Revise § 1000.431 to read as follows:

**§ 1000.431 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?**

Yes. EAJA claims against the DOI will be heard under 48 CFR 6101.30, 6101.31 (CBCA) and 43 CFR 4.602, 4.604 through 4.628 (DOI) and under the Equal Access to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412.

Dated: October 30, 2009.

**Larry Echo Hawk,**

*Assistant Secretary, Indian Affairs,  
Department of the Interior.*

Dated: May 24, 2010.

**Yvette Roubideaux,**

*Director, Indian Health Service, Department  
of Health and Human Services.*

[FR Doc. 2010-13297 Filed 6-3-10; 8:45 am]

**BILLING CODE 4310-79-P**

## POSTAL SERVICE

### 39 CFR PART 111

#### General Information on Postal Service

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service announces the issuance of Issue 300, dated May 11, 2009, of the Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), and its incorporation by reference in the Code of Federal Regulations.

**DATES:** *Effective Date:* This final rule is effective on June 4, 2010. The incorporation by reference of Issue 300, May 11, 2009, of the DMM is approved by the Director of the Federal Register as of June 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lizbeth Dobbins (202) 268-3789.

**SUPPLEMENTARY INFORMATION:** The most recent Issue 300 of the Domestic Mail Manual (DMM) was issued on May 11, 2009.

This Issue of the DMM contains all Postal Service domestic mailing standards. This issue continues to (1) increase the user's ability to find information, (2) increase confidence that users have found all the information they need, and (3) reduce the need to consult multiple chapters of the Manual to locate necessary information. Issue 300, dated May 11, 2009, set forth specific changes, such as new standards throughout the DMM to support the

pricing changes approved by the Governors of the United States Postal Service. The new prices and standards were effective May 11, 2009. Changes to mailing standards will continue to be published through **Federal Register** notices and the Postal Bulletin, and will appear in the next printed version of Mailing Standards of the United States Postal Service, Domestic Mail Manual, and in the online version available via Postal Explorer <http://pe.usps.com>.

#### List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Incorporation by reference.

■ In view of the considerations discussed above, the Postal Service hereby amends 39 CFR Part 111 as follows:

#### PART 111—GENERAL INFORMATION ON POSTAL SERVICE

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, 5001.

■ 2. Amend § 111.3(f) by adding the following new entry at the end of the table: § 111.3 Amendment to the Mailing Standards of the United States Postal Service, Domestic Mail Manual.

\* \* \* \* \*  
(f) \* \* \*

Transmittal letter for issue publication	Dated	Federal Register
Issue 300 .....	May 12, 2008 .....	[Insert FR citation for this Final Rule].
Issue 300 .....	May 11, 2009 .....	[Insert FR citation for this Final Rule].

■ 3. Amend § 111.4 by removing "May 7, 2008" and adding "June 4, 2010".

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. 2010-13356 Filed 6-3-10; 8:45 am]

**BILLING CODE 7710-12-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 7

[EPA-HQ-OA-2004-0002; FRL-9158-9]

RIN 2090-AA37

#### Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency. This document sets out EPA rules for

implementing the Age Discrimination Act of 1975, as amended. The Act prohibits discrimination on the basis of age in programs or activities receiving Federal assistance.

**DATES:** This rule is effective on October 4, 2010 without further notice, unless EPA receives adverse comment by August 3, 2010. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OA-2004-0002, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* [doCKET.oei@epa.gov](mailto:doCKET.oei@epa.gov).

- *Fax:* 202-566-0562.
- *Mail:* OEI Docket, U.S. EPA, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand delivery:* OEI Docket, EPA Docket Center, Room 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangement should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OA-2004-0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at

the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the OEI Docket is 202-566-1752.

**Submitting CBI:** Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedure set forth in 40 CFR Part 2.

#### Tips for Preparing Your Comments

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part of section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

**FOR FURTHER INFORMATION CONTACT:** Tom Walker, U.S. Environmental Protection Agency, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343-9894.

