

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**Turbomeca S.A.:** Docket No. FAA-2011-0115; Directorate Identifier 2010-NE-40-AD.

### Comments Due Date

(a) We must receive comments by April 4, 2011.

### Affected Airworthiness Directives (ADs)

(b) None.

### Applicability

(c) This AD applies to Turbomeca S.A. ARRIEL 2B and 2B1 turboshaft engines not modified by TU166 modification. These engines are installed on, but not limited to, Eurocopter AS 350 B3 and EC 130 B4 helicopters.

### Reason

(d) This AD results from:  
Several cases of Gas Generator (GG) Turbine Blade rupture occurred in service on ARRIEL 2 twin engine applications and recently one on a single engine helicopter. For the case occurring in flight on a single engine helicopter (ARRIEL 2B1 engine), the pilot performed an emergency autorotation, landing the helicopter without further incident.

We are issuing this AD to prevent rupture of a GG turbine blade, which could result in an uncommanded in-flight shutdown and an emergency autorotation landing or accident.

### Actions and Compliance

(e) Unless already done, do the following actions.

(1) Accomplish TU166 modification in accordance with the instructions specified within Turboméca Mandatory Service Bulletin (MSB) A292 72 3166 Version B, dated September 20, 2010, when the GG Turbine is replaced or when the engine or Module M03 is going through overhaul or repair, or within 1,300 cycles-in-service after the effective date of this AD, whichever occurs first.

(2) Accomplishment, before the effective date of this AD, of TU166 modification in accordance with the instructions of Turboméca MSB A292 72 3166 Version A, dated August 17, 2010, satisfies the requirement of paragraph (e)(1) of this AD.

### FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and or service information by the following:

(1) European Aviation Safety Agency (EASA) AD No. 2010-0198, dated October 1, 2010, applies to the ARRIEL 2B1A engine. This AD does not apply to that model because it has no U.S. type certificate.

(2) EASA AD No. 2010-198 has a compliance date of “but no later than 25 months after the effective date of this AD. This AD has a compliance time of “1,300 cycles-in-service,” based on average fleet usage data supplied by Turbomeca.

### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

### Alternative Methods of Compliance (AMOCs)

(h) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

### Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2010-0198, dated October 1, 2010, and Turbomeca S.A. Mandatory Service Bulletins A292 72 3166, Version A, dated August 17, 2010, and A292 72 3166 Version B, dated September 20, 2010, for related information. Contact Turbomeca S.A., 40220 Tarnos, France; *e-mail*: [noria-dallas@turbomeca.com](mailto:noria-dallas@turbomeca.com); telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, or go to: <http://www.turbomeca-support.com>, for a copy of this service information.

(j) Contact James Gray, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; *e-mail*: [james.e.gray@faa.gov](mailto:james.e.gray@faa.gov); telephone (781) 238-7742; fax (781) 238-7199, for more information about this AD.

Issued in Burlington, Massachusetts, on February 14, 2011.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF LABOR

### Veterans' Employment and Training Service

#### 20 CFR Part 1001

#### RIN 1293-AA18

### Uniform National Threshold Entered Employment Rate for Veterans

**AGENCY:** Veterans' Employment and Training Service, Labor.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Veterans' Employment and Training Service (VETS) of the Department of Labor (the Department) is proposing a rule to implement a uniform national threshold entered employment rate for veterans applicable to State employment service delivery systems. The Department undertakes this rulemaking in accordance with the

Jobs for Veterans Act, which requires the Department to implement that threshold rate by regulation.

**DATES:** To ensure consideration, comments must be received on or before April 19, 2011.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1293-AA18, by any one of the three following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

- *Mail/Hand Delivery/Courier:* Written comments, disk, and CD-ROM submissions may be mailed or delivered by hand delivery/courier to The Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-1325, Washington, DC 20210.

- *Fax:* Comments may be submitted by fax, with a cover page to the attention of Patrick Hecker, at (202) 693-4755 (this is not a toll-free number).

*Instructions:* Please submit your comments by only one method. All submissions received must include the agency name, as well as RIN 1293-AA18. The Department will post all comments received on <http://www.regulations.gov> without making any change to the comments, including any personal information provided. The <http://www.regulations.gov> Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters safeguard their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses. It is the responsibility of the commenter to safeguard his or her information. Also, please note that due to security concerns, postal mail delivery in Washington, DC, may be delayed. Therefore, in order to ensure that comments receive full consideration, the Department encourages the public to submit comments via the Internet as indicated above.

*Docket:* The Department will make all the comments it receives available for public inspection during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the proposed rule available, upon request, in large print or electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule

an appointment to review the comments and/or obtain the proposed rule in an alternate format, contact the office of Gordon Burke at (202) 693-4730 (VOICE) (this is not a toll-free number) or (202) 693-4760 (TTY/TDD). You may also contact Mr. Burke's office at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Patrick Hecker, State Grants Lead, Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-1312, Washington, DC 20210, at [Hecker.Patrick@dol.gov](mailto:Hecker.Patrick@dol.gov), or at (202) 693-4709 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The preamble to this proposed rule is organized as follows:

- I. Background—provides a brief description of the development of the proposed rule.
- II. Section-by-Section Review of the Proposed Rule—summarizes and discusses the proposed regulations.
- III. Administrative Information—sets forth the applicable regulatory requirements.

### I. Background

On November 7, 2002, the Jobs for Veterans Act (JVA), Public Law 107-288 (Nov. 7, 2002) was signed into law. Section 4(a)(1) of the JVA amended 38 U.S.C. 4102A to require that the Secretary of Labor “establish, and update as appropriate, a comprehensive performance accountability system (as described in subsection (f)) and carry out annual performance reviews of veterans employment, training, and placement services provided through employment service delivery systems, including through disabled veterans' outreach program specialists and through local veterans' employment representatives in States receiving grants, contracts, or awards under this chapter.” 38 U.S.C. 4102A(b)(7).

