

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SOCIAL SECURITY ADMINISTRATION

5 CFR Chapter LXXXI

RINs 0960-AE48, 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Social Security Administration

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Social Security Administration (SSA), with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations that would supplement, for officers and employees of SSA, the OGE Standards of Ethical Conduct for Employees of the Executive Branch. The proposed regulations would set forth prohibitions and prior approval requirements for certain outside employment and other outside activities for all SSA employees, and would set forth additional prior approval requirements for SSA Administrative Law Judges.

DATES: To be sure that your comments are considered, we must receive them by March 14, 2005.

ADDRESSES: You may give us your comments by: Using our Internet facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to regulations@ssa.gov; telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or you may inspect them physically on regular business days by making arrangements

with the contact person shown in this preamble.

Electronic Version

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FOR FURTHER INFORMATION CONTACT:

Asim A. Akbari, Office of the General Counsel, General Law Division, telephone (410) 966-6581, fax (410) 597-0071, or TTY 1-410-966-5609. For information on eligibility or filing for benefits, call our national toll-free numbers, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, (at 57 FR 35006-35067) OGE published Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards), which as corrected and amended are codified at 5 CFR part 2635. Effective generally on February 3, 1993, the OGE Standards established uniform rules applicable to all executive branch personnel.

Pursuant to 5 CFR 2635.105, executive branch agencies are authorized to publish, with the concurrence of OGE, supplemental regulations deemed necessary to implement their respective ethics programs. SSA and OGE have determined that the following proposed supplemental regulations are necessary and appropriate in view of SSA's programs and operations, and to fulfill the purposes of the OGE Standards. The supplemental regulations would be issued in a new chapter LXXXI, consisting of part 9101, of 5 CFR.

II. Analysis of the Proposed Regulations

Proposed § 9101.101 General

This proposed section would state the purpose of the supplemental regulation. Also, it would include cross-references to other issuances applicable to SSA employees, including regulations on financial disclosure, financial interests, and employee responsibilities and

conduct and implementing SSA guidance and procedures issued in accordance with the executive branch-wide Standards.

Proposed § 9101.102 Outside Employment and Other Outside Activities

Under 5 CFR 2635.403(a), an agency may, by supplemental regulation, prohibit its employees from having compensated outside employment, when the agency determines that having that outside employment would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Such outside employment prohibited by an agency's supplemental regulation would, in turn, be "conflicting outside employment" and therefore barred by the executive branch-wide Standards, under 5 CFR 2635.802(a). In addition, under 5 CFR 2635.803 where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall by supplemental regulation require employees or any category of employees to obtain approval before engaging in specific types of outside activities, including outside employment.

SSA has determined that SSA employees' having the outside employment described below would cause a reasonable person to question the impartiality and objectivity with which SSA programs are administered. In addition, SSA has determined that it is necessary or desirable for the purpose of administering its ethics program to impose on its employees the prior approval requirements described below.

(a) *Applicability.* The outside employment and activity prohibitions and the prior approval requirements imposed by paragraphs (c) and (d), respectively, of this proposed section, would apply to all SSA employees, except special Government employees. Nevertheless, special Government employees remain subject to other statutory and regulatory authorities governing their outside activities, including bars on their representational activities at 18 U.S.C. 203(c) and 205(c), and applicable provisions of 5 CFR part 2635.

(b) *Definitions.* Proposed § 9101.102(b) would set forth definitions of the terms used in the section.

(c) *Prohibited Outside Employment and Activities.* Proposed § 9101.102(c)

would prohibit an SSA employee from engaging in consultative or professional services, for compensation, to prepare, or assist in the preparation of, any grant applications, contract proposals, program reports, or other documents that are intended for submission to SSA. Note that such conduct, if undertaken on an uncompensated basis, though not expressly prohibited by proposed paragraph (c), would be subject to the prior approval requirement in proposed paragraph (d).