#### SUPPLEMENTARY INFORMATION:

#### Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment because (1) entities that have applied for and received assistance from EPA comply with the Age Discrimination Act of 1975. This rule implements the Age Discrimination Act of 1975, and would not substantively change existing obligations for recipients. (2) The current action has been reviewed and approved by the U.S. Department of Health and Human Services (HHS), the lead Federal agency that sets the government-wide standards to be followed by all Federal agencies implementing the Age Discrimination Act. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to the Age Discrimination regulations if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in the commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

#### I. General Information

These regulations implement provisions of the Age Discrimination Act of 1975, as amended. The Age Discrimination Act of 1975, 42 U.S.C. 6101 *et. seq.*, (The Act) prohibits discrimination on the basis of age in programs or activities receiving Federal assistance. The Act applies to persons of all ages. The Act also contains specific exceptions that permit the use of certain age distinctions and factors other than age that meet the Act's requirements. The Act however, does not cover employment discrimination on the basis of age. The Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et. seq.*, (ADEA) applies specifically to employment practices and programs, both in the public and private sectors, and applies only to persons 40 and over. Complaints of employment discrimination based on age against an individual by recipients of Federal financial assistance are subject to the ADEA and should be filed administratively with the Equal Employment Opportunity Commission

(EEOC) (*see* 29 CFR part 1626). The EEOC has recently published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) under the authority of the ADEA (*see* 75 FR 7212 (Feb. 18, 2010)). EEOC's NPRM defines the term "reasonable factors other than age" (RFOA) under the ADEA, a term that is also used in the Age Discrimination Act and in the subject regulation. Because of the different statutory bases for the two regulations, the use of the term RFOA in EPA's regulation implementing the Age Discrimination Act has no effect on EEOC's regulation under the ADEA and the use of the term RFOA in EEOC's regulation has no effect on EPA's regulation. Nonetheless, EPA would accept comments about any potential impact of EEOC's definition on EPA's regulation. Parties interested in the ADEA action should refer to the **Federal Register**; 75 FR 7212 (Feb. 18, 2010).

The Act required the former Department of Health, Education, and Welfare (HEW) to issue general, government-wide regulations setting standards to be followed by all Federal agencies implementing the Act. These government-wide regulations, which were issued on June 12, 1979, (45 CFR part 90; 44 FR 33768) and became effective on July 1, 1979, required each Federal agency providing assistance to any program or activity to publish final regulations implementing the Act, and to submit final agency regulations to HEW (now the Department of Health and Human Services (HHS)), before publication in the **Federal Register**. (*See* 45 CFR 90.31.) The Act became effective on the effective date of HEW's final government-wide regulations (*i.e.*, July 1, 1979). The Act was amended by the Civil Rights Restoration Act of 1987, Public Law 100-259, 102 Stat. 28, to add a definition for the term "program or activity."

The Age discrimination regulations apply to all applicants for, and recipients of, EPA assistance in the operation of their programs or activities, and only establish and enforce statutory rights that prohibit discrimination on the basis of age. These regulations do not apply to any program or activity unless that program or activity applies for and/or receives Federal assistance from the Agency.

EPA's Age discrimination regulations which implement the Age Discrimination Act of 1975, will amend the U.S. Code of Federal Regulations (40 CFR Part 7) by adding Age as a protected classification to the Agency's nondiscrimination regulations. Currently, the Agency's nondiscrimination regulations prohibit discrimination on the basis of race,

color, national origin, sex (gender), or disability in any program or activity receiving EPA assistance. The Age Discrimination regulations will become the new Part 7 Subpart F—Discrimination Prohibited on the Basis of Age.

The regulation states, "No person in the United States may, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance." (40 CFR 7.140) The specific prohibited actions are patterned after the regulations issued under Title VI of the Civil Rights Act of 1964 (40 CFR 7.30). As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving Federal funds will be prohibited by these regulations.

The Act does include some exceptions to the general rule against age discrimination. The regulations provide definitions for two terms "normal operations" and "statutory objective" (40 CFR 7.25) that provide the framework for which the exceptions can apply. (40 CFR 7.150) For example, the normal operations and objectives of our public schools are to educate our nation's children. Public schools, for instance, have received Federal environmental grants, to establish ecology clubs or educate students on water restoration and beach ecology. These school programs are just a few examples of recipients operating under normal conditions and meeting their objectives while receiving Federal assistance targeted at a specific age group, and are therefore, permissible under the Act.

