

**DEPARTMENT OF LABOR**

**Veterans' Employment and Training Service**

**41 CFR Parts 61-250 and 61-300**

**RIN 1293-AA20**

**Annual Report from Federal Contractors**

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

**ACTION:** Final Rule.

**SUMMARY:** The Veterans' Employment and Training Service (VETS or the Agency) is issuing this Final Rule to revise the regulations implementing the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). Generally, VEVRAA requires Federal contractors and subcontractors to annually report on the total number of their employees who belong to the categories of veterans protected under VEVRAA, and the total number of those protected veterans who were hired during the period covered by the report.

This Final Rule rescinds the regulations that prescribe the reporting requirements applicable to Government contracts and subcontracts entered into before December 1, 2003, because those regulations are now obsolete. In addition, this Final Rule revises the regulations that prescribe the reporting requirements applicable to Government contracts and subcontracts of

\$100,000 or more entered into or modified after December 1, 2003, by changing the manner in which Federal contractors report on their employment of veterans. The Final Rule renames the annual report required under those regulations the Federal Contractor Veterans' Employment Report VETS-4212. Further, the Final Rule revises regulations that address the definitions of terms used in the regulations, the text of the reporting requirements clause included in Government contracts and subcontracts, and the methods of filing the annual report on veterans' employment.

Contractors and subcontractors will have to comply with the reporting requirements in the Final Rule beginning with the annual report filed in 2015.

**DATES: Effective Date:** This rule is effective [Insert date 30 days after date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**I. Background**

On February 24, 2014, the Department of Labor's Veterans' Employment and Training Service (VETS) issued a notice of proposed rulemaking (NPRM) to revise the regulations

implementing the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), 38 U.S.C. 4212(d). VETS invited interested parties to provide written comments on the proposed regulations and related specific issues identified in the NPRM. The written comment period closed on April 25, 2014, and VETS considered all timely comments received in response to the proposed regulations.

VETS received timely comments from five sources. Commenters included: an organization representing human resource professionals, three organizations representing Federal contractors and subcontractors, and an organization representing human resource professionals and related groups in employment law compliance matters. The comments comprised several concerns addressed to approximately eight topics set forth in VETS' NPRM. Several comments were more general plaudits or criticisms; the majority specifically addressed discrete issues contained in VETS' proposed rule. VETS appreciates the comments, ideas, and suggestions received.

## **II. Statutory Authority**

VEVRAA authorizes the Secretary of Labor to prescribe regulations implementing the reporting requirements of the law that apply to Federal contractors and subcontractors.<sup>1</sup> 38 U.S.C. 4212(d)(1). VETS issues these regulations under that authority in order to guide contractors concerning their annual reporting obligations.

## **III. Background on the VEVRAA Reporting Requirement**

VEVRAA obligates contractors that are subject to the statute's affirmative action provisions codified at 38 U.S.C. 4212(a) to report annually to the Secretary of Labor on the number of employees and new hires protected under the statute. In 2008, VETS promulgated

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<sup>1</sup> Hereinafter, we refer to Federal contractors and subcontractors collectively as "contractors" unless otherwise specified, given that obligations for contractors and subcontractors with qualifying contracts are identical.

two sets of regulations necessitated by the Jobs for Veterans Act (JVA) (Pub. L. 107-288), implementing statutory reporting requirements under VEVRAA.

Prior to the JVA amendments, VEVRAA required contractors to report annually the number of employees in their workforces, by job category and hiring location, and the number of new hires during the reporting period, who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. The part 61-250 regulations implement these reporting requirements and apply to contracts of \$25,000 or more entered into before December 1, 2003, unless they were modified on or after that date and have a value of \$100,000 or more. The existing part 61-250 regulations require covered contractors to use the VETS-100 Federal Contractor Veterans' Employment Report (VETS-100 Report), and provide data regarding veterans' employment in the four categories of veterans protected under VEVRAA pre-JVA and in the nine occupational categories used in the EEO-1 Standard Employer Information Report (EEO-1 Report), prior to the revision of the EEO-1 Report in 2007.

The JVA amendments increased the contract threshold amount that triggers the reporting requirement from \$25,000 to \$100,000, and changed the categories of veterans protected under the Act. As amended by the JVA, VEVRAA requires contractors to report the number of employees in their workforces, by job category and hiring location, and the number of new hires during the reporting period, who are "qualified covered veterans." 38 U.S.C. 4212(d)(1). The statute defines "covered veteran" as any of the following veterans: (1) disabled veterans; (2) Armed Forces service medal veterans; (3) veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized; and (4) recently

separated veterans. 38 U.S.C. 4212(a)(3). The JVA reporting requirements are implemented by the regulations in part 61-300 and apply to Government contracts of \$100,000 or more entered into on or after December 1, 2003. A contract that was entered into before December 1, 2003, is subject to the part 61-300 regulations if it was modified on or after December 1, 2003, and meets the contract dollar threshold of \$100,000 or more.

The regulations in part 61-300 require contractors to use the Federal Contractor Veterans' Employment Report VETS-100A (VETS-100A Report) to provide the specified information on veterans' employment. Specifically, the VETS-100A Report, like the VETS-100 Report, requires contractors to report data on veterans' employment by the 10 occupational categories and subcategories found on the revised EEO-1 Report, and by each of the four categories of veterans protected under the JVA amendments.

This Final Rule eases the reporting burden on Federal contractors and subcontractors, standardizes definitional terminology with the existing EEO-1 Report, renames the required report the "VETS-4212 Report" and provides a more useful tool for employers to assess the effectiveness of their applicable affirmative action programs.

#### **IV. Plain Language**

VETS wrote the rule in the more personal style advocated by the Presidential Memorandum on Plain Language. "Plain language" encourages the use of:

- Personal pronouns (we and you);
- Sentences in the active voice; and
- A greater use of headings, lists, and questions.