Section 4102A(f) referred to in the statutory quote above requires the establishment of performance standards and outcome measures to measure the performance of State employment service delivery systems. Section 4101(7) of the statute defines “employment service delivery system” to include “labor exchange services \* \* \* offered in accordance with the Wagner-Peyser Act.” The Department interprets this definition to include the services delivered through the Wagner-Peyser State Grants, funded by the Employment and Training Administration (ETA), as well as the services delivered through the Jobs for Veterans State Grants (JVSG), funded by VETS. In addition, the Department interprets this definition to exclude the services funded through the Workforce

Investment Act of 1998 (WIA) (Pub. L. 105-220).

Under section 4102A(f), the standards and measures used to assess performance of veterans' programs must be consistent with State performance measures applicable under section 136(b) of the WIA. 38 U.S.C. 4102A(f)(2)(A); *see also* WIA section 136(b) (codified at 29 U.S.C. 2871(b)). The basic standards and measures applied by the Department to measure performance under WIA are referred to in the State employment service delivery systems as “common measures.” The current methods of calculating the common measures are specified in Training and Employment Guidance Letter (TEGL) No.17-05, issued on February 17, 2006. This TEGL can be accessed at <http://wdr.doleta.gov/directives/attach/TEGL17-05.pdf>. The common measures for adult workforce programs include a measure of the rate at which enrollees of State employment service delivery systems enter employment. This is referred to as the “entered employment rate” or EER. Under the common measures, there is a comparable EER specifically applicable to veterans and eligible persons. Application of that measure to all State employment service delivery systems is implemented each year through issuance of a Veterans' Program Letter (VPL), most recently VPL 08-10, issued on June 29, 2010, which established the reporting and performance measurement requirements for PY 2010. This VPL can be accessed at: <http://www.dol.gov/vets/VPLS/VPLDirectory.html>.

This Proposed Rule establishes a uniform national threshold only for the EER for veterans and eligible persons. If the calculation of the standards and measures applied by the Department to measure performance under WIA or under a successor program to WIA are revised in the future by the Department through issuance of policy guidance, the Proposed Rule provides that the revised method of calculating the EER for veterans and eligible persons will be used in calculating the uniform threshold EER for the purposes of the Proposed Rule. The method of calculating the uniform national threshold EER for veterans and eligible persons will be specified to State employment service delivery systems in the annual VPL, as mentioned above.

As part of its responsibility for measuring the performance of veterans' programs, the Department is required to establish a uniform national threshold EER to be used in determining whether a State is deficient with regard to its

EER for veterans and eligible persons. Section 4102A(c)(3) of Title 38 provides:

(A)(i) As a condition of a grant or contract under this section for a program year, in the case of a State that the Secretary determines has an entered employment rate for veterans that is deficient for the preceding program year, the State shall develop a corrective action plan to improve that rate for veterans in the State. (ii) The State shall submit the corrective action plan to the Secretary for approval, and if approved, shall expeditiously implement the plan. (iii) If the Secretary does not approve a corrective action plan submitted by the State under clause (i), the Secretary shall take such steps as may be necessary to implement corrective actions in the State to improve the entered-employment rate for veterans in that State. (B) To carry out subparagraph (A), the Secretary shall establish in regulations a uniform national threshold entered-employment rate for veterans for a program year by which determinations of deficiency may be made under subparagraph (A). (C) In making a determination with respect to a deficiency under subparagraph (A), the Secretary shall take into account the applicable annual unemployment data for the State and consider other factors, such as prevailing economic conditions, that affect performance of individuals providing employment, training, and placement services in the State.

The purpose of this Proposed Rule is to establish the uniform national threshold EER, as required of the Secretary in 38 U.S.C. 4102A(c)(3)(B), for use in determining deficiencies in States' performance in assisting veterans to meet their employment needs. The Proposed Rule also explains how the threshold will be used in the process of identifying those States to be reviewed for a potential determination of deficiency, and it identifies certain factors, in addition to the threshold, that will be included in the Department's review to determine deficiency. 38 U.S.C. 4102A(c)(3)(C). Finally, in those cases in which a State's EER is determined to be deficient, the Proposed Rule identifies the procedure for the subsequent submission and review of a corrective action plan (CAP), the delivery of technical assistance (TA), and the initiation of the necessary steps to implement corrective actions to improve the State's performance in assisting veterans to meet their employment needs. 38 U.S.C. 4102A(c)(3)(A).

VETS is the agency of the Department with principal responsibility for monitoring the performance of all State employment service delivery systems with respect to the services received and outcomes experienced by veterans. Since Program Year 2005 (July 1, 2005 through June 30, 2006), VETS has been collecting data from each State on the

EER achieved for veterans and eligible persons, and annually VETS calculates the national EER for veterans and eligible persons. VETS is taking this rulemaking action to establish the uniform national threshold EER now since the common measures, including the EER for veterans and eligible persons, have been in place for several years in the State employment service delivery systems and there is empirical data and a rational basis for proposing a uniform national threshold EER for veterans and eligible persons.

To establish the uniform national threshold, VETS has considered a variety of methodologies and has used actual EER results from Program Years 2005 through (3rd Quarter) 2009 in order to test the validity of the methodologies. VETS' goal was to establish a uniform national threshold that would meet five criteria: the threshold should produce reasonable results under varying economic conditions; the threshold should relate directly to the national EER because the national EER is the overall program performance measure related to entered employment rates; the threshold should identify State agencies whose EERs are demonstrably low; the threshold methodology should be easily explained and readily grasped; and the annual threshold-setting process should not conflict with or introduce confusion into the annual performance goal-setting process conducted between VETS and each State agency.