Recipients of EPA funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." (40 CFR 7.155) For example, children may be more vulnerable to environmental exposures (*i.e.* lead poisoning) than adults because their bodily systems are still developing. Providing grants to recipients to research these specific exposure risks in children play an important role in protecting children's health. Even though environmental toxins may also affect adults, it is thought that children are generally more vulnerable to such environmental exposures. Thus, recipients that are solely studying the unique environmental exposure risks to children (targeting a specific age group) are taking actions based on "reasonable factors other than age", and, such studies are therefore permissible under the Act. As noted above, the use of the term "reasonable factors other than age"

in EPA's regulation has no effect on EEOC's RFOA definition under the ADEA and, conversely, the use of the term RFOA by the EEOC has no effect on EPA's regulation.

In addition, these regulations incorporate the provisions of the general regulations (45 CFR part 90; 44 FR 33768) permitting a recipient of a program to provide special benefits for children and the elderly. (40 CFR 7.165) These special benefits often take the form of special discounts or reduced fees for the elderly or children in a Federally funded program.

## II. Rulemaking History

EPA first proposed regulations implementing the Age Discrimination Act as part of its proposed consolidated nondiscrimination regulations on January 8, 1981 (46 FR 2306-2312). The Age Discrimination Act provisions were not included in the final rule published on January 12, 1984 (49 FR 1656-66), because they had not been approved by HHS as required by the Act. During 1993 through 1998, the regulations were submitted to HHS and went through different revisions in an on-going effort between EPA and HHS. Because of the time lapse since the regulations were initially drafted, in 2002 EPA had conducted an internal re-review of the draft regulations. The draft Age Discrimination Act regulations were then resubmitted to HHS in 2002, which granted its approval later that year. In January 2003, new regulatory development guidelines were issued, which spurred another delay in the publication of EPA's draft Age regulations. Between 2003 and 2004, EPA's internal re-review resulted in various revisions to the draft regulations based on the new regulatory development guidelines. In 2005, EPA resubmitted its final draft Age discrimination regulations to HHS. The revised regulations were subsequently approved by HHS in 2006. EPA is now publishing these regulations as a direct final rule along, with a parallel proposed rule. Any comments submitted during the 1981, public comment period pertaining to the Age provisions of the consolidated nondiscrimination regulations are no longer available for viewing. Comments on the current rule are welcome. If EPA receives public comment on the current direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the current parallel proposed rule as mentioned above.

### III. Statutory and Executive Orders Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action.” Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

#### B. Paperwork Reduction Act of 1995

This action does not impose any new information collection burden. EPA Form 4700–4 (Preaward Compliance Review Report for All Applicants Requesting Federal Assistance), which is used to collect compliance information under EPA’s nondiscrimination regulations, already requests civil rights compliance information based on age under the Age Discrimination Act of 1975. The current version, which also requests civil rights compliance information based on race, color, national origin, sex, or handicap as well as age, has been in use since January 1990. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR Part 7 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2030–0020. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR Part 9.

#### C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s rule on small entities, *small entity* is defined as: (1) A small business as defined by the U.S. Small Business Administration in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.

After considering the economic impacts of today’s direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities because it only formalizes existing requirements for entities receiving assistance from EPA and would not substantively change existing obligations on recipients. The requirements prohibiting age discrimination by recipients of Federal assistance that are in the Age Discrimination Act and the government-wide regulations have been in effect since 1979.

#### D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

Today’s rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, or Tribal governments or the private sector for the following reasons: (1) The UMRA excludes from the definitions of “Federal intergovernmental mandate” and “Federal private sector mandate” duties that arise from conditions of Federal assistance; (2) The UMRA generally excludes from the definition of “Federal intergovernmental mandate” duties that arise from participation in a voluntary Federal program; (3) The UMRA excludes from the definition of “Federal private sector mandate” duties that arise from participation in a voluntary Federal program; and (4) The UMRA does not apply to rules that establish or enforce statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability. These regulations were mandated by Congress in the Act. These regulations only establish and enforce statutory rights that prohibit discrimination on the basis of age. These regulations do not apply to any program or activity unless that program or activity applies for and receives Federal assistance from the Agency. Application for, and receipt of, Federal assistance from the Agency is entirely voluntary. No program or activity is required to apply for, or accept, Federal assistance from the Agency. Thus, today’s rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. These regulations apply uniformly to all recipients of Federal assistance from the Agency, regardless of whether the recipient is a small government. Moreover, the application for, and acceptance of, Federal assistance from the Agency that triggers the applicability of these regulations is entirely voluntary. Furthermore, it has already been determined that these regulations will not have a significant economic impact on small entities.