#### **V. Section-by-Section Summary of the Final Rule and Discussion of Comments**

This preamble sets out VETS' interpretation of the reporting requirement under VEVRAA, section-by-section. The preamble generally follows the outline of the rule, which in turn follows the outline of the reporting requirements in VEVRAA. Within each section of the preamble, VETS has noted and responded to those comments that are addressed to that particular section of the rule. However, before setting out the section-by-section analysis, VETS will first acknowledge and respond to some broader comments that were not addressed to a specific proposal.

#### A. General Comments

VETS received one comment suggesting that it should publicly disclose aggregate protected veteran workforce data and related percentages of protected veterans in the Federal contractor workforce, using the data reported by Federal contractors under the VETS-4212 Report, so as to be useful to contractors when assessing the effectiveness of their veteran outreach programs, in accordance with the Office of Federal Contract Compliance Programs' (OFCCP) VEVRAA regulations at 41 CFR part 60-300, et seq. VETS acknowledges the comment, and intends for Federal contractors to use data showing the total number of protected veterans employed and newly hired during the reporting period to monitor the success of their recruitment and outreach efforts in attracting protected veterans. VETS also concurs with the suggestion of disclosure, and notes that information currently collected from the VETS-100 and the VETS-100A reports is available to the public on the Data.gov website at:

<http://catalog.data.gov/dataset/vets-100>, and <http://catalog.data.gov/dataset/vets-100a>. Data collected through the VETS-4212 Report will similarly be made available to the public.

Three commenters requested VETS include the VETS-4212 Report in the Final Rule and make it subject to notice and comment rulemaking. VETS proposed removing the VETS-4212

Report from the regulations so that it would be easier to make future changes to the annual report that did not require notice and comment rulemaking. Accordingly, under the Final Rule, the VETS-4212 Report is not included in the regulatory text or as an appendix.

As VETS explained in the NPRM, the public still would have an opportunity to comment on any changes to the annual report under the Paperwork Reduction Act (PRA) clearance procedures. Thus, in the PRA section of the NPRM, VETS stated that the proposed VETS-4212 Report and instructions could be obtained from the RegInfo.gov website or by contacting VETS, and invited the public to provide comments to both VETS and the Office of Management and Budget (OMB) as to the specific format and content of the proposed VETS-4212 Report. OMB received no such comments, and the comments received by VETS on the proposed VETS-4212 Report are addressed below. By taking the VETS-4212 Report out of the regulations, VETS can adopt changes that would not require formal rulemaking, which takes considerably more time, while still retaining the ability for interested parties to comment through PRA clearance. VETS' preferred course therefore ultimately makes it more responsive to future concerns from interested parties.

Four commenters recommended that the VETS-4212 Report be modified to reflect the same numbering system as the EEO-1 Report, to ease the burden on Federal contractors in meeting their reporting obligations for both reports. VETS agrees, and will renumber the job categories on the VETS-4212 Report to mirror the numbering system on the EEO-1 Report. The job categories on both the EEO-1 and the VETS-4212 Reports will be the same.

One commenter generally asserted that some of the fields on the VETS-4212 Report are not required by statute. For example, the commenter observed that VEVRAA requires contractors to report the total number of new hires during the reporting period who are protected

veterans, but the statute does not require new hire data to be reported by job category. VETS has taken this comment under consideration, and has modified the VETS-4212 Report to indicate that providing data on new hires by job category is optional. In addition, VETS has included an instruction that “answers to questions in all areas of the VETS-4212 Report are mandatory unless otherwise specified.”

VETS received one comment that its estimate of burden hours for the VETS-4212 Report is incorrect, and that the elimination of data fields will have no impact on the time necessary to complete the report. After careful reconsideration, VETS stands by its estimate. The VETS-4212 Report requires 50 percent fewer reportable items than the currently approved VETS-100A Report. Additionally, VETS expects that contractors’ burden hours will be further reduced by the rescission of the part 61-250 regulations. As set forth in the NPRM, VETS calculates that as a result of these changes, over a ten-year period, the revisions should save Federal contractors about 804,300 burden hours and approximately \$18.2 million in salary equivalent burden costs.

VETS established a base for calculating burden hours utilizing burden hours calculated in 2008 to assess the time and cost necessary to complete the VETS-100 and VETS-100A Reports. VETS conducted field testing and market research in conjunction with a number of employers and professional associations as part of its calculation of the burden associated with the VETS-100A Report; one of those associations, affiliated with the contractor community, commented on the NPRM, and did not object to VETS’ calculus.

According to the commenter who objected to VETS’ calculus for determining time and cost associated with completing the VETS 4212-Report, VETS underestimated the amount of time required to retrieve, review, correct, edit, and compile the information necessary for completing these reports. However, VETS notes that contractors may use the human resources

information systems which are already in place for their existing VETS-100A reporting obligations to collect the information required in the Final Rule. Therefore, since the information to be collected has not materially changed, a contractor will have only a one-time modification of its systems which would not require the contractor to implement additional procedures to retrieve, review, correct, edit, and compile the report as the commenter suggested.

In addition, historical reporting information reinforces VETS position that minimal changes to the contractors' reporting method, combined with the reduction in the number of items reported annually, result in an estimated time required to complete a VETS-4212 Report that is consistent with what VETS estimated in the NPRM for the part 61-300 regulations.

VETS received one comment proposing to change the effective date of the reporting requirements from one year after the effective date of the Final Rule to "one year after the effective date of the final rule, or at the start of the next Affirmative Action Program (AAP) cycle, whichever is later," in order to be as flexible as the new OFCCP regulations. VETS notes that the VETS-4212 and AAP reporting requirements are separate obligations, and the two obligations have never been connected. Accordingly, VETS respectfully declines to adopt this proposal. When VETS proposed in the NPRM that contractors begin complying with reporting requirements in the revised part 61-300 regulations one year after the effective date of the Final Rule, VETS contemplated that contractors would use the VETS-4212 Report for the first time in 2015. Accordingly, VETS has clarified that contractors will be required to comply with the revised regulations beginning with the VETS-4212 Report that is filed in 2015.

