due date (not including extensions) for filing the tax-exempt entity's annual information return under section 6033(a)(1). If the tax-exempt entity is not required to file an annual information return under section 6033(a)(1), the Form 4720 shall be filed on or before the 15th day of the fifth month after the end of the tax-exempt entity's taxable year or, if the entity has not established a taxable year for Federal income tax purposes, the entity's annual accounting period.

(2) *Returns by entity managers of tax-exempt entities described in section 4965(c)(1), (c)(2) or (c)(3).* A Form 4720, required by § 53.6011–1(b) for an entity manager of a tax-exempt entity described in section 4965(c)(1), (c)(2) or (c)(3) who is liable for tax imposed by section 4965(a)(2) shall be filed on or before the 15th day of the fifth month following the close of the entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction.

(3) *Transition rule.* A Form 4720, for a section 4965 tax that is or was due on or before October 4, 2007 will be deemed to have been filed on the due date if it is filed by October 4, 2007 and if all section 4965 taxes required to be reported on that Form 4720 are paid by October 4, 2007.

(h) *Effective/applicability date*—(1) *In general.* Paragraph (g) of this section is applicable on July 6, 2007.

(2) *Expiration date.* Paragraph (g) of this section will cease to apply on July 6, 2010.

PART 54—PENSION EXCISE TAXES

■ **Par. 5**. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 6**. Section 54.6011–1 is amended by adding and reserving paragraph (c) and adding paragraph (d) to read as follows:

§ 54.6011–1 General requirement of return, statement, or list.

* * * * *

(c) [Reserved]. For further guidance, see § 54.6011–1T(c).

(d) *Effective/applicability date.* For the applicability date of paragraph (c) of this section, see § 54.6011–1T(d).

■ **Par. 7**. Section 54.6011–1T is amended as follows:

■ 1. The undesignated text is designated as paragraph (a) and a paragraph heading is added.

■ 2. Paragraph (b) is added and reserved.

■ 3. Paragraphs (c) and (d) are added.

§ 54.6011–1T General requirement of return, statement or list (temporary).

(a) *Tax on reversions of qualified plan assets to employer.* * * *

(b) [Reserved].

(c) *Entity manager tax on prohibited tax shelter transactions*—(1) *In general.* Any entity manager of a tax-exempt entity described in section 4965(c)(4), (c)(5), (c)(6), or (c)(7) who is liable for tax under section 4965(a)(2) shall file a return on Form 5330, ''Return of Excise Taxes Related to Employee Benefit Plans,'' on or before the 15th day of the fifth month following the close of such entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction, and shall include therein the information required by such form and the instructions issued with respect thereto.

(2) *Transition rule.* A Form 5330, ''Return of Excise Taxes Related to Employee Benefit Plans,'' for an excise tax under section 4965 that is or was due on or before October 4, 2007 will be deemed to have been filed on the due date if it is filed by October 4, 2007 and if the section 4965 tax that was required to be reported on that Form 5330 is paid by October 4, 2007.

(d) *Effective/applicability date*—(1) *In general.* Paragraph (c) of this section is applicable on July 6, 2007.

(2) *Expiration date.* Paragraph (c) of this section will expire on July 5, 2010.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: June 21, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–12901 Filed 7–5–07; 8:45 am]

BILLING CODE 4830–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

RIN 3046–AA78

Coverage Under the Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is publishing this final rule to amend its Age Discrimination in Employment Act (the ''Act'' or ''ADEA'') regulations to conform them to the Supreme Court's holding in *General Dynamics Land System, Inc.* v. *Cline,* 540 U.S. 581 (2004), that the ADEA only prohibits discrimination based on relatively older age, not discrimination based on age generally. Thus, the final rule deletes language in EEOC's ADEA regulations that prohibited discrimination against relatively younger individuals. The new rule explains that the ADEA only prohibits employment discrimination based on old age and, therefore, does not prohibit employers from favoring relatively older individuals.

DATES: Effective date July 6, 2007.

FOR FURTHER INFORMATION CONTACT: Raymond Peeler, Senior Attorney Advisor, Office of Legal Counsel, at (202) 663–4537 (voice) or (202) 663–7026 (TTY) (These are not toll free numbers). This final rule also is available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this final rule in an alternative format should be made to the Publications Information Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: On August 11, 2006, the EEOC published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** to amend regulations that prohibited any age-based discrimination against individuals forty years old or older, regardless of whether the age-bias favored older or younger individuals.[1] Relying on the Supreme Court's decision in *General Dynamics Land System, Inc.* v. *Cline,* 540 U.S. 581 (2004),[2] the NPRM explained that the ADEA protects only relatively older individuals.

Overview of Public Comments

The Commission received nine public comments during the public comment period, which ended on October 10, 2006. Six commenters strongly supported the proposed rule: AARP, National Employment Lawyers Association (NELA), Equal Employment Advisory Counsel (EEAC), U.S. Chamber of Commerce, TOC Management Services, and the National Federation of Independent Business (NFIB). Two federal employee unions opposed the rule. The Conference

[1] EEOC Notice of Proposed Rulemaking, 71 FR 46177, Aug. 11, 2006.