#### E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255), entitled “Federalism,” requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to

include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not directly impose any obligations on the States and there are no significant compliance costs associated with it. This rule only applies to State and non-State entities that apply for and receive assistance from EPA. When the recipient receives the EPA assistance, they accept the obligation to comply with EPA’s Age Discrimination Act implementing regulations. Compliance obligations are, therefore, voluntary and contractual. No entity is required to apply for or accept EPA assistance. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this direct final rule from State and local officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249), entitled “Consultation and Coordination with Indian Tribal Governments,” requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This direct final rule does not have Tribal implications, as specified in Executive Order 13175. This rule does not directly impose any obligations on the Tribes and there are no significant compliance costs associated with it. This rule only applies to Tribal and non-Tribal entities that apply for and receive assistance from EPA. When the recipient receives the EPA assistance, it accepts the obligation to comply with EPA’s Age Discrimination Act implementing regulations. Compliance obligations are, therefore, voluntary and contractual. No entity is required to apply for or accept EPA assistance. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment

on this direct final rule from Tribal officials.

#### *G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

*Executive Order 13045 (62 FR 19885), “Protection of Children from Environmental Health Risks and Safety Risks,” applies to any rule that:* (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA is taking action to approve rules for implementing the Age Discrimination Act of 1975, as amended. The Act prohibits discrimination on the basis of age in programs or activities receiving Federal assistance. Accordingly, we have concluded that this rule is not likely to have any adverse energy effects.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272n) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*,

materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This direct final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the direct final rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA is taking action to approve rules for implementing the Age Discrimination Act of 1975, as amended. The Act prohibits discrimination on the basis of age in programs or activities receiving Federal assistance. This rule does not adversely affect minority or low-income populations therefore, we have concluded that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations.

#### *K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 4, 2010.

#### List of Subjects in 40 CFR Part 7

Environmental protection, Administrative practice and procedure, Age discrimination, Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

Dated: May 27, 2010.

**Lisa P. Jackson,**  
Administrator.

■ For the reasons stated in the preamble, 40 CFR part 7 is amended as follows:

#### **PART 7—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY**

■ 1. The authority citation for part 7 is revised to read as follows:

**Authority:** 42 U.S.C. 2000d to 2000d-7 and 6101 *et seq.*; 29 U.S.C. 794; 33 U.S.C. 1251nt.

■ 2. Section 7.10 is revised to read as follows:

##### **§ 7.10 Purpose of this part.**

This part implements: Title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, (collectively, the Acts).

■ 3. Section 7.25 is amended by adding the definitions for "Action," "Age," "Age distinction," "Age-related term," "Normal operation," and "Statutory objective" in alphabetical order to read as follows:

##### **§ 7.25 Definitions.**

\* \* \* \* \*

**Action**, for purposes of subpart F of this part, means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

\* \* \* \* \*

**Age**, for purposes of subpart F of this part, means how old a person is, or the number of elapsed years from the date of a person's birth.

**Age distinction**, for purposes of subpart F of this part, means any action using age or an age-related term.

**Age-related term**, for purposes of subpart F of this part, means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student" or "grade").

\* \* \* \* \*

**Normal operation**, for purposes of subpart F of this part, means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

\* \* \* \* \*

**Statutory objective**, for purposes of subpart F of this part, means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

\* \* \* \* \*

■ 4. Section 7.80(c)(1) is revised to read as follows:

##### **§ 7.80 Applicants.**

\* \* \* \* \*

(c) \* \* \*  
(1) Notice of any lawsuit pending against the applicant alleging discrimination on the basis of race, color, sex, age, handicap, or national origin;

\* \* \* \* \*

■ 5. Section 7.85 is amended by revising paragraph (a)(2), by redesignating the introductory text of paragraph (c) after the heading as paragraph (c)(1), and adding paragraph (c)(2) to read as follows:

##### **§ 7.85 Recipients.**

(a) \* \* \*

(2) Racial/ethnic, national origin, age, sex and handicap data, or EPA Form 4700-4 information submitted with its application;

\* \* \* \* \*

(c) **Self-evaluation.** (1) \* \* \*

(2) Each recipient employing the equivalent of 15 or more full time employees may be required to complete a written self-evaluation of its compliance under the Age Discrimination Act as part of a compliance review or complaint investigation. This self-evaluation will pertain to any age distinction imposed in its program or activity receiving Federal assistance from EPA. If required, each recipient's self-evaluation shall identify and justify

each age distinction imposed by the recipient and each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Age Discrimination Act.