The existing instructions for completing the VETS-100/100A Reports give multi-establishment employers that have hiring locations employing fewer than 50 employees two options for reporting: 1) file a separate annual report for each hiring location employing fewer

than 50 employees; or 2) file consolidated reports that cover multiple hiring locations within one State that have fewer than 50 employees. One commenter recommended that contractors with hiring locations employing fewer than 50 employees be allowed to report on their employment of protected veterans by providing a list showing the name, address, and total employment of each hiring location employing fewer than 50 employees and a data grid combining all employees working at those hiring locations by relevant job category, instead of being required to file consolidated reports that cover all hiring locations within one State. According to the commenter, this change would make the structure of VETS reporting identical to that of EEO-1 reporting. However, VETS believes that consolidated veterans' employment data at the State level would be more useful to contractors than aggregated data at a national level when evaluating their efforts to employ and promote protected veterans. Accordingly, the agency has not adopted this recommendation.

Finally, one commenter suggested that VETS should refer to "establishments" rather than "hiring locations" since those terms may have different meanings to different contractors. The term "hiring location" is set forth in the statute, and VETS respectfully declines to use or substitute the term "establishments" for "hiring locations" in that section.

#### B. Section-by-Section Analysis

##### **41 CFR Part 61-250**

In the NPRM, VETS proposed rescinding the regulations in part 61-250. Commenters to the NPRM were generally supportive of this rescission, and agreed that these regulations were obsolete. VETS did not receive any comments suggesting that contracts covered under the part 61-250 regulations were still active. This echoes comments OFCCP received during its 2013

rulemaking that rescinded the part 60-250 regulations, which indicate that no such contracts still exist.

The part 61-250 regulations apply only to contracts and subcontracts of \$25,000 or more entered into prior to December 1, 2003, that have not been modified since that time or have a value of less than \$100,000. VETS believes no contracts subject to the part 61-250 regulations exist today because the Federal Acquisition Regulations (FAR) generally limit the length of government contracts to a maximum period of five years.<sup>2</sup> Any existing contracts entered into before December 1, 2003, would have been modified since that date, and if valued at \$100,000 or more would be covered under the part 61-300 regulations. OFCCP published a final rule on September 24, 2013 (78 FR 58613), revising regulations implementing the affirmative action provisions of VEVRAA. That final rule rescinded the regulations in part 60-250, which apply to contracts entered before December 1, 2003. In the final rule's preamble, OFCCP stated that the rescission of the part 60-250 regulations was supported by the commenters, many of whom echoed the agency's belief that any contracts for \$25,000 or more entered into prior to December 1, 2003, have either terminated or since been modified (which, if \$100,000 or more would be covered under OFCCP's part 60-300 regulations). 78 FR at 58619.

Accordingly, this Final Rule eliminates the part 61-250 regulations in full.

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<sup>2</sup> FAR 16.505(c)(1) stipulates that indefinite-delivery task-order contracts for advisory and assistance services cannot exceed five years. FAR 17.104(a) establishes a maximum length of five years for multi-year contracts. For contracts with options, FAR 17.204(e) states that the total of the base and options periods cannot exceed five years. FAR 17.204(e) provides an exception to the five-year limit for information technology (IT) contracts and special cases approved in accordance with agency procedures. Further, FAR 22.1002-1 provides that contracts for services that are subject to the Services Contract Act may not exceed five years.

Although the FAR exempts certain IT contracts from the five-year maximum, agencies may limit the duration so that they can re-compete the contract to take advantage of improvements in service delivery and supplies that subsequently occur in the IT industry. *See e.g.*, Office of Personnel Management, Contracting Policy No. 17.204 Contract Length, January 7, 2007, available at [www.opm.gov/DoingBusiness/contract/.../17.204ContractLength.pdf](http://www.opm.gov/DoingBusiness/contract/.../17.204ContractLength.pdf)

## **41 CFR Part 61-300**

### Section 61-300.1 What is the purpose and scope of this part?

This section outlines the purpose and scope of the regulations.

VETS did not receive comments to this section.

The Final Rule revisions to paragraph (a) were made necessary by the rescission of the part 61-250 regulations. The references to the part 61-250 regulations and the JVA have been deleted from paragraph (a) because the Final Rule eliminates the need to distinguish the coverage of the part 61-300 regulations from that of the part 61-250 regulations. Additionally, paragraph (a) briefly describes the reporting obligations under VEVRAA, and states that contractors must provide the required information on veterans' employment by filing the VETS-4212 Report in accordance with the requirements of § 61-300.11.

The Final Rule carries forward paragraph (b) of the existing regulation without change. As discussed below in the section-by-section analysis of § 61-300.2, the Final Rule adds a definition for the term "protected veteran." Accordingly, the term "protected veteran" has been substituted for the term "veteran" in paragraphs (c) and (d).

### Section 61-300.2 What definitions apply to this part?

This section contains the definitions of terms used in the regulations. VETS proposed multiple minor changes to this section in the NPRM.

First, VETS proposed changing the term "other protected veteran" to the more descriptive "active duty wartime or campaign badge veteran." The Veterans Employment Opportunity Act of 1998 (VEOA) amended VEVRAA by extending protection to the category of veterans "who served on active duty in the U.S. military, ground, naval, or air service during a war or in a campaign or expedition for which a campaign badge has been authorized under the

laws administered by the Department of Defense.” Both the VETS and OFCCP regulations implementing the VEOA amendments adopted the term “other protected veteran” to refer to the veterans belonging to this category. OFCCP’s September 24, 2013, final rule replaces the term “other protected veteran” with the term “active duty wartime or campaign badge veteran.” As OFCCP explained in the final rule’s preamble, the term “other protected veteran” has been misinterpreted as a “catch-all” that includes all veterans rather than shorthand for the category of veterans who served on active duty during a war or in a campaign for which a campaign badge has been authorized (78 FR 58619, Sept. 24, 2013). VETS agrees that the “active duty wartime or campaign badge veteran” is an appropriate classification for the category, and therefore the term is set forth in paragraph (b)(1) of § 61-300.2.

VETS received no comments on this change.