(d) *Prior Approval for Outside Employment and Other Outside Activities.* Proposed § 9101.102(d) would require employees to obtain written approval prior to engaging in certain outside employment or other outside activities. The prior approval requirement would be an integral part of SSA's ethics program. SSA, with OGE's concurrence, believes that the prior approval requirement is necessary to ensure that an employee's participation in outside employment or other outside activities does not adversely affect operations within the employing component or place the employee at risk of violating applicable statutes and regulations governing employee conduct. SSA deems the prior approval requirement necessary to preclude the appearance that an outside employment or other outside activity mentioned above may have been obtained through the use of the employee's official position and to address a number of other potential ethics concerns. Given that SSA annually provides millions of dollars of funding in SSA grants, contracts, cooperative research and development agreements and other funding relationships, SSA has determined that requiring approval prior to engaging in such SSA-funded activities is critical to protect against questions arising regarding the impartiality and objectivity of its employees and the administration of SSA's programs. In fulfilling its mission, SSA would be hindered if members of the public were to question whether SSA employees were using their public position or workplace connections for private remunerative gain attributable, directly or indirectly, to appropriated funds. In addition, an appearance of misuse of an employee's official position may arise where an employee is providing professional or consultative services; engaging in teaching, speaking, writing, or editing that relates to his or her official duties or is undertaken upon invitation by a prohibited source; or providing services to a non-Federal entity as an officer, director, or board member, or, with certain exceptions for

nonprofit organizations, as a member of a group, such as an advisory board. Therefore, prior approval would be required for such outside employment activities as well.

(1) *General Approval Requirement.* Proposed § 9101.102(d)(1) would list the employment or activities, with or without compensation, for which prior written approval would be required for SSA employees. Proposed § 9101.102(d)(1)(iii) would exclude from the prior approval requirement certain services for enumerated nonprofit organizations that are uncompensated (other than reimbursement of expenses) and do not involve the provision of professional or consultative services. Proposed § 9101.102(d)(5) would likewise exclude those categories of outside employment and activities exempted thereunder (see the discussion of that provision below).

(2) *Additional Approval Requirement Applicable to Administrative Law Judges (ALJs).* Under proposed § 9101.102(d)(2), SSA ALJs would be required to obtain prior written approval for all outside employment, with only limited exceptions. SSA has determined that it is necessary to the administration of its ethics program to have this broad prior approval requirement for its ALJs. SSA ALJs have the responsibility for issuing decisions on benefit claims under titles II and XVI of the Social Security Act. SSA must ensure the public that the hearing process is fair and that there is no appearance that an ALJ has a conflict of any kind that would undermine the process. ALJs hear and decide cases from the public on a daily basis. Thus, ALJs are one of the most visible SSA employees to the public. ALJ activities, both in and out of the office, are scrutinized by the public. Due to their heightened notoriety by the public as compared to other SSA employees, the proposed prior approval requirement in § 9101.102(d)(2) would allow SSA to assist ALJs in avoiding outside employment activities that may create a perception of partiality in the decision-making process.

Consistent with the other prior approval provisions applicable to all SSA employees, proposed § 9101.102(d)(2)(ii) would not require approval for participation in the activities of certain enumerated nonprofit organizations, unless the participation were to involve the provision of professional or consultative services, were to be performed for compensation (other than reimbursement of expenses), or, additionally, the activity relates to the employee's official duties within the

meaning of 5 CFR 2635.807(a)(2)(i)(B) through (E). Moreover, the proposed prior approval requirement would not apply, as provided at § 9101.102(d)(2)(iii) as proposed, to those categories of employment that have been exempted, pursuant to § 9101.102(d)(5) as proposed, based on a determination that such employment activities generally would be approved and are not likely to involve conduct prohibited by statute or Federal regulation.

(3) *Submission of Requests for Prior Approval.* Proposed § 9101.102(d)(3) would specify that employees would have to submit prior approval requests in writing to their immediate supervisor at least 30 days in advance in order to allow a reasonable time before the proposed activity for the consideration of the requested approval of outside activities. Employees would be required to include information in their prior approval requests sufficient to assess the activity. Upon a significant change in the nature or scope of the outside employment or in the employee's SSA position, proposed § 9101.102(d)(3)(ii) would require the employee to submit a revised request for approval.