\* \* \* \* \*

■ 6. The first sentence in § 7.95(a) is revised to read as follows:

##### **§ 7.95 Notice of nondiscrimination.**

\* \* \* \* \*

(a) **Requirements.** A recipient shall provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, age, or handicap in a program or activity receiving EPA assistance or, in programs or activities covered by section 13, on the basis of sex. \* \* \*

\* \* \* \* \*

■ 7. The third sentence in § 7.110(a) is revised to read as follows:

##### **§ 7.110 Preaward compliance.**

\* \* \* \* \*

(a) \* \* \* When the OCR cannot make a determination on the basis of this information, additional information will be requested from the applicant, local government officials, or interested persons or organizations, including aged and handicapped persons or organizations representing such persons. \* \* \*

\* \* \* \* \*

■ 8. Section 7.120 is amended by adding a new fifth sentence to paragraph (a) and adding paragraph (d)(1)(iv) to read as follows:

##### **§ 7.120 Complaint investigations.**

\* \* \* \* \*

(a) **Who may file a complaint.** \* \* \* Complaints of employment discrimination based on age against an individual by recipients of Federal financial assistance are subject to the Age Discrimination in Employment Act of 1967 and should be filed administratively with the Equal Employment Opportunity Commission (*see* 29 CFR part 1626). \* \* \*

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iv) Complaints alleging age discrimination under the Age Discrimination Act of 1975 will be referred to a mediation agency in accordance with § 7.180.

\* \* \* \* \*

■ 9. A new subpart F, consisting of §§ 7.140 through 7.180, is added to read as follows:

#### **Subpart F—Discrimination Prohibited on the Basis of Age**

Sec.

- 7.140 General prohibition.
- 7.145 Specific prohibitions.
- 7.150 Exceptions to the rules against age discrimination—normal operation or statutory objective of any program or activity.
- 7.155 Exceptions to the rules against age discrimination—reasonable factors other than age.
- 7.160 Burden of proof.
- 7.165 Special benefits for children and the elderly.
- 7.170 Alternative funds disbursement procedures.
- 7.175 Exhaustion of administrative remedy.
- 7.180 Mediation of age discrimination complaints.

## Subpart F—Discrimination Prohibited on the Basis of Age

### § 7.140 General prohibition.

No person in the United States may, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance.

### § 7.145 Specific prohibitions.

(a) As to any program or activity receiving EPA assistance, a recipient shall not directly or through contractual, licensing, or other arrangements on the basis of age:

(1) Exclude any individuals from, deny them the service, aid or benefits of, or subject them to discrimination under, a program or activity;

(2) Provide a person any service, aid or other benefit that is different, or is provided differently from that provided to others under the program or activity;

(3) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit provided by the program or activity;

(4) Subject a person to segregation in any manner or separate treatment in any way related to receiving services or benefits under the program or activity;

(5) Deny a person or any group of persons the opportunity to participate as members of any planning or advisory body which is an integral part of the program or activity, such as a local sanitation board or sewer authority;

(6) In administering a program or activity receiving Federal financial assistance in which the recipient has previously discriminated on the basis of age, the recipient shall take affirmative action to provide remedies to those who have been injured by the discrimination.

(b) A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their age, or have the effect of defeating or substantially impairing

accomplishment of the objectives of the program or activity with respect to individuals of a particular age.

(c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the ground of age; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

(d) The specific prohibitions of discrimination enumerated above do not limit the general prohibition of § 7.140.

### § 7.150 Exceptions to the rules against age discrimination—normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by §§ 7.140 and 7.145, if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity if:

(a) Age is used as a measure or approximation of one or more other characteristics;

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

### § 7.155 Exceptions to the rules against age discrimination—reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by §§ 7.140 and 7.145 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

### § 7.160 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 7.150 and

7.155 is on the recipient of EPA financial assistance.