VETS also proposed adding a definition for “electronic filing or ‘e-filing’” in paragraph (b)(4). Under the Final Rule, “electronic filing” means using the VETS web-based filing system to file the VETS-4212 Report. The Final Rule also defines “electronic filing” to include transmitting or delivering the VETS-4212 Report as an electronic data file.

VETS received no comments on this change.

The existing regulations include the term “covered veteran” and indicate that it means a veteran in any of the four categories defined in the section – disabled veteran, other protected veteran, Armed Forces service medal veteran, and recently separated veteran. OFCCP’s Final Rule adds a definition for the term “protected veteran” and defines it to mean a veteran belonging to any of the four categories specified in the statute. For consistency, VETS has replaced the term “covered veteran” with the term “protected veteran.” Thus, paragraph (b)(10) defines “protected veteran” as a veteran who may be classified as a “disabled veteran,” “recently

separated veteran,” “active duty wartime or campaign badge veteran,” or an “Armed Forces service medal veteran.”

The Final Rule restructures and renumbers the definitions so that they are in alphabetical order and easier to find. In addition, the Final Rule eliminates the definitions for “covered veteran,” “covered incumbent veteran,” “other protected veteran,” and “qualified.” Further, definitions for “active duty wartime or campaign badge veteran,” “protected veteran,” and “electronic filing” are added under the Final Rule.

Section 61-300.10 What reporting requirements apply to Federal contractors and subcontractors and what specific wording must the reporting requirements contract clause contain?

This section contains the reporting requirements clause that is to be included in each covered government contract or subcontract (and modifications, renewals, or extensions thereof if not included in the original contract). In existing § 61-300.10, paragraphs (a)(1) and (2) of the reporting requirements clause call for contractors to provide the total number of employees, by job category and hiring location, and the number of new hires during the reporting period who are “disabled veterans,” “other protected veterans,” “Armed Forces service medal veterans,” and “recently separated veterans.”

Paragraphs (a)(1) and (2) of the clause are revised to require contractors to provide the total number of employees and new hires who are “protected veterans.” Paragraph (a)(4) now reflects the definition of “protected veteran” found in § 61-300.2.

VETS received one comment complimenting the elimination of reporting by specific protected veteran category as easing contractors’ reporting obligations, and simplifying data collection and recordkeeping.

The instructions for completing the existing VETS-100 and VETS-100A Reports are

substantially similar. Reporting is based on the number of veterans in each category rather than the number of employees protected by VEVRAA. For example, an employee who is a disabled veteran and an Armed Forces service medal veteran would be counted in each of those protected veteran categories. Further, the existing VETS-100 and VETS-100A Reports do not ask contractors to provide the total number of protected veterans in their workforces. Nor do the reports ask contractors to report the total number of protected veterans who were hired during the reporting period. Moreover, because employees may be counted in more than one veteran category, it is not possible for the Government to determine the total number of protected veterans employed or newly hired in the contractor's workforce based on the data submitted in the existing VETS-100 and VETS-100A Reports.

VETS believes it is preferable for contractors to report the total number of protected veterans employed and newly hired during the reporting period in the annual reports required under VEVRAA, rather than the total number of veterans protected under each category of protected veterans. Accordingly, VETS is revising the manner in which contractors report on their employment and hiring of employees belonging to the categories of veterans protected under VEVRAA.

For example, data showing the total number of protected veterans employed and newly hired during the reporting period will be more appropriate for implementing the amendment to the reporting provisions under VEVRAA made by the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, (Pub. L 122-154). Section 708 of the Camp Lejeune Families Act, codified at 38 U.S.C. 4212(d)(3), requires VETS to publicly disclose the information reported in VETS-100 and VETS-100A Reports. The existing VETS-100 and VETS-100A Reports ask contractors to provide, by job category and hiring location, the number

of employees in each of the specified categories of veterans. In many instances, the category might include only one employee, and currently it might be possible to discern the identities of disabled veteran employees because the reports disclose the number of employees who are disabled veterans. For example, if a contractor's VETS-100A Report lists two employees in the Executive/Senior Level Officials and Managers category, one of whom is a disabled veteran, the identity of the disabled veteran could be easily discovered.

In addition, VETS believes its annual report to Congress on reports filed by contractors under VEVRAA will be more meaningful by providing aggregate data on the total number of protected veterans employed and newly hired by Federal contractors, the total number of employees in the workforce, and the total number of new hires. In the annual report to Congress required under 38 U.S.C. 4107, VETS currently includes data showing the number of veterans in each of the categories found on the VETS-100 and VETS-100A Reports. By making available data on the total number of protected veterans employed and newly hired by Federal contractors it will now be possible to include cross-year comparisons of Federal contractors' employment and hiring of protected veterans in the annual report, as well as the proportion of contractors' workforce and new hires made up by protected veterans. Information on the total number and proportion of protected veterans employed and newly hired in Federal contractor workforces from year to year will show trends in the employment of protected veterans, and analyses of those trends can be used to assess the extent to which Federal contractors are providing employment opportunities to protected veterans.

Further, data showing the total number of protected veterans that Federal contractors employed or hired during the reporting period will better assist contractors in complying with their affirmative action obligations under VEVRAA. Contractors subject to the reporting

requirements under VEVRAA are also required under the Act to take affirmative action to employ and advance in employment protected veterans. 38 U.S.C. 4212(a). Under regulations published by OFCCP in September 2013, contractors' affirmative action obligations include an annual assessment of the effectiveness of their outreach and recruitment efforts that is premised, in part, on the hiring data that they collect. See 41 CFR 60-300.44(f)(3). VETS believes that the revised data collection under this Final Rule could aid Federal contractors to more effectively monitor the success of their recruitment and outreach efforts to attract protected veterans. VETS recognizes that the changes to the manner in which contractors report on their employment of protected veterans may require them to adjust their recordkeeping systems. Therefore, to ensure that contractors have sufficient time to make any needed adjustments, VETS will not require contractors to comply with the reporting requirements in the revised part 61-300 regulations until the reporting cycle in 2015.