[2] In *Cline,* a group of employees between the ages of forty and forty-nine sued their employer for age discrimination when it eliminated its future obligation to pay retiree health benefits for any employee then under fifty years old. The Supreme Court rejected their claim, finding that the ADEA's prohibition against discrimination ''because of age'' only prevents discrimination that favors younger workers, not actions that place older workers in a more favorable position. The Court's rationale is described in detail in the NPRM. *See* 71 FR at 46178.

Board, a ''business research and membership non-profit organization'' whose comment is a compilation of questions from its members, sought some clarifications that are discussed below.

Scope of the Regulation

One of the opposing commenters argued that the Supreme Court's ruling in *Cline* was already reflected in Section 1625.2(b) of the Commission's current regulations, which allows favorable treatment of older workers with respect to benefits. We believe that the Supreme Court addressed this comment through its detailed analysis concerning the purpose of the ADEA as protecting older workers and its characterization of the current regulations' prohibition of ''reverse'' age discrimination as ''clearly wrong.'' [3] Thus, the Commission concludes that it cannot conform its regulations to the Court's decision in *Cline* without amendment.

A Conference Board member's comment that ''the change in language creates a slippery slope around creating new protections,'' suggests a belief that the rule creates a new enforceable right for older individuals. The rule creates no such right. It simply provides that an employer does not violate the ADEA if it makes an age-based decision that favors older individuals.[4] The Commission has added language to section 1625.2 to clarify this point.

The opposing comments and some comments from the Conference Board construe the NPRM to inappropriately encourage favoritism of older individuals. For example, the American Federation of Government Employees (AFGE) argued that the NPRM inappropriately deters the employment of younger individuals in the protected age group, and a Conference Board member expressed concern that certain positions will become ''for matures only.'' However, as the *Cline* Court noted:

> The [legislative and administrative] record is devoid of any evidence that younger workers were suffering at the expense of their elders * * * Common experience is to the contrary * * * If Congress had been worrying about protecting the younger against the older, it would not likely have ignored everyone under 40. The youthful deficiencies of inexperience and unsteadiness invite stereotypical and discriminatory thinking about those a lot younger than 40, and prejudice suffered by a 40-year-old is not typically owing to youth, as 40-year-olds sadly tend to find out. The enemy of 40 is 30, not 50.[5]

AFGE also asked EEOC to restrict the regulation's scope by explaining that it does not affect state laws prohibiting age discrimination against relatively younger persons. The same concern was reflected in a question from the Conference Board. The Commission agrees with this suggestion; the rule only interprets the ADEA, not state or local law. The ADEA permits states to provide protections in addition to those provided by federal law.[6] Thus, the Commission has revised the final rule to clarify that it only interprets the ADEA, not state or local law.

Concerns With Specific Provisions

Some members of the Conference Board asked for additional guidance in Section 1625.4 regarding how employers may structure advertisements without violating the ADEA. AFGE also criticized this Section, suggesting that we only provide examples such as ''experience a plus.'' But AARP, whose comment also was adopted by NELA, praised the NPRM's ''straightforward description of what is acceptable in posting employment advertisements.'' The NFIB and EEAC also supported the advertisement language, believing it would aid their members' recruitment efforts. Inasmuch as the advertising provisions are expressly supported by many commenters and already include several examples that EEOC believes reflect the Court's interpretation of the ADEA, the EEOC concludes that further guidance in the text of the regulation is unnecessary. Further, providing a definitive list of legally acceptable advertising language could hamper employers' unique efforts to fill their workforce needs.

AFGE also commented that the revised § 1625.5 improperly encourages employers to collect an applicant's age or date of birth. The Commission does not agree that this Section encourages employers to collect such information. To the contrary, it warns employers that the EEOC will closely scrutinize the collection of age-identifying information to ensure that it is collected and used only for lawful purposes. AARP and NELA (adopting AARP's comment), both worker rights groups, explicitly approved of how this provision ''emphasizes the role of the EEOC in monitoring employment applications.''

Revisions to the NPRM

The final rule adopts the NPRM but adds a sentence to clarify that it neither creates an enforceable right for older workers nor affects state or local prohibitions against age-based favoritism.

Regulatory Planning and Review

This final rule is considered to be a ''significant regulatory action'' pursuant to section 3(f)(4) of Executive Order 12866, 58 FR 51735 (Sept. 30, 1993), in that it arises out of the Commission's legal mandate to enforce the ADEA. Therefore, it was circulated to the Office of Management and Budget for review. Nonetheless, the Commission has determined that this rule will not have an annual effect on the economy of $100 million or more, and will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety. To the contrary, this final rule increases the flexibility of employers to take previously forbidden age-based actions that favor older workers.

