

**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.*

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**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.