Accordingly, the Final Rule revises paragraphs (a)(1), (2), and (4) as noted, and revises paragraphs (b), (c), and (e) of the reporting requirements clause to refer to the "VETS-4212 Report." Further, paragraph (e) no longer includes the term "covered incumbent veterans" because the Final Rule adopts the term "protected veteran." No other changes are made to the reporting requirements clause in § 61-300.10. Existing § 61-300.10(c) provides that contractors must file reports by September 30 of each year following a calendar year in which a contractor held a covered contract or subcontract.

#### Section 61-300.11 When and how should Federal contractors and subcontractors file VETS-4212 Reports?

Final Rule § 61-300.11 addresses when and how contractors should file the report. The title to the section in the Final Rule is revised to refer to filing the VETS-4212 Report.

References to the report “form” have been removed from § 61-300.11 to better reflect that no physical form will be required, as the Final Rule allows the VETS-4212 Reports to be filed electronically as well as in paper format.

Paragraph (a) provides that contractors must use the VETS-4212 Report to provide the information on veterans’ employment specified in the reporting requirements clause set forth in § 61-300.10. This paragraph also provides that Federal contractors and subcontractors must provide the total number of current and newly hired employees in their workforces, as well as additional related information, on their VETS-4212 Reports. In addition, paragraph (a) incorporates various categories of veteran such as disabled, recently separated, active duty wartime or campaign badge, or Armed Forces service medal veterans under the broad term “protected veteran.”

One commenter suggested that VETS provide contractors a flexible alternative to the existing “hiring location” requirement for reporting information because some employees are not assigned to a specific location.

VETS notes that, for purposes of the statute, contractors’ hiring actions typically occur at one or more specific hiring location. Accordingly, VETS believes that its long-standing policy of requiring contractors to report information by hiring location provides contractors a reliable basis to determine how to report information for employees who are not assigned to a specific location. In addition, this does not reflect a change in VETS’ position, and was not offered as a revision for notice and comment in the NPRM. For these reasons, VETS declines to adopt this recommendation.

Paragraph (b) requires that VETS-4212 Reports must be filed between August 1 and September 30 of each year following a calendar year in which a contractor held a contract. One

commenter recommended that VETS allow contractors flexibility to choose a payroll period aligning with the EEO-1 Report to file their VETS-4212 Reports. VETS respectfully declines to modify the Final Rule to allow contractors to choose a payroll period aligning with the EEO-1 reporting date. VETS believes that contractors should be able to choose a date common to both reports given there is a two-month period common to both reports. The EEO-1 Report must be filed no later than September 30, using employment figures for any pay period from July 1 through September 30. The filing period for the VETS-4212 Report is from August 1 to September 30, using employment data for the 12-month period preceding a date in the current year between July 1 and August 31 that represents the end of payroll period. Accordingly, contractors should be able to file both reports timely, using data from any pay period between July 1 and August 31, without difficulty<sup>3</sup>.

Paragraph (c) of this section sets forth the methods for filing the VETS-4212 Report. Paragraph (c)(1)(i) addresses electronic filing by contractors with one hiring location and states that such contractors may complete and submit a VETS-4212 Report using the web-based filing system.

Electronic filing by contractors with multiple hiring locations is addressed in paragraph (c)(1)(ii). Contractors with 10 or more hiring or business locations must file their VETS-4212 Reports electronically, either by using VETS' web-based electronic filing system or by submitting their VETS-4212 Reports in alternate electronic formats such as compact disc or flash drive. Under existing § 61-300.11(b) contractors with more than 10 hiring locations that submit computer-generated reports are required to submit the reports in an electronic data file.

Similarly, paragraph (c)(1)(ii) requires contractors with more than 10 hiring locations to submit

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<sup>3</sup> Contractors that use December 31 as the ending date for the EEO-1 Report are permitted to use that date as the ending date for the 12-month reporting period for the VETS-4212 Report.

their VETS-4212 Reports in the form of an electronic data file and provides that the electronic data files may be submitted through the web-based filing system, transmitted electronically as an e-mail attachment (if they do not exceed the size stated in the Department of Labor specifications), or submitted on a compact disc or other electronic storage media.

Paragraph (c)(2) addresses “alternative filing methods” and provides that Federal contractors with up to 10 hiring locations may file the VETS-4212 Report in paper format. Paragraph (c)(2) explains that paper versions of the VETS-4212 Report may be downloaded from the VETS website or requested by writing to VETS at the address stated in the final regulation.

VETS received two comments regarding its preference for electronic filing versus paper forms. One commenter proposed that contractors, regardless of size, be allowed to file manual (paper) forms, whereas another commenter proposed that paper forms should be allowed for contractors required to file electronically when electronic filing is unavailable.

VETS recognizes that contractors may experience difficulty in submitting their reports when VETS’ web-based electronic filing system is unavailable. Other means of electronic filing such as compact disc or flash drive are available, however, and contractors with 10 or fewer hiring locations may still file their reports in paper format. VETS declines to eliminate that requirement for contractors with more than 10 hiring locations. Such practice is consistent with the existing regulation and long-standing practice, and should not adversely affect those contractors. Moreover, in the event of an electronic filing system failure, VETS has the discretion to continue its practice of extending the filing cycle for a period of time commensurate with the disruption of the electronic filing system. Accordingly, the Final Rule states that contractors with 10 or fewer hiring locations may file their VETS-4212 Reports in paper format,

but that all other contractors must submit their VETS-4212 Reports in one of the prescribed electronic formats.

Section 61-300.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?

This section states that OFCCP may determine whether a contractor has submitted a VETS-4212 Report as required by the regulations. The Final Rule carries forward this section without change, except that the word “filed” has been substituted for “submitted” and § 61-300.20 refers to the VETS-4212 Report.

VETS did not receive comments on this section.

Section 61-300.99 What is the OMB control number for this part?

The Final Rule makes no changes to this section.