### § 7.165 Special benefits for children and the elderly.

If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

### § 7.170 Alternative funds disbursement procedures.

(a) When EPA withholds funds from a recipient under Subpart F of these regulations, the Administrator may disburse the withheld funds directly to an alternate recipient: Any public or non-profit private organization or agency, or State or political subdivision of the State.

(b) The Administrator will require any alternate recipient to demonstrate the ability to achieve the goals of the Federal statute authorizing the funds and these regulations (40 CFR Part 7).

### § 7.175 Exhaustion of administrative remedy.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Age Discrimination Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and EPA has made no finding with regard to the complaint; or

(2) EPA issues any finding in favor of the recipient.

(b) If EPA fails to make a finding within 180 days or issues a finding in favor of the recipient, EPA shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant that:

(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary of the Department of Health and Human Services, the Administrator,



the Attorney General of the United States, and the recipient;

(iv) The notice must state: The alleged violation of the Age Discrimination Act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the same recipient is the subject of a pending action in any court of the United States.

#### **§ 7.180 Mediation of age discrimination complaints.**

(a) The OCR will refer all accepted complaints alleging age discrimination to the Mediation Agency designated by the Secretary of the Department of Health and Human Services.

(b) Both the complainant and the recipient must participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. The recipient and the complainant must meet with the mediator at least once before the OCR will accept a judgment that an agreement is not possible. The recipient and the complainant, however, need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator must prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator will send a copy of the agreement to the OCR, which will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator must protect the confidentiality of all information obtained in the course of the mediation process. No mediator may testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator.

(e) Mediation ends after sixty (60) days from the time EPA received the complaint or if:

(1) An agreement is reached; or

(2) The Mediator determines that an agreement cannot be reached.

(f) The mediator must return unresolved complaints to OCR to be processed in accordance with the procedure in § 7.120.

[FR Doc. 2010-13470 Filed 6-3-10; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R03-OAR-2009-0957; FRL-9158-4]

#### **Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonable Further Progress Plan, 2002 Base Year Emission Inventory, Contingency Measures, Reasonably Available Control Measures, and Transportation Conformity Budgets for the Baltimore 1997 8-Hour Moderate Ozone Nonattainment Area**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the Maryland State Implementation Plan (SIP) to meet the 2002 base year emissions inventory, the reasonable further progress (RFP) plan, RFP contingency measure, and reasonably available control measure (RACM) requirements of the Clean Air Act (CAA) for the Baltimore moderate 1997 8-hour ozone nonattainment area. EPA is also approving the transportation conformity motor vehicle emissions budgets (MVEBs) associated with this revision. EPA is approving the SIP revision because it satisfies the emission inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and demonstrates further progress in reducing ozone precursors. EPA is approving the SIP revision pursuant to the CAA and EPA's regulations.

**DATES:** *Effective Date:* This final rule is effective on July 6, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2009-0957. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) 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 for public inspection during normal business hours at the Air Protection

Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

#### **FOR FURTHER INFORMATION CONTACT:**

Maria A. Pino, (215) 814-2181, or by e-mail at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On January 7, 2010 (75 FR 958), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of Maryland's 2002 base year emissions inventory, RFP plan, RFP contingency measures, RACM, and MVEBs for the Baltimore moderate 1997 8-hour ozone nonattainment area. EPA is approving the SIP revision because it satisfies the emission inventory, RFP, RACM, RFP contingency measure, and transportation conformity requirements of the section 110 and part D of the CAA and EPA's regulations. The formal SIP revision was submitted by the State of Maryland on June 4, 2007.

##### **II. Summary of SIP Revision**

The SIP revision addresses emissions inventory, RACM, RFP and contingency measures requirements for the 1997 8-hour ozone NAAQS for the Baltimore 8-hour ozone moderate nonattainment area. The SIP revision also establishes MVEBs for 2008. Other specific requirements of Maryland's June 4, 2007 SIP revision for the Baltimore 8-hour ozone nonattainment area and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

##### **III. Final Action**

EPA is approving the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets for the Baltimore 8-hour ozone nonattainment area, contained in Maryland's June 4, 2007 SIP revision submittal for the Baltimore 8-hour ozone nonattainment area. The SIP revision satisfies the requirements for 1997 8-hour ozone NAAQS nonattainment areas classified as moderate and demonstrates further progress in reducing ozone precursors.