VETS first developed and tested a two-step process setting the uniform national threshold EER for veterans and determining which, if any State agencies would be subject to a formal review to determine whether or not a Corrective Action Plan would be required. First, VETS would compare each State's program year EER with the national EER for that program year. Then, the State's program year EER would be compared to the State's average EER for the prior three program years. Those two comparisons would provide the basis for identifying those States that would undergo further review of their program year EERs. By comparing each State's program year EER to the national EER for the same program year while also comparing each State's program year EER to its own average EER for the prior three program years, the process was intended to balance application of a standard criterion with application of a relative measure reflecting the variation among the States with respect to economic conditions and other relevant factors. However, empirical tests with State performance data from Program Years 2008 and 2009 demonstrated that

this methodology did not produce reasonable results under the conditions created by the economic recession experienced during that period.

Another formula that was developed and tested involved averaging of the annual national EERs, measuring the percentage of change over time, and using the resultant change percentage as the uniform national threshold EER; that benchmark would be used for comparisons of the change percentages in the program year EERs achieved by each State for the same time period. This methodology added complexity to the process, and testing also demonstrated that averaging tends to skew the resultant measure up or down. Therefore, VETS determined that the use of a method involving averaging adds complexity without producing reasonable results.

VETS then looked at simpler designs for calculating and applying the uniform national threshold EER. One methodology used the national EER for the program year before the subject program year as the basis for calculating the threshold EER. The process would have involved simply setting the threshold at a particular percentage of the national EER from the prior year and comparing the State agencies' actual achievements in the subject program year to that threshold percentage. However, testing at several different levels, that is, percentages, indicated that using the prior year's national EER as the basis for a threshold also produces unreasonable results in years when there are relatively unusual declines or upturns in economic conditions.

VETS then tested and selected a similar one-step methodology using the national EER for the subject program year as the basis for calculating the threshold EER. VETS chose to propose a 90% (of the national EER) level as the threshold for identifying the State agencies to be subject to a deficiency review each year because testing of that threshold level most completely satisfies the five criteria stated above. Testing of higher and lower threshold levels (e.g., 80 to 95% of the national EER) produced results that in one or more ways failed to satisfy those criteria.

## II. Section-by-Section Review of the Proposed Rule

The Proposed Rule includes a total of eight sections. Sections 1001.160 through 1001.162 address the general aspects of the Proposed Rule, such as purpose, scope and definitions. Sections 1001.163 and 1001.164 address the two EER measures that are at the heart of the

Proposed Rule: (a) A State's program year EER, which will be reviewed annually for each State against the national threshold EER; and (b) the uniform national threshold EER, which is the benchmark used in the annual review of each State's program year EER. VETS proposes to use the uniform national threshold EER as the criterion for evaluating each State's program year EER because this methodology is reasonable, easy to understand, and likely to promote continuous improvement in the entered employment outcomes achieved for veterans and eligible persons. Section 1001.165 states when the uniform national threshold EER will be published each year, and § 1001.166 explains how the two proposed EER measures will be used in the process of determining whether or not a State agency will be subject to a CAP in order to receive its next-due Jobs for Veterans State grant. Section 1001.167 addresses other monitoring of compliance regarding services to veterans.

*What is the purpose and scope of this part? (§ 1001.160)*

Section 1001.160 briefly describes the purpose of this regulation and supplies the citation of the requirement in the JVA. It also identifies the service providers to which this regulation applies, that is, the agencies that comprise State employment service delivery systems.

*What definitions apply to this part? (§ 1001.161)*

Section 1001.161 defines the terms used in this proposed rule. For purposes of this Proposed Rule, the Department is interpreting the statutory term "employment service delivery system" to include the employment service delivery infrastructure, personnel, and services provided through the combined funding of Wagner-Peyser State Grants and JVSGs, but excluding those delivery systems provided through WIA grants and governed by a separate performance system. A program year, which is the performance period applicable to State employment service delivery systems, is defined as the period from July 1 of a year through June 30 of the following year. A program year is numbered according to the calendar year during which it begins.

*How does the Department define veteran for purposes of this subpart? (§ 1001.162)*

The definition of veteran currently in effect for the State employment service delivery systems operating under the Wagner-Peyser and JVSG funding is

based on the definition of the term eligible veteran in 38 U.S.C. 4211(4), as referenced in 38 U.S.C. 4101(4). That definition of eligible veteran includes a criterion requiring the individual to have served over 180 days on active military duty. That definition of veteran currently applies to eligibility for JVSG services and also applies to the State employment service delivery systems (both the Wagner-Peyser and JVSG components) for program reporting purposes.

The JVA enacted a new priority of service requirement for veterans and eligible spouses in all employment and training programs funded by the Department. The Department has implemented that requirement through issuance of a final rule on veterans' priority of service at 20 CFR Part 1010. Section 1010.110 of that rule clarifies that the definition of veteran enacted for priority of service purposes at 38 U.S.C. 4215(a)(1)(A) refers to the definition of veteran at 38 U.S.C. 101(2), which does not include the criterion requiring over 180 days of active duty service. Section 1010.330(c)(2)(i) of the priority of service rule further specifies that the latter, less restrictive, definition of veteran will be applied in the future for reporting the services received and the outcomes experienced by veterans and eligible spouses served by employment and training programs funded by the Department.