## **Regulatory Procedures**

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any

regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal and policy implications of this regulatory action have been examined. As reflected in the cost and paperwork burden analysis in the section on Paperwork Burden and Compliance Costs, the Final Rule will not have an annual effect on the economy of \$100 million or more, and it does not raise novel legal or policy issues. Accordingly, it has been determined that the Final Rule is not a significant regulatory action under Executive Order 12866.

#### Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 et seq., requires agencies issuing rulemaking proposals to consider the impact they are likely to have on small entities. More specifically, the RFA requires agencies to “review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations.” If a proposed rule is expected to have a “significant economic impact on a substantial number of small entities,” the agency must prepare an initial regulatory flexibility analysis (IRFA). If, however, a proposed rule is not expected to have a significant economic

impact on a substantial number of small entities, the agency may so certify, and need not perform an IRFA. Further, if the Final Rule is expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis (FRFA) is required which must respond to comments on the IRFA and explain why significant alternatives were rejected.

VETS certified in its NPRM that an IRFA was not required based on the lack of a significant economic impact on a substantial number of small entities. Based on the analysis below, in which VETS estimates the impact of complying with the requirements contained in this Final Rule on small entities that are Federal contractors, VETS certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities, and thus an FRFA is not required.

In making this certification, VETS determined the approximate number of regulated small entities that will be impacted by the Final Rule. Based on information in the VETS-100/100A Reporting System regarding reports on veterans' employment filed in 2012, VETS estimates that approximately 15,000 Federal contractors will be subject to the reporting requirements under the Final Rule. The size standard used by the Small Business Administration (SBA) to define small businesses varies by industry, but the SBA uses the "fewer than 500 employees" limit when making an across-the-board classification.<sup>4</sup> Using VETS data applied to the SBA standard noted above, VETS assumes that 8,000 of the Federal contractors subject to the Final Rule are small entities.<sup>5</sup> VETS sought comment on that assumption, but did not receive

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<sup>4</sup> SBA Office of Advocacy *Frequently Asked Questions about Small Business*, September 2012, available at <http://www.sba.gov/advocacy/7495/29581>.

<sup>5</sup> The dollar amount of the government contract triggers the reporting requirement under VEVRAA. VETS does not maintain data on the size of Federal contractor workforces. However, VETS believes that a large number of Federal contractors and subcontractors employ more than 500 employees.

any. While the guidance for FRFAs does not specifically define “substantial number,” VETS concludes that the Final Rule may impact a substantial number of small entities.

However, VETS has determined that the impact on small entities affected by the Final Rule will not be significant. The objective of the Final Rule is to implement the reporting obligations under VEVRAA in a manner that provides meaningful data on Federal contractors’ employment and hiring of protected veterans. As discussed below in the Paperwork Reduction Act section, the Final Rule will result in a significant reduction in paperwork burden for Federal contractors and subcontractors subject to the VETS-4212 reporting requirement over a ten-year period. VETS believes that Federal contractors may need to adjust their human resources (HR) information systems to provide the information requested in the VETS-4212 Report and therefore estimates one-time implementation costs would total \$5.1 million. VETS estimates that all Federal contractors and subcontractors subject to the VETS-4212 reporting requirement would have combined recurring annual costs of about \$2.7 million. Thus, VETS estimates that the first-year compliance costs for the Final Rule for all contractors combined are approximately \$7.8 million. Assuming that each contractor subject to the reporting requirement has a contract valued at the \$100,000 minimum for coverage under VEVRAA, VETS estimates that each contractor’s share of first-year compliance costs is about \$520 (\$7.8 million/15,000 contractors) or about 0.52% of the \$100,000 minimum contract. After the first year, each contractor’s share of the recurring annual costs would be approximately \$180 (\$2.7 million/15,000) or about 0.18% of the \$100,000 minimum contract. Accordingly, VETS considers it appropriate to conclude that the Final Rule will not have a significant economic impact on a substantial number of small entities. VETS invited comment from members of the public who believe there will be a significant economic impact on small entities that are Federal contractors. Other than the one

comment, addressed previously, on VETS' calculus on burden hours, VETS received no other comments contesting its economic impact calculations.

### Paperwork Reduction Act

The collections of information contained in the existing part 61-250 and part 61-300 regulations implementing the reporting requirements under VEVRAA are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. The existing information collection instruments – the VETS-100 Report that contractors subject to the part 61-250 regulations are required to use, and the VETS-100A Report that contractors covered under the part 61-300 regulations must use to report annually on their veterans' employment – are currently approved under OMB Control No. 1293-0005.

The Final Rule contains information collections that are subject to review and approval by OMB under the PRA. Section 61-300.11 now requires contractors to use a simplified collection instrument renamed the VETS-4212 Report to provide the total number of employees in their workforces; the total number of such employees, by job category and hiring location, who are protected veterans; the total number of new hires during the reporting period covered by the report; the total number of new hires who are protected veterans; and the maximum and minimum number of employees of such contractor during the period covered by the report.

Under the existing part 61-300 regulations, the collection instrument – the VETS-100A Report – is published as an appendix to the regulations. The Final Rule does not include the collection instrument in the regulations so that it will be easier to make future changes that do not require notice and comment rulemaking under the Administrative Procedure Act. However,

the public will still be able to comment on any subsequent changes to the collection instrument under the PRA clearance procedures, as addressed previously.

The recordkeeping and reporting burden for the collection of information in § 61-300.11 is imposed through the preparation and submission of the VETS-4212 Report, which is discussed in the paperwork burden analysis of the report below. A copy of the information collection request with applicable supporting documentation, including the VETS-4212 Report and instructions, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov website, <http://www.reginfo.gov/public/do/PRAMain>.

VETS encouraged comments from the public on the continued collection of information for the VETS-100A Report as well as those in the NPRM, including comments about the specific format and content of the VETS-4212 Report that VETS is requiring contractors to use to report annually information on their employment of protected veterans.