(4) *Standard for Approval.* Proposed § 9101.102(d)(4) would specify the standard for approval of outside employment or other activities. Each proposed activity would be reviewed on a case-by-case basis in order to determine that the activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and the SSA supplemental regulations. A proposed note that would follow § 9101.102 would advise employees that the granting of approval for an outside activity does not relieve the employee of the obligation to abide by all applicable laws and regulations governing employee conduct. The note would put employees on notice that approval merely constitutes an assessment that the activity, as described on the approval request, generally does not appear likely to violate any criminal statutes or other ethics rules. The note would serve as a reminder to employees that during the course of an otherwise approvable activity, situations may arise, or actions may be contemplated that nevertheless pose ethical concerns. SSA ethics officials are available to provide advice and guidance to SSA employees as to such situations.

(5) *Responsibilities of the Designated Agency Ethics Official or Designee.* Proposed § 9101.102(d)(5) would provide that the Designated Agency Ethics Official (DAEO) may issue instructions or manual issuances that

will be distributed to all SSA offices exempting categories of employment or other activities from the prior approval requirement, after a determination that the employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including the OGE Standards and this supplemental regulation. Through these instructions or manual issuances, SSA may specify internal procedures governing the submission of prior approval requests and maintenance of records, designate appropriate officials to act on such requests, and include examples of outside employment or other outside activities that are permissible or impermissible consistent with the OGE Standards and this part.

Clarity of the Proposed Rules

In addition to your substantive comments on these proposed rules, we invite your comments on how to make the rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that may be avoided or that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- What else could we do to make the rules easier to understand?

III. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

In issuing this proposed rule, SSA has adhered to the regulatory philosophy and the applicable principles of regulations set forth in section 1 of Executive Order 12866 of September 30, 1993. This proposed rule is limited to agency organization, management, or personnel matters, and thus is not a "significant regulatory action," as defined in sections 3(d) through (f) of the Executive Order.

Executive Order 12988

As Commissioner of Social Security I have reviewed this proposed rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

SSA has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed regulation will not have a significant economic impact on a substantial number of small entities because it affects only SSA employees.

Paperwork Reduction Act

SSA has determined that the reporting requirements contained in proposed § 9101.102(d) are exempt from coverage under the Paperwork Reduction Act as specified in 5 CFR 1320.3(c)(4).

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed regulation will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

SSA has determined that this rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the United States Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Part 9101

Conflict of interests, Government employees.

Dated: January 26, 2005.

Jo Anne B. Barnhart,
Commissioner of Social Security.

Approved: February 1, 2005.

Marilyn L. Glynn,
Acting Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Social Security Administration, with the concurrence of the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter LXXXI, consisting of part 9101, to read as follows:

Chapter LXXXI—Social Security Administration

PART 9101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE SOCIAL SECURITY ADMINISTRATION

Sec.

9101.101 General.

9101.102 Outside employment and other outside activities.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.802, 2635.803.

§ 9101.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of Social Security Administration (SSA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Cross-references.* In addition to 5 CFR part 2635 and this part, SSA employees are required to comply with implementing guidance and procedures issued by SSA in accordance with 5 CFR 2635.105(c). SSA employees are also subject to the executive branch-wide financial disclosure regulations at 5 CFR part 2634, the financial interests regulations at 5 CFR part 2640, and the employee responsibilities and conduct regulations at 5 CFR part 735.

§ 9101.102 Outside employment and other outside activities.

(a) *Applicability.* This section applies to all SSA employees, except special Government employees.

(b) *Definitions.* For the purposes of this section:

Compensation has the meaning set forth in 5 CFR 2635.807(a)(2)(iii).

Consultative services means the provision of personal services by an employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or other similar facility.

Employment means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether or not for compensation, or any self-employment business activity. It includes but it is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee.

Professional services means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1) or involves a fiduciary relationship as defined in 5 CFR 2636.305(b)(2).

Receive has the meaning set forth in 5 CFR 2635.807(a)(2)(iv).

