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DEPARTMENT OF ENERGY

10 CFR Part 1040

[DOE-HQ-2025-0023]

RIN 1903-AA21

Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (Nondiscrimination on the Basis of Age)

AGENCY: Office of Minority Economic Impact, Department of Energy (DOE).

ACTION: Proposed rule; request for comments.

SUMMARY: DOE is proposing to rescind certain regulatory provisions related to nondiscrimination based on age in federally assisted programs or activities.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov under docket number DOE-HQ-2025-0023. Follow the instructions for submitting comments. The docket for this proposed rule, which includes *Federal Register* notices, comments, and other supporting documents and materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The docket web page can be found at www.regulations.gov/docket/DOE-HQ-2025-0023. The docket web page contains instructions on how to access all documents, including public comments, in the docket, as well as a summary of the rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Taggart, U.S. Department of Energy, Office of the General Counsel, GC-1, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-5281. Email: DOEGeneralCounsel@hq.doe.gov.

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I. General Discussion

DOE is proposing to rescind certain provisions from its regulations found in subpart E (“Nondiscrimination on the Basis of Age”) to part 1040 of chapter X of title 10 of the Code of Federal Regulations (CFR) (“Nondiscrimination in Federally Assisted Programs or Activities”). Specifically, DOE is rescinding subparagraphs (b) through (c) of 10 CFR 1040.88, “Remedial and affirmative action by recipients.” Upon further evaluation, and for the reasons explained subsequently, DOE has determined these provisions to be unnecessary.

Under 10 CFR 1040.88(a), if the Director of DOE’s Office of Equal Opportunity finds that a recipient of financial assistance has discriminated against persons on the basis of age, the recipient shall take such remedial action as the Director considers necessary to overcome the effects of discrimination. This provision can be distinguished from 10 CFR 1040.88(b), which suggests financial assistance recipients may take other affirmative actions, even in the absence of any finding of discrimination. “Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.” 10 CFR 1040.88(b). This provision

contains no substantive right or obligation but rather grants permission for a recipient to take action in the absence of a finding of discrimination. Accordingly, DOE finds this provision to be unnecessary. 10 CFR 1040.88(c) clarifies the conditions under which a recipient operating a program or activity shall be presumed to be providing voluntary affirmative action. 10 CFR 1040.88(c) states, “If a recipient operating a program or activity 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 or activity.” 10 CFR 1040.88(c). Given the general prohibition on age-related discriminatory activities and related penalties, DOE finds these additional provisions unnecessary. DOE finds no reason to suggest additional actions associated with the provisions under 10 CFR 1040.88(b) in the absence of any improper action or attempt to provide unnecessary “clarification” of age based “voluntary affirmative action” under 10 CFR 1040.88(c). Accordingly, DOE finds good reason to eliminate these regulatory provisions. DOE seeks all comments.

II. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866

Executive Order (E.O.) 12866, “Regulatory Planning and Review,” requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits; (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as

user fees or marketable permits, or providing information upon which choices can be made by the public. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, this proposed rulemaking action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website (www.energy.gov/gc/office-general-counsel).

DOE reviewed this proposed rule rescission under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. This proposal eliminates provisions in regulations that are unnecessary and create no substantive right or obligation. Therefore, DOE initially concludes that the impacts of the proposed rule rescission would not have a “significant economic impact on a substantial number of small entities,” and that the preparation of an IRFA is not warranted. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This proposed rule rescission imposes no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501

et seq.).

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (NEPA), DOE is analyzing this proposed rule rescission in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that are strictly procedural. *See* 10 CFR part 1021, subpart D, appendix A6. DOE anticipates that this rulemaking qualifies for categorical exclusion A6 because it is a strictly procedural rulemaking and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410.

E. Review Under Executive Order 13132

E.O. 13132, "Federalism," 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735.

DOE has examined this proposed rule rescission and has tentatively determined that it would not have a substantial direct effect 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.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations,

section 3(a) of E.O. 12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule rescission meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal

governments on a “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

DOE examined this proposed rule rescission according to UMRA and its statement of policy and determined that the proposed rule rescission does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule rescission would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule rescission would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general

guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at: <https://www.energy.gov/cio/department-energy-information-quality-guideline>. DOE has reviewed this proposed rule rescission under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed rule rescission is not a significant regulatory action under E.O. 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Additional Executive Orders and Presidential Memoranda

DOE has examined this rescission and has tentatively determined that it is consistent with the policies and directives outlined in Executive Order 14192, "Unleashing Prosperity Through

Deregulation.” This rescission is expected to be an Executive Order 14192 deregulatory action.

III. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule; request for comment.

List of Subjects in 10 CFR Part 1040

Age, Civil rights, Equal employment opportunity, Individuals with disabilities, Sex discrimination.

Signing Authority

This document of the Department of Energy was signed on May 9, 2025, by Chris Wright, Secretary, Department of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on May 9, 2025.

Jennifer Hartzell,
Alternate Federal Register Liaison Officer,
U.S. Department of Energy.

For the reasons set forth in the preamble, DOE amends part 1040 of chapter X of title 10 of the Code of Federal Regulations, as set forth below:

**PART 1040 – NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR
ACTIVITIES**

1. The authority citation for subpart E of part 1040 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45
CFR part 90.

§ 1040.88 [Amended]

2. Amend §1040.88, by removing and reserving paragraphs (b) and (c).

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