VETS sought comments that:

- (1) Evaluated whether the information collection is necessary to the proper performance of the agency, including whether the information will have practical utility;
- (2) Evaluated the accuracy of the agency's estimate of the projected burden of the collection of information, including the methodology and assumptions used;
- (3) Enhanced the quality, utility and clarity of the information to be collected; and
- (4) Minimized the burden of the collection of information on those required to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

VETS received comments regarding the format and content of the VETS-4212 Report, which have been addressed above in the preamble discussion of the General Comments. As noted above, in response to one of these comments, VETS will indicate that providing information on new hires by job category on the VETS-4212 Report is optional. VETS also received one comment that its estimate of burden hours for the VETS-4212 Report is incorrect, and that the elimination of data fields will have no impact on the time necessary to complete the report. As VETS explained above in the preamble discussion of the General Comments, VETS believes its burden estimates are accurate.

Contractors and other members of the public were encouraged to provide data where estimates are provided or assumptions are described. This data would help VETS refine estimates of the amount of time needed to fulfill the reporting requirements. VETS notes that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it under the PRA, and it displays a currently valid OMB control number. The public is not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. The information collection in the Final Rule is not effective until the final regulations become effective and VETS publishes a Federal Register Notice announcing OMB's approval of the new information collection instrument.

### Paperwork Burden and Compliance Costs

#### Estimate of the Burden for the Collection of Information

The paperwork burden that results from the Final Rule is comprised of two components. The first component is the one-time burden of the hours and their equivalent salary cost associated with contractors adjusting their recordkeeping systems to generate the information on veterans' employment required by the revisions to § 61-300.11 and the VETS-4212 Report. The second component is the ongoing annual burden (number of burden hours and their equivalent salary cost and the mailing cost) required for contractors to file annually the VETS-4212 Report.

The currently approved Information Collection Request for the VETS-100 and VETS-100A Reports contain paperwork burden hours and costs that are based on the total number of respondents and VETS-100 and VETS-100A Reports filed in 2010. The paperwork burden and costs associated with the VETS-4212 Report are based on data showing the actual number of respondents, and the VETS-100 and VETS-100A Reports filed in 2012.

#### One-Time Implementation Burden and Costs

In 2012, 14,714 contractors filed the VETS-100A Report, while nearly 5,960 filed the VETS-100 Report. Now that the 61-250 regulations are rescinded, the unnecessary duplicate filings many contractors do now will be eliminated, and VETS estimates that 15,000 contractors will file the VETS-4212 Report.

VETS assumes that contractors subject to the VETS-4212 reporting requirement will make adjustments to their human resources (HR) information systems to provide the data requested in the VETS-4212 Report. VETS expects the burden hours and costs for making such adjustments will be greater for contractors that electronically file annual reports on veterans' employment than they will be for contractors that file paper versions of the annual report. In 2012, approximately 98% of contractors electronically filed their annual reports, and therefore VETS estimates that 98% or 14,700 contractors will electronically file the VETS-4212 Report.

VETS believes a software developer will take about 8 hours to make the one-time modification to the HR information system of a contractor that electronically files annual reports.

Accordingly, the estimated burden for electronic filers to make the one-time change to their HR information systems is 117,600 hours (14,700 x 8). The estimated cost for the system modifications for electronic filers is based on data from the Occupational Outlook Handbook (OOH), which lists the 2010 median compensation of \$43.52 per hour for a software developer. VETS therefore estimates the one-time implementation salary costs for electronic filers would total \$5,117,952.

With respect to contractors that file paper versions of the annual report on veterans' employment, VETS believes that it will take a human resources specialist about two hours to make the one-time adjustment to the HR information system. The OOH lists \$25.33 per hour as the 2010 median compensation for a human resources specialist. The estimated burden for the 300 contractors that file paper versions of the annual report to make one-time adjustments to their HR information systems is 600 hours, and the estimated cost is \$15,198. Thus, VETS estimates that the one-time implementation salary costs for all contractors that are required to file the VETS-4212 Report would total \$5,133,150.

- Contractors: 15,000 Federal Contractors
- Electronic Filing (98%): 14,700 contractors
- Paper filing (2%): 300 contractors
- Hours for software design: 8 Hrs. x 14,700 contractors = 117,600 implementation work hours
- Hours for HR specialist: 2 Hrs. x 300 contractors = 600 implementation work hours
- Salary for software developer: \$43.52 per hour
- Salary for HR Specialist: \$25.33 per hour
- Estimated One-time Salary Costs: \$5,117,952 (electronic) + \$15,198 (paper) = \$5,133,150

#### Recurring Burden Hours and Other Cost Calculation

The Final Rule requires contractors with a contract of \$100,000 or more to file the VETS-4212 Report for each of their hiring locations. Table 1 shows 14,700 contractors submitted approximately 315,000 VETS-100A Reports in 2012. VETS estimates that approximately 15,000 contractors are subject to the VETS-4212 reporting requirement based on the number of VETS-100A reports filed in 2012.

Table 1

VETS-100A Reports Filed in 2012	
Submission from Federal Contractors	Totals
Total Respondents	14,700
Total Annual Responses	315,000
• Electronic Response	308,700
• Paper Response	6,300

The VETS-4212 Report requires fewer reportable items. The currently approved VETS-100A Report required under the existing part 61-300 regulations has 82 unique reportable items. The VETS-4212 Report has just 42 unique items – a reduction of nearly 50 percent. The reduction in the number of reportable items is expected to reduce the time it takes to complete and file the annual report on veterans’ employment. VETS estimates that it would take contractors 20 minutes (a reduction of 10 minutes per report) to complete and electronically file the VETS-4212 Report and 40 minutes (a reduction of 20 minutes per report) to complete a paper version of the VETS-4212 Report.

As shown in Table 2, VETS estimates that it would take 107,100 burden hours annually to file electronic and paper versions of the VETS-4212 Report. VETS assumes human resources specialists would prepare and file the reports, and based on their 2010 median compensation of \$25.33 per hour, VETS estimates that the annual salary cost for filing the VETS-4212 Report

would total \$2,712,843.