(c) *Prohibited outside employment and activities—prohibited assistance in the preparation of grant applications or*

contract proposals. An employee shall not provide to or on behalf of any person consultative or professional services, for compensation, which includes preparing, or assisting in the preparation of, any grant application, contract proposal, program report or other document intended for submission to SSA.

(d) *Prior approval for outside employment and other outside activities.* (1) *General approval requirement.* Except to the extent that the SSA Designated Agency Ethics Official has exempted the employment or other activity under paragraph (d)(5) of this section, an employee shall obtain written approval prior to engaging, with or without compensation, in the following outside employment or activities:

(i) Providing professional or consultative services, including service as an expert witness;

(ii) Engaging in teaching, speaking, writing, or editing that:

(A) Relates to the employee's official duties within the meaning of 5 CFR 2635.807(a)(2)(i)(B) through (E); or

(B) Would be undertaken as a result of an invitation to engage in the activity that was extended to the employee by a person who is a prohibited source within the meaning of 5 CFR 2635.203(d).

(iii) Providing services to a non-Federal entity as an officer, director, or board member, or as a member of a group such as a planning commission advisory council, editorial board, scientific or technical advisory board or panel, which require the provision of advice, counsel or consultation, unless the service is provided, without compensation other than reimbursement of expenses, to a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization and does not involve the provision of professional or consultative services within the meaning of paragraph (b) of this section.

(iv) Engaging in an activity funded by an SSA grant, contract, cooperative research and development agreement, or other funding relationship.

(2) *Additional approval requirement for Administrative Law Judges.* (i) In addition to the approval requirements set forth in paragraph (d)(1) of this section, an SSA Administrative Law Judge shall obtain written approval prior to engaging in any outside employment, except as provided in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section.

(ii) The requirement of paragraph (d)(2)(i) of this section does not apply to participation in the activities of a

nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless the participation involves the provision of professional or consultative services within the meaning of paragraph (b) of this section, is performed for compensation other than the reimbursement of expenses, or the activity relates to the employee's official duties within the meaning of 5 CFR 2635.807(a)(2)(i)(B) through (E).

(iii) The requirement of paragraph (d)(2)(i) of this section shall not apply to the extent that an employment activity has been exempted, pursuant to paragraph (d)(5) of this section.

(3) *Submission of request for approval.* (i) An employee seeking to engage in any of the activities for which advance approval is required shall allow not less than 30 days before the proposed activity for the consideration of the written request for approval. The employee shall submit the request for approval to his or her immediate supervisor. All requests for prior approval shall include the following information:

(A) The employee's name, organizational component, position title, grade and salary;

(B) The nature of the proposed outside employment or other outside activity, including a full description of the specific duties or services to be performed;

(C) A description of the employee's official duties that relate in any way to the proposed activity;

(D) The name and address of the person or organization for whom or with which the work or activity will be done, including the location where the services will be performed;

(E) The estimated total time that will be devoted to the activity. There must be a statement of the estimated number of hours per year and a statement of the anticipated beginning and ending date;

(F) A statement as to whether the work can be performed entirely outside of the employee's regular duty hours and, if not, the estimated number of hours of absence that will be required;

(G) The method or basis of any compensation (e.g., fee, per diem, honorarium, royalties, stock options, travel and expenses, or other);

(H) A statement whether the compensation is derived from an SSA grant, contract, cooperative agreement, or other source of SSA funding;

(I) For activities involving the provision of consultative or professional services, a statement indicating whether the client, employer, or other person on whose behalf the services are to be

performed is receiving, or intends to seek, SSA or Federal Government benefits, an SSA grant, contract, cooperative research and development agreement, or other funding relationship; and

(J) For activities involving teaching, speaking, writing, or editing, the proposed text of any disclaimer required by 5 CFR 2635.807(b)(2) or by the instructions or manual issuances authorized under paragraph (d)(5) of this section. However, no advance approval for the disclaimer is required if the disclaimer reads as follows: "This (article, book, etc.) was (written, edited) by (employee's name) in (his or her) private capacity. No official support or endorsement by the Social Security Administration or the United States is intended or should be inferred." Where a disclaimer is required for an article, book or other writing, the disclaimer will be printed in a reasonably prominent position in the writing itself.

