

Section 35.3

Section 35.3 would contain definitions applicable to the Age Act regulations. The definition for “program or activity” has been modified in two respects in today’s NPRM: the modified definition contains an updated statutory citation to the definition of “local educational agency,” and the definition is now proposed to match the definition used in the Civil Rights Restoration Act of 1987. As discussed above, the CRRRA amended the definition of “program or activity” in the Age Act to encompass all parts of the recipient’s operations. The definition proposed today is the same as the definition proposed for the Department of Justice common rule which will amend the definition of “program or activity” for various Executive branch agencies’ Title VI, Section 504 of the Rehabilitation Act, and Age Act regulations. (For more information on this change, see 65 FR 76460, December 6, 2000.)

Section 35.13

Section 35.13 is proposed to contain certain exemptions to the rules against age discrimination. Today’s proposal differs from NPRM II in that the word “reasonable” has been deleted from the text of this section to conform its language to that of the government-wide Age Act regulation.

Section 35.15

Section 35.15 is proposed to allow recipients to take steps to overcome the effects of conditions that result in a limited participation on the basis of age. Today’s NPRM proposes to revise the title of this section and to clarify that this section does not allow recipients to take actions that would permit any otherwise prohibited use of age distinctions in any program or activity receiving Federal financial assistance from DOL.

Section 35.37

In NPRM II DOL proposed to use its procedures for conducting hearings, issuing decisions, and conducting post-termination proceedings under Section 188 of the Workforce Investment Act to conduct such proceedings under the Age Act as well. Differences between the Age Act and WIA coverage, discussed above, make it more appropriate to propose use of DOL Title VI enforcement procedures for Age Act cases. Section 37.37 of today’s proposal would accomplish that end.

IV. Regulatory Procedures*Executive Order 12866*

These proposed Age Discrimination Act regulations have been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed rule is a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, yet is not economically significant as defined in section 3(f)(1), and, therefore, the information enumerated in section 6(a)(3)(C) of the order is not required. Pursuant to Executive Order 12866, this proposed rule has been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform

Executive Order 12875—This proposed rule would not create an unfunded Federal mandate on any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This proposed rule would not include any Federal mandate that might result in increased expenditures by State, local and tribal governments, in the aggregate, of \$100 million or more, or increased expenditures by the private sector of \$100 million or more.

Regulatory Flexibility Act

This proposed rule clarifies existing requirements for entities receiving financial assistance from DOL. The requirements prohibiting age discrimination by recipients of Federal financial assistance that are in the Age Act and the government-wide regulations have been in effect since 1979. In addition, entities receiving financial assistance from DOL under WIA have been expressly informed of their obligations to comply with the Age Act by both WIA statutory language and by the DOL regulations implementing the civil rights provisions of WIA. Because this proposed rule will not substantively change existing obligations on recipients, but merely clarifies such duties, the Department certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Section 35.31(c)(1) of the proposed rule allows a complainant to file a complaint by submitting a written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed

by the complainant. Section 35.40(b)(3)(iii) of the proposed rule requires a complainant to give 30 days notice to the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient, before commencing a civil action in the event that CRC issues a finding in favor of the recipient or fails to make a finding within 180 days. Based on the history of the program, the Department projects that fewer than 9 persons per year will either file a complaint with CRC or give notice that a civil action is being pursued. Accordingly, the Department believes the Paperwork Reduction Act is inapplicable to this rule. The Department invites the public to comment on its Paperwork Reduction Act analysis.

Executive Order 13132

This proposed rule has been reviewed in accordance with Executive Order 13132 regarding Federalism. This proposed rule 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. Therefore, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

List of Subjects in 29 CFR Part 35

Administrative practice and procedure, Age discrimination, Children, Civil rights, Elderly, Grant programs—Labor.

Signed at Washington, DC this 7th day of July, 2003.

Elaine L. Chao,
Secretary of Labor.

For the reasons set out in the preamble, 29 CFR subtitle A is proposed to be amended by adding a new part 35 to read as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR

Subpart A—General

Sec.

35.1 What is the purpose of the Department of Labor (DOL) age discrimination regulations?

35.2 To what programs or activities do these regulations apply?

35.3 What definitions apply to these regulations?

Subpart B—Standards for Determining Age Discrimination

35.10 Rules against age discrimination.