In conjunction with issuance of the final rule on priority of service, the Department also published an Information Collection Request (ICR) which was approved by the Office of Management and Budget (OMB) under OMB Control Number 1205-0468. The reporting specifications authorized under that approval call for application of the less restrictive definition of veteran to the Wagner-Peyser component of State employment service delivery systems. The Department delayed implementing this new requirement in light of the impact of the current recession on the public workforce system, as well as the impact upon the system of the various initiatives in response to the recession, which were authorized under the American Recovery and Reinvestment Act. It is not certain when the Department will implement the new reporting specifications.

To accommodate the anticipated addition of the less restrictive veteran definition for reporting by the Wagner-Peyser component of State employment service delivery systems, the Department intends the proposed rule's definition of veteran to have two stages. The first stage will begin with

application of the rule to the first program year that begins following the effective date of the final rule. During the first stage, all the EER measures implemented under the proposed rule will reflect the more restrictive veteran definition. The second stage will begin two years after the program year for which data are first collected and reported on the less restrictive veteran definition. For example, if priority of service reporting first applies to Wagner-Peyser for PY 2011, the second stage of implementation of the proposed rule will first apply for PY 2013. During the second stage, all the EER measures implemented under the proposed rule will reflect the less restrictive veteran definition. During the second stage of implementation, any veteran who meets the more restrictive definition will be considered to meet the less restrictive definition.

Applying the definition of veteran in two stages will enable immediate implementation of the uniform national threshold EER under the more restrictive veteran definition, while also establishing the necessary period for implementing the uniform national threshold EER using the less restrictive veteran definition. This addition of the new definition of veteran for the Wagner-Peyser component of State employment delivery systems will not increase the information collection burden for the States, nor will it alter the calculation, publication, or use of the EER for veterans and eligible persons, as described in the sections that follow.

When the less restrictive definition of veteran takes effect for these regulations and is applied to the Wagner-Peyser component of State employment service delivery systems as required by the priority of service final rule and the accompanying reporting specifications, the more restrictive definition (*i.e.*, 180+ days of active duty service) also will be retained. That is because the Secretary is required, by 38 U.S.C. 4107(c)(1), to report annually to the Senate and House Veterans' Affairs Committees on employment and training services for veterans. The statutory requirement for that report specifies that it is to include information on the characteristics, services and outcomes of "eligible" veterans who meet the more restrictive veteran definition. Therefore, unless that specific reporting requirement is amended through legislative action, the Wagner-Peyser component of State employment service delivery systems will be reporting information for veterans about their characteristics (such as their veteran status), services

received and outcomes experienced, under both definitions.

*What is the national entered employment rate (EER) and what is a State's program year EER for purposes of this part? (§ 1001.163)*

This proposed section discusses the two EER measures that will be used in the evaluation process described by the proposed rule. Generally, an EER for veterans and eligible persons looks at the veterans and eligible persons who have participated in an employment service delivery system and then exited that system. The EER measures the number of these participants who are employed after exiting compared to the total number of the participants who exited. The calculation of the EER, as discussed above, is specified through Departmental policy guidance issued in TEGL No.17-05, which describes the calculation of all the common measures. The TEGL describes the entered employment rate as:

Of those who are not employed at the date of participation: The number of adult participants who are employed in the first quarter after the exit quarter *divided* by the number of adult participants who exit during the quarter.

This Proposed Rule uses this calculation of the EER as applied to veterans and eligible persons who participate in State employment service delivery systems, consistent with VPL 08-10. This calculation is stated in proposed § 1001.163(b).

Using this calculation method, VETS annually calculates the national EER for veterans and eligible persons. As stated in proposed § 1001.163(c), the calculation of the national EER for veterans and eligible persons measures the employment results for the group of veterans and eligible persons who are not employed at the date of their participation in the nationwide set of State employment service delivery systems and then exit those systems during the set of four exit quarters that is associated with the EER measure for a specific four-quarter reporting period. This nationwide perspective on the State employment service delivery systems looks at all the employment service delivery systems in each State together as one national employment service delivery system. The national EER for veterans and eligible persons currently is computed by: (1) Summing, for the set of four exit quarters, the total number of these veterans and eligible persons who are employed in the first quarter after their exit quarter; (2) summing, for the set of four exit quarters, the total number of these veterans and eligible persons who exit

during the exit quarters; and, (3) dividing the first sum by the second sum. This measure currently is compiled by the Labor Exchange Reporting System (LERS), implemented by ETA, and currently is displayed in the cell that appears in Row 6 at Column A-4 of the ETA 9002-D Report, as defined in the ETA 9002 and VETS 200 DATA PREPARATION HANDBOOK; ET HANDBOOK NO. 406 (OMB Approval No.: 1205-0240; Expiration Date: 03/31/2012). The national EER resulting from this calculation is expressed as a percentage that is rounded to the nearest tenth of a percent.

A State's program year EER is the EER for veterans and eligible persons achieved by a single State's employment service delivery system for the program year under review. It is calculated using the same method as the national EER. A State's program year EER is discussed in proposed § 1001.163(d). A State's program year EER is expressed as a percentage that is rounded to the nearest tenth of a percent. For the balance of this preamble, a "State's program year EER" also may be referred to simply as a "program year EER."

Section 1001.163(b) of the Proposed Rule specifies that the method of calculation of the EER for veterans and eligible persons is established based on policy guidance issued by the Department. As indicated above, that method of calculation currently is: (a) Established by TEGL No. 17-05; (b) implemented for reporting purposes by ET HANDBOOK NO. 406; and, (c) applied to State employment service delivery systems for veterans and eligible persons by VPL 08-10. If the Department revises the calculation of the EER in the future through new policy guidance, the revised method of calculation will apply to the calculation of the national EER and a State's program year EER.