(ii) Upon a significant change in the nature or scope of the outside employment or in the employee's SSA position, the employee must submit a revised request for approval.

(4) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment or activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(5) *Responsibilities of the Designated Agency Ethics Official or Designee.* The SSA Designated Agency Ethics Official may issue an instruction or manual issuance exempting categories of employment or other outside activities from a requirement of prior written approval based on a determination that the employment or activities within those categories would generally be approved and would not be likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part. Through these instructions or manual issuances, SSA may specify internal procedures governing the submission of prior approval requests and maintenance of records, designate appropriate officials to act on such requests, and include examples of outside employment or other outside activities that are permissible or impermissible consistent with the OGE Standards and this part.

Note to § 9101.102: The granting of approval for an outside activity does not relieve the employee of the obligation to abide by all applicable laws and regulations governing employee conduct. Approval merely constitutes an assessment that the activity as described on the submission generally does not appear likely to violate

any criminal statutes or other ethics rules. Employees are reminded that during the course of an otherwise approvable activity, situations may arise, or actions may be contemplated, that nevertheless, pose ethical concerns. SSA ethics officials are available to provide advice and guidance to SSA employees as to such situations.

[FR Doc. 05-2644 Filed 2-10-05; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76 and 150

RIN: 3150-AH57

Protection of Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for the protection of Safeguards Information (SGI) to protect SGI from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials. The proposed amendments are consistent with recent Commission practices reflected in orders and threat advisories, issued since September 11, 2001. The proposed amendments would affect certain licensees, information, and materials not currently specified in the regulations, but which are within the scope of Commission authority under the Atomic Energy Act of 1954, as amended (AEA).

DATES: The comment period expires March 28, 2005. Submit comments specific to the information collections aspects of this rule March 14, 2005. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AH57) in the subject line of your comments. Comments on this rulemaking submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission,

Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher at (301) 415-5905; e-mail cag@nrc.gov. Comments can also be submitted via the Federal Rulemaking Portal <http://www.regulations.gov>.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone: (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101. Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be reviewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Marjorie Rothschild, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1633, e-mail MUR@nrc.gov or Bernard Stapleton, Office of Nuclear Security and Incident Response, Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2432, e-mail BWS2@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Need for Rule

III. Purpose of Rulemaking

IV. Request for Specific Comment

V. Discussion of Proposed Amendments by Section

VI. Criminal Penalties

VII. Agreement State Issues

VIII. Plain Language

IX. Voluntary Consensus Standards

X. Finding of No Significant Impact:

Environmental Assessment

XI. Paperwork Reduction Act Statement

XII. Regulatory Analysis

XIII. Regulatory Flexibility Analysis

XIV. Backfit Analysis

I. Background

Safeguards Information (SGI) is a special category of sensitive unclassified information to be protected from unauthorized disclosure under section 147 of the Atomic Energy Act of 1954, as amended (AEA). Although SGI is considered to be sensitive unclassified information, it is handled and protected more like classified National Security Information than like other sensitive unclassified information (e.g., privacy and proprietary information). Part 73, "Physical Protection of Plants and Materials," of the Commission's regulations in Title 10 of the Code of Federal Regulations contains requirements for the protection of SGI. Commission orders issued since September 11, 2001, have also imposed requirements for the designation and protection of SGI. These requirements apply to SGI in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires SGI. An individual's access to SGI requires both a valid "need to know" such information and authorization based on an appropriate background investigation. Power reactors, certain research and test reactors, and spent fuel storage installations are examples of the categories of licensees currently within the scope of the provisions of part 73 for the protection of SGI. Examples of the types of information designated as SGI include the physical security plan for a licensee's facility; the design features of such a licensee's physical protection system; and operational procedures for the licensee's security organization.

The Commission has authority under section 147 of the AEA to designate, by regulation or order, other types of information as SGI. For example, section 147.a.(2) allows the Commission to designate as SGI a licensee's or applicant's detailed security measures (including security plans, procedures and equipment) for the physical protection of source material or byproduct material in quantities determined by the Commission to be significant to the public health and