Although the final rule applies to all employers with at least 20 employees,[7] it will not have a significant impact on small business entities under the Regulatory Flexibility Act, because it imposes no economic or reporting burdens. For reasons already identified, the Commission also finds that this final rule requires no additional scrutiny under either the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, concerning the collection of information, or the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.*, concerning the burden imposed on state, local, or tribal governments.

List of Subjects for 29 CFR Part 1625

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

Dated: June 29, 2007.

For the Commission.

Naomi C. Earp,

Chair.

■ For the reasons discussed in the preamble, the Equal Employment Opportunity Commission amends 29 CFR chapter XIV part 1625 as follows:

[3] *Cline,* 540 U.S. at 600.

[4] In *Cline,* the employer eliminated retiree health benefits, but grandfathered employees who were age 50 or older.

[5] *Cline,* 540 U.S. at 591.

[6] ''Nothing in this [statute] shall affect the jurisdiction of any agency of any state performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under [the ADEA] such action shall supersede any state action.'' 29 U.S.C. 633(a).

[7] *See* 29 U.S.C. 630(b). According to Census Bureau Information, approximately 1,976,216 establishments employed 20 or more employees in 2000, *see* Census Bureau, U.S. Department of Commerce, Statistics of U.S. Businesses (2000).

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

■ 1. Revise the authority citation for part 1625 to read as follows:

Authority: 29 U.S.C. 621–634; 5 U.S.C. 301; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807; E.O. 12067, 43 FR 28967.

Subpart A—Interpretations

■ 2. Revise § 1625.2 to read as follows:

§ 1625.2 Discrimination prohibited by the Act.

It is unlawful for an employer to discriminate against an individual in any aspect of employment because that individual is 40 years old or older, unless one of the statutory exceptions applies. Favoring an older individual over a younger individual because of age is not unlawful discrimination under the ADEA, even if the younger individual is at least 40 years old. However, the ADEA does not require employers to prefer older individuals and does not affect applicable state, municipal, or local laws that prohibit such preferences.

■ 3. Revise § 1625.4 to read as follows:

§ 1625.4 Help wanted notices or advertisements.

(a) Help wanted notices or advertisements may not contain terms and phrases that limit or deter the employment of older individuals. Notices or advertisements that contain terms such as *age 25 to 35, young, college student, recent college graduate, boy, girl,* or others of a similar nature violate the Act unless one of the statutory exceptions applies. Employers may post help wanted notices or advertisements expressing a preference for older individuals with terms such as *over age 60, retirees,* or *supplement your pension.*

(b) Help wanted notices or advertisements that ask applicants to disclose or state their age do not, in themselves, violate the Act. But because asking applicants to state their age may tend to deter older individuals from applying, or otherwise indicate discrimination against older individuals, employment notices or advertisements that include such requests will be closely scrutinized to assure that the requests were made for a lawful purpose.

■ 4. Revise the first paragraph of § 1625.5 to read as follows:

§ 1625.5 Employment applications.

A request on the part of an employer for information such as *Date of Birth* or *age* on an employment application form is not, in itself, a violation of the Act. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination against older individuals, employment application forms that request such information will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the Act. That the purpose is not one proscribed by the statute should be made known to the applicant by a reference on the application form to the statutory prohibition in language to the following effect:

* * * * *

[FR Doc. E7–13051 Filed 7–5–07; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 197

[DoD–2006–OS–0023]

RIN 0790–AI12

Historical Research in the Files of the Office of the Secretary of Defense (OSD)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule identifies and updates the policies and procedures for the programs that permit U.S. citizens to perform historical research in records created by or in the custody of the Office of the Secretary of Defense (OSD). Historical Research in the Files of OSD updates the policies and procedures for the programs that permit U.S. citizens to perform historical research in records created by or in the custody of the OSD.

DATES: *Effective Date:* This rule is effective August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Storer, 703–696–2197.

SUPPLEMENTARY INFORMATION: Anyone accessing classified material must possess the requisite security clearance. Information requested by historical researchers shall be accessed at a DoD activity or facility under the control of the National Archives and Records Administration (NARA).

Access to records by historical researchers shall be limited to the specific records within the scope of the proposed historical research over which the Department of Defense has classification authority. Access shall also be limited to any other records for which the written consent of other Agencies that have classification authority over information contained in or revealed by the records has been obtained.

Access to unclassified OSD Component files by historical researchers shall be permitted consistent with the restrictions of the exemptions of the Freedom of Information Act. The procedures for access to classified information shall be used if the requested unclassified information is contained in OSD files whose overall markings are classified.

On February 28, 2007 (72 FR 8952), the Department of Defense published a proposed rule, ''Historical Research in the Files of the Office of the Secretary of Defense (OSD)'' inviting public comments. No comments were received.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 197 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

Executive Order 12630, ''Government Actions and Interference With Constitutionally Protected Property Rights''

It has been certified that 32 CFR part 197 does not:

(1) Place a restriction on a use of private property;

(2) Involve a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property; or

(3) Regulate private property use for the protection of public health or safety.

Executive Order 12866, ''Regulatory Planning and Review''

It has been certified that 32 CFR part 197 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the