*What is the uniform national threshold EER, and how is it calculated?*  
(§ 1001.164)

The uniform national threshold EER is equal to 90% of the national EER for veterans and eligible persons (as defined in § 1001.163(c)).

As discussed above for § 1001.163 of the Proposed Rule, the method of calculating the EER for veterans and eligible persons is established through policy guidance. The Department may revise the method of calculating the EER through the issuance of new policy guidance. If this occurs, the uniform national threshold EER will remain 90% of that newly-calculated national EER for veterans and eligible persons.

VETS chose to propose the 90% (of the national EER) level as the threshold for identifying the State agencies to be subject to a deficiency review each year because testing of that threshold level (using the empirical data available) most completely satisfies the five criteria stated in the Background section above. Testing of higher and lower threshold levels (e.g., 80 to 95% of the national EER) using empirical data from prior years produced results that in one way or another failed to satisfy those criteria.

*When will the uniform national threshold EER be published?*  
(§ 1001.165)

Complete, final program year results for the entered employment outcomes achieved by each State agency typically are compiled by VETS during the month of October following the end of each program year (on June 30). For each program year, VETS will: (a) Finalize its calculation of the uniform national threshold EER; (b) finalize its calculation of each State's program year EER; and, (c) when practicable, publish those results in December following the end of the program year.

*How will the uniform national threshold EER be used to evaluate whether a State will be required to submit a corrective action plan (CAP)?* (§ 1001.166)

The JVA requires that the Department develop a uniform national threshold EER by which determinations of deficiency may be made. 38 U.S.C. 4102A(c)(3)(B). If the Department determines that a State's program year EER is deficient, the State must develop a CAP. 38 U.S.C. 4102A(c)(3)(A)(i). The law requires the Secretary to take into account the annual unemployment data for the State and to consider other factors that may have affected the program year EER for veterans and eligible persons, such as prevailing economic conditions, before requiring a CAP. 38 U.S.C. 4102A(c)(3)(C).

The Department proposes to use a simple comparison process to identify those State agencies that need to undergo further review to determine whether their program year EERs are deficient, resulting in the need for a CAP. First, the Department will compare each State's program year EER with the uniform national threshold EER (90% of the national EER) for that program year. A State agency whose program year EER does not meet or exceed the uniform national threshold will be subject to a review by VETS to determine whether the program year EER is deficient. For those States whose program year EER is determined to be deficient, a CAP will be required.

VETS' review to determine deficiency will consider the degree to which the State's program year EER fell short of the uniform national threshold EER for that program year, as well as the annual unemployment data for the State. The review also may include other relevant factors, including other measures of prevailing economic conditions and regional economic conditions, other measures of workforce program performance, and/or any information the State may submit. The review will include consultation with VETS field staff about findings from their on-site reviews and desk audits of the State agency's implementation of policies and procedures for services to veterans. The review also may include consultation with staff affiliated with other agencies of the Department, as appropriate.

The determination that a program year EER for any State is deficient will be made on the basis of this review. Once a State's program year EER has been determined to be deficient, the governing statute envisions a cooperative relationship between that State and the Department. Evidence of that intent is the inclusion in the statute of specific authorization (at 38 U.S.C. 4102A(g)) for the Secretary to provide technical assistance (TA) to any State whose program year EER is determined to be deficient, including TA in the development of a CAP.

The following illustrates how the uniform national threshold EER and the State's program year EER will be compared. In these examples, the program year hypothetically is Program Year (PY) 2009, the national EER is 65.2%, and the uniform national threshold EER is 58.7%.

1. State agency #1 achieved a program year EER of 63.5%. This State would be exempt from a deficiency review based solely on the statistics because its program year EER exceeds the uniform national threshold EER.

2. State agency #2 achieved a program year EER of 58.7%. This State would be exempt from a deficiency review based solely on the statistics because its program year EER equals the uniform national threshold EER.

3. State #3 achieved a program year EER of 58.0%. This State would be considered subject to a deficiency review because it failed to meet or exceed the uniform national threshold EER.

If VETS' review determines a State's program year EER to be deficient, the State will be required, as a condition for receipt of the upcoming program year's JVSG grant, to submit a CAP to the Grant Officer's Technical Representative by June 30 of the year following the

calendar year in which the program year under review ended. For any State required to submit a CAP, VETS will provide TA in the development of the CAP. The Department's review and (as required) comment on the CAP will be handled in conjunction with the Department's review of that State's annual application for funds under the JVSG program for the upcoming fiscal year (which begins on October 1 of the year following the calendar year in which the program year under review ended). Based on review of the CAP submitted, VETS may provide additional TA to the State. If the CAP is approved, the approval of the CAP will be transmitted in conjunction with the approval of that State's JVSG funding for the upcoming fiscal year. The State then must expeditiously implement the CAP. If the CAP is not approved, VETS will take such steps as necessary to implement corrective actions to improve the State's EER for veterans and eligible persons. If the State fails to cooperate with these corrective actions, VETS may take any actions available to remedy non-compliance under 20 CFR part 658, subpart H. These are the compliance measures available to the Assistant Secretary for Veterans' Employment and Training through 20 CFR 1001.130(a).

*In addition to the procedures specified in these regulations, will the Department be conducting any other monitoring of compliance regarding services to veterans? (§ 1001.167)*

Yes. VETS, as the grantor agency for the JVSG, has primary responsibility for initiating comprehensive compliance and performance reviews of each State's employment service delivery system with respect to the services received and outcomes experienced by veterans. The specific procedures prescribed in this Proposed Rule are distinct from, but related to, that overall monitoring responsibility.

These procedures also relate in a somewhat different way to the joint monitoring of priority of service, to be conducted by VETS and ETA according to 20 CFR 1010.240(b). Specifically, if a State's program year EER is determined to be deficient for a given program year, that fact would be one of the elements considered in monitoring priority of service, since failure to fully implement priority of service could be one of the contributors to a deficient program year EER.

### III. Administrative Information

*Regulatory Flexibility Analysis, Executive Order 13272, and Small Business Regulatory Enforcement Fairness Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. Chapter 6, requires the Department to evaluate the economic impact of this proposed rule with regard to small entities. The RFA defines small entities to include small businesses, small organizations including not-for-profit organizations, and small governmental jurisdictions. The Department has determined, and has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule does not impose a significant economic impact on a substantial number of such small entities, because this Rule would directly impact only States and the definition of small entities does not include States.

*Executive Order 12866*

Executive Order 12866 requires that for each "significant regulatory action" proposed by the Department, the Department conduct an assessment of the proposed regulatory action and provide OMB with the proposed regulation and the requisite assessment prior to publishing the regulation. A significant regulatory action is defined to include an action that will have an annual effect on the economy of \$100 million or more, and/or an action that raises a novel legal or policy issue. The uniform national threshold EER implemented by this proposed rule will not have an annual effect on the economy of \$100 million or more.

VETS estimates that the costs specifically attributable to submitting and implementing a CAP would be about one percent of a State agency's annual grant amount. Although VETS has not had recent experience with a CAP and associated costs, past experience suggests that one percent would be a reasonable estimate. States' JVSG grants average about \$3 million per year, so a typical State agency would be expected to use an average of about \$30,000 for CAP costs if a CAP were to be required. Based on an analysis of the number of States that in the past would have failed to meet the proposed uniform national threshold level, VETS estimates that there would be no more than four to six CAPS per year, and allowing for the possible inclusion of some of the State agencies from larger States whose funding levels exceed the average, VETS estimates that the upper range of the average annual total cost for CAPs will not exceed

\$200,000 to \$300,000. Furthermore, if this estimate falls short of CAP development costs or if a CAP requires the State agency to fund additional services for which its JVSG is not adequate, the funds for developing the CAP or any additional services will be provided through VETS' routine reallocation procedure, which requires no additional appropriation and thus would have no net effect on the economy.

This Proposed Rule could raise a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Therefore, the Department has submitted this Proposed Rule to OMB for review.

*Paperwork Reduction Act*

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise the collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information. This rule will not require new or additional information collections, as defined in the Act, from the affected entities. The Department has determined that a State's obligation to develop and submit a CAP for approval does not qualify as a collection of information, as defined by 5 CFR 1320.3(c), because after receiving a determination of deficiency from VETS that excludes the systemic factors beyond the State's control, the State is required to develop and submit a CAP based on a self-diagnosis and prescription that addresses the unique set of deficiencies embodied in that State's policies and procedures. Therefore, a CAP does not qualify as a "collection of information" under 5 CFR 1320.3(c), because it does not result from identical questions nor is the content across multiple CAPs in any way identical. In addition, a CAP does not qualify as "information" under 5 CFR 1320.3(h) because the individuality of the information provided in each State's CAP is consistent with a response to a "request for facts or opinions addressed to a single person," which is excluded under 5 CFR 1320.3(h)(6).

Current reporting systems and requirements are not changed by this Proposed Rule. VETS will calculate the uniform national threshold EER using data from the existing approved data collection included in the ETA 9002 and VETS 200 DATA PREPARATION

HANDBOOK; ET HANDBOOK NO. 406 (OMB Approval No.: 1205-0240; Expiration Date: 03/31/2012). Therefore, this regulation does not impose on the State employment service delivery systems any new information collection that would require approval under the PRA.

#### *Executive Order 13132*

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have “federalism implications.” The rule does 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.” This proposed rule implements the uniform national threshold EER for veterans and eligible persons applicable to State employment service delivery systems. This proposed rule does nothing to alter either the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Accordingly, this proposed rule does not have “federalism implications.”

#### *Unfunded Mandates Reform Act of 1995*

For purposes of the Unfunded Mandates Reform Act (UMRA) of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local and Tribal governments, or by the private sector. As this proposed rule does not impose any unfunded Federal mandate, the UMRA is not implicated. As explained above, current reporting requirements on the States are not changed by this Proposed Rule. The Labor Exchange Reporting System (LERS) produces program year EER results for 52 of the 54 reporting State employment service delivery systems and calculates the first step toward a national EER, based on inclusion of those 52 reporting units. For each program year, VETS will supplement the results available from the LERS by: (a) Incorporating the program year EER results for the two States that are piloting a separate reporting system; and, (b) calculating the uniform national threshold EER based on inclusion of the results for all 54 reporting units. Therefore, this regulation does not impose any new reporting or calculation requirement upon the State employment service delivery systems. Some States may be required to institute corrective actions under this rule. However, such actions

are required by statute. Moreover, the Department provides grant funds for the administration of the JVSG program which may be used for any costs associated with the imposition of a CAP.

#### *Executive Order 13045*

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This proposed rule implements the uniform national threshold EER for veterans and eligible persons applicable to State employment service delivery systems funded by the Department. This proposed rule has no impact on safety or health risks to children.

#### *Executive Order 13175*

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian Tribal governments. The order requires Federal agencies to take certain actions when regulations have “Tribal implications.” The order defines regulations as having “Tribal implications” when they have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The Department has reviewed this proposed rule and concludes that it does not have Tribal implications for purposes of Executive Order 13175, as it does nothing to affect either the relationship or the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### *Environmental Impact Assessment*

The Department has reviewed this proposed rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department’s NEPA procedures (29 CFR part 11). The proposed rule will not have a significant impact on the quality of the human environment, and thus the Department has not prepared an environmental assessment or an environmental impact statement.

#### *Assessment of the Impact of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681), requires the Department to assess the impact of this rule on family well-being.

A rule that is determined to have a negative effect on families must be supported with an adequate rationale. The Department has assessed this proposed rule and has determined that it will not have a negative effect on families.

#### *Privacy Act*

The Privacy Act of 1974 (5 U.S.C. 552a) provides safeguards to individuals for their personal information which the Government collects. The Act requires certain actions by an agency that collects information on individuals when that information contains personally identifying information such as Social Security Numbers or names. Because this proposed rule does not require a new collection of personally identifiable information, the Privacy Act does not apply in this instance.

#### *Executive Order 12630*

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

#### *Executive Order 12988*

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and it will not unduly burden the Federal court system. The proposed regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

#### *Executive Order 13211*

This proposed rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

#### **Plain Language**

The Department drafted this proposed rule in plain language.

#### **Catalog of Federal Domestic Assistance Number**

State employment service delivery systems consist of three formula grant programs, operating within an integrated service delivery infrastructure. Each of these three programs has been assigned a Catalog of Federal Domestic Assistance (CFDA) Number. The three programs are the Employment Service/Wagner-Peyser Funded Activities (CFDA #17.207), the Disabled Veterans’ Outreach Program (CFDA #17.801), and the Local Veterans’

Employment Representative Program (CFDA #17.804).

Signed at Washington, DC, this 10th day of February 2011.

**Raymond M. Jefferson,**

*Assistant Secretary for Veterans' Employment and Training.*

### List of Subjects in 20 CFR Part 1001

Employment, Grant programs—Labor, Veterans.

For reasons stated in the preamble, the Department proposes to amend 20 CFR Chapter IX as follows:

## PART 1001—SERVICES FOR VETERANS

1. The authority citation for part 1001 continues to read as follows:

**Authority:** 29 U.S.C. 49k; 38 U.S.C. chapters 41 and 42.

2. Add subpart G, consisting of §§ 1001.160 through 1001.167, to read as follows:

### Subpart G—Purpose and Definitions

Sec.

1001.160 What is the purpose and scope of this part?

1001.161 What definitions apply to this part?

1001.162 How does the Department define veteran for purposes of this subpart?

1001.163 What is the national entered employment rate (EER) and what is a State's program year EER for purposes of this part?

1001.164 What is the uniform national threshold EER, and how will it be calculated?

1001.165 When will the uniform national threshold EER be published?

1001.166 How will the uniform national threshold EER be used to evaluate whether a State will be required to submit a corrective action plan (CAP)?

1001.167 In addition to the procedures specified in these regulations, will the Department be conducting any other monitoring of compliance regarding services to veterans?

### Subpart G—Purpose and Definitions

#### § 1001.160 What is the purpose and scope of this part?

(a) The purpose of this regulation is to fulfill the requirement of 38 U.S.C. 4102A(c)(3)(B) to establish a uniform national threshold entered employment rate (EER) achieved for veterans and eligible persons by the State employment service delivery systems. The Department will use the threshold rate as part of its process for determining whether a State's program year EER is deficient and whether a corrective action plan (CAP) will be required of a State employment service delivery system.

(b) This regulation is applicable to all State agencies that are recipients of Wagner-Peyser State Grants, and/or Jobs for Veterans State Grants.

#### § 1001.161 What definitions apply to this part?

*Department* means the United States Department of Labor, including its agencies and organizational units and their representatives.

*Eligible person*, as defined at 38 U.S.C. 4101(5), means:

(1) The spouse of any person who died of a service-connected disability;

(2) The spouse of any member of the Armed Forces serving on active duty who, at the time of application for assistance under this chapter, is listed, pursuant to 37 U.S.C. 556 and regulations issued thereunder by the Secretary concerned, in one or more of the following categories and has been so listed for a total of more than ninety days:

(i) Missing in action,

(ii) Captured in line of duty by a hostile force, or

(iii) Forcibly detained or interned in line of duty by a foreign government or power; or

(3) The spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

*Employment service delivery system*, as defined at 38 U.S.C. 4101(7), means a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act.

*Jobs for Veterans Act (JVA)* means Public Law 107–288, 116 Stat. 2033 (2002).

*Jobs for Veterans State Grant (JVSG)* means an award of Federal financial assistance by the Department to a State for the purposes of the Disabled Veterans' Outreach Program or the Local Veterans' Employment Representative Program.

*Program year* is the period from July 1 of a year through June 30 of the following year and is numbered according to the calendar year in which it begins.

#### § 1001.162 How does the Department define veteran for purposes of this subpart?

The Department applies two definitions of veteran for the purposes of this subpart and has established two stages for the implementation of these definitions.

(a) The first stage of implementation begins with application of this subpart

G to the first program year following [EFFECTIVE DATE OF THE FINAL RULE]. *As of that date*, Veteran is defined as it is in 38 U.S.C. 4211(4):

(1) A person who served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;

(2) Was discharged or released from active duty because of a service-connected disability;

(3) As a member of a reserve component under an order to active duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 12302, or 12304, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge; or

(4) Was discharged or released from active duty by reason of a sole survivorship discharge (as that term is defined in 10 U.S.C. 1174(i)).

(b) The second stage of implementation begins with the first day of the program year that begins two years after the first day of the program year that State grantees begin collecting and maintaining data as required by 20 CFR 1010.330(c). As of that date, Veteran will be defined as it is for purposes of 38 U.S.C. 4215(a):

(1) A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable, as specified in 38 U.S.C. 101(2).

(2) Active service includes full-time Federal service in the National Guard or a Reserve component, other than full-time duty for training purposes.

(c) During the second stage of implementation, any veteran who meets the definition specified in paragraph (a) of this section will be considered to meet the definition specified in paragraph (b) of this section.

(d) The Department will notify State grantees when they are required to begin implementing 20 CFR 1010.330(c).

#### § 1001.163 What is the national entered employment rate (EER) and what is a State's program year EER for purposes of this part?

(a) For purposes of this part, the Department uses the EER for veterans and eligible persons. This is the EER as applied to veterans (as defined in § 1001.162) and eligible persons (as defined in § 1001.161) who are participants in State employment service delivery systems.

(b) The EER for veterans and eligible persons measures the number of the participants described in paragraph (a)

of this section who are employed after exiting an employment service delivery system compared to the total number of those participants who exited. The method of calculation will be established through policy guidance issued by the Department.

(c) The national EER for veterans and eligible persons is the EER achieved by the national State employment service delivery system for those veterans and eligible persons who are participants in all of the State employment service delivery systems for the program year under review. The national EER resulting from this calculation is expressed as a percentage that is rounded to the nearest tenth of a percent.

(d) A State's program year EER is the EER for veterans and eligible persons (as calculated in paragraph (b) of this section) achieved by a single State's employment service delivery system for those veterans and eligible persons who are included in the EER measure for that State's employment service delivery system for the program year under review. The program year EER resulting from this calculation is expressed as a percentage that is rounded to the nearest tenth of a percent.

**§ 1001.164 What is the uniform national threshold EER, and how will it be calculated?**

(a) The uniform national threshold EER for a program year is equal to 90% of the national EER for veterans and eligible persons (as defined in § 1001.163(c)).

(b) The uniform national threshold EER resulting from this calculation is expressed as a percentage that is rounded to the nearest tenth of a percent.

**§ 1001.165 When will the uniform national threshold EER be published?**

When practicable, the Veterans' Employment and Training Service (VETS) will publish the uniform national threshold EER for a given program year by the end of December of the calendar year in which that program year ends.

**§ 1001.166 How will the uniform national threshold EER be used to evaluate whether a State will be required to submit a corrective action plan (CAP)?**

(a) *Comparison.* Each State's program year EER will be compared to the uniform national threshold EER for that program year. State agencies that do not achieve a program year EER that equals or exceeds the national threshold EER (90% of the national EER) for the year under review will be subject to a review

by VETS to determine whether the program year EER is deficient.

(b) *Review.* For each State whose program year EER is subject to review to determine deficiency, the review will consider the degree of difference between the State's program year EER and the uniform national threshold EER for that program year, as well as the annual unemployment data for the State as compiled by the Bureau of Labor Statistics.

(1) The review also may consider other relevant measures of prevailing economic conditions and regional economic conditions, as well as other measures of the performance of workforce programs and/or any information the State may submit.

(2) The review will include consultation with VETS field staff about findings from their on-site reviews and desk audits of State agency implementation of policies and procedures for services to veterans, and also may include consultation with staff affiliated with other agencies of the Department, as appropriate.

(c) *Requirement of a CAP.* A State whose program year EER is determined to be deficient will be required to submit a CAP to improve the State's performance in assisting veterans to meet their employment needs as a condition of receiving its next-due JVSG.

(1) Any State whose program year EER has been determined to be deficient will be notified by March 31 of the year following the calendar year in which the program year under review ended.

(2) For any State that is required to submit a CAP, VETS will provide technical assistance (TA) regarding the development of the CAP. The CAP must be submitted to the Grant Officer's Technical Representative by June 30 of the year following the calendar year in which the program year under review ended.

(3) VETS will review the CAP submitted by the State and determine whether to approve it or to provide additional TA to the State.

(i) If VETS approves the CAP, the State must expeditiously implement it.

(ii) If VETS does not approve the CAP, it will take such steps as are necessary to implement corrective actions to improve the State's EER for veterans and eligible persons.

(4) If a State fails to cooperate with the actions imposed by the Department under paragraph (c)(3)(ii) of this section, the Assistant Secretary for Veterans' Employment and Training may take any actions available to remedy non-compliance under 20 CFR 1001.130(a) (referring to the compliance measures

discussed in 20 CFR part 658, subpart H).

**§ 1001.167 In addition to the procedures specified in these regulations, will the Department be conducting any other monitoring of compliance regarding services to veterans?**

Yes. VETS will continue to monitor compliance with the regulations related to veterans' priority of service at 20 CFR 1010.240(b) jointly with the Employment and Training Administration. If a State's program year EER is determined to be deficient for a given program year, that deficiency would constitute information to be considered in monitoring priority of service, since failure to fully implement priority of service could be one of the contributors to a deficient program year EER.

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 101**

[Docket No. FDA-2000-P-0102, FDA-2000-P-0133, and FDA-2006-P-0033]

**Health Claim; Phytosterols and Risk of Coronary Heart Disease**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Extension of enforcement discretion.

**SUMMARY:** The Food and Drug Administration (FDA) is extending the period of time that it intends to exercise enforcement discretion, concerning the use of the health claim for phytosterols and risk of coronary heart disease (CHD), in a manner that is consistent with FDA's February 14, 2003, letter of enforcement discretion to Cargill Health and Food Technologies. In the proposed rule for this health claim that published on December 8, 2010 (75 FR 76526), the Agency provided a period of 75 days from the date of publication of the proposed rule during which FDA intended to exercise its enforcement discretion for the use of such claim consistent with the 2003 letter. FDA is extending this period during which the Agency intends to exercise enforcement discretion to February 21, 2012.

**DATES:** Submit either electronic or written comments by April 19, 2011.

**ADDRESSES:** Submit electronic comments to <http://www.regulations.gov>. Submit written