In addition, VETS recognizes that the 300 contractors that file paper versions of the VETS-4212 Report will have operations and maintenance costs. VETS estimates that contractors on average will submit 21 VETS-4212 Reports and that it will cost approximately \$.08 to print and/or copy each report. The estimated paper cost would be \$504 (300 x 21 x \$.08). In addition, VETS estimates an average mailing cost of \$1.92 for each submission. The estimated cost for mailing would be \$576 (300 x \$1.92). Accordingly, Table 2 shows the total estimated annual operations and maintenance costs would be \$1,080.

Table 2

Estimated Paperwork Burden and Costs for Filing the VETS-4212 Report	
Submission from Federal Contractors	Total VETS-4212 Reporting
Total Respondents	15,000
Total Annual Responses (Avg. 21 Reports per Contractor)	(15,000 x 21) = 315,000
• Electronic Responses (98% of total responses)	308,700
• Paper Responses (2% of total responses)	6,300
Burden Hours	
• Electronic 20 min.	102,900
• Paper 40 min.	4,200
Recurring Total Filing Burden Hours	107,100
• Filing Salary Equivalent Burden Cost (\$25.33)	\$2,712,843
• Annual Operations and Maintenance Cost	\$1,080
Recurring Total Annual Costs	\$2,713,923
Total One Time Implementation Burden Hours	118,200
Total One Time Implementation Salary Equivalent Burden Cost	\$5,133,150

As Table 3 shows, the Final Rule is expected to reduce burden hours from the currently approved 199,350 to 107,100 total burden hours (a decrease of 46%). The reduction in burden hours comes from two sources: the rescission of the part 61-250 regulations and elimination of the VETS-100 reporting requirement, and the reduction in the number of unique items the contractor would be required to complete on the VETS-4212 Report. Over a ten-year period, the

regulation is expected to save Federal contractors about 804,300 burden hours and approximately \$18,233,780 in salary equivalent burden costs.

Table 3

Estimated Burden Hours and Costs			
Submission from Federal Contractors	Currently Approved ICR for OMB No. 1293-0005	VETS-4212 Estimate	Change in Estimated Burden Hours and Costs
<b>Burden Hours</b>			
• Annual Burden Calculation	199,350	107,100	(92,250)
• One-Time Implementation Burden Hours	0	118,200	118,200
First-Year Burden	199,350	225,300	25,950
Burden Savings After Year One	199,350	107,100	(92,250)
Ten –Year Burden Savings			(804,300)
<b>Burden Costs</b>			
• Annual Salary Equivalent Burden Cost (\$25.33) <sup>6</sup>	\$5,049,536	\$2,712,843	(\$2,336,693)
• One Time Implementation Salary Equivalent Burden Cost	0	\$5,133,150	\$5,133,150
First-year Salary Equivalent Burden Cost	\$5,049,536	\$7,845,993	\$2,796,457
Salary Equivalent Costs Savings After Year One	\$5,049,536	\$2,712,843	(\$2,336,692)
Ten-Year Salary Equivalent Cost Savings	\$50,495,360	\$32,261,580	(\$18,233,780)

Ongoing information collections must be reauthorized by OMB at least every three years. The annualized burden over the three-year life-span of this collection is summarized as follows:

Agency: DOL-VETS.

<sup>6</sup> The Supporting Statement for the currently approved VETS-100/100A Reports (OMB No. 1293-0005) contains estimated salary equivalent burden costs that are based on the \$16.00 hourly compensation of an unspecified contractor employee. The \$25.33 per hour median compensation for a Human Resources Specialist is used to calculate the salary equivalent burden costs in this analysis. In order to calculate the change in salary equivalent costs resulting from the rule, VETS has used the \$25.33 hourly compensation of the HR Specialist to calculate the salary equivalent burden cost for the currently approved burden hours.

Title of Collection: Federal Contractor Veterans' Employment Report VETS-4212.

OMB Control Number: 1290-0005.

Affected Public: Private Sector—businesses or other for-profit and not-for-profit institutions; state, local, and tribal governments.

Total Estimated Number of Respondents: 15,000.

Total Estimated Number of Responses: 315,000.

Total Estimated Annual Burden Hours: 107,100.

Total Estimated Annualized Salary Equivalency: \$4,423,893.

Total Estimated Other Cost Burden: \$1,080.

#### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

#### Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this Final Rule does not include any Federal mandate that may result in excess of \$100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

#### Executive Order 13132 (Federalism)

VETS has reviewed this Final Rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have “federalism implications.” This rule will

not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

This Final Rule does not have tribal implications under Executive Order 13175 that requires a tribal summary impact statement. The Final Rule does not 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.

Effects on Families

The undersigned hereby certifies that the Final Rule would not adversely affect the well-being of families, as discussed under Section 654 of the Treasury and General Government Appropriations Act of 1999.

Executive Order 13045 (Protection of Children)

This Final Rule would have no environmental health risk or safety risk that may disproportionately affect children.

Environmental Impact Assessment

A review of this Final Rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq.; the regulations of the Council on Environmental Quality, 40 CFR part 1500 et seq.; and DOL NEPA procedures, 29 CFR part 11, indicates the Final Rule would not have a significant impact on the quality of the human environment. Thus, there is no corresponding environmental assessment or an environmental impact statement.

Executive Order 13211 (Energy Supply)

This Final Rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12630 (Constitutionally Protected Property Rights)

This Final Rule is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

Executive Order 12988 (Civil Justice Reform Analysis)

This Final Rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The Final Rule was: (1) reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects

**41 CFR Part 61-250**

Government contracts, reporting and recordkeeping requirements, Veterans.

**41 CFR Part 61-300**

Government contracts, reporting and record keeping requirements, Veterans.

Signed at Washington, D.C., this 18th day of September, 2014.

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Keith Kelly

Assistant Secretary of Labor for Veterans' Employment and Training Service

Accordingly, for the reasons stated in the preamble, under the authority of 38 U.S.C. 4212, Title 41 of the Code of Federal Regulations, Chapter 61 is amended as follows:

**PART 61-250 [Removed]**

1. Remove part 61-250.
2. Revise part 61-300 to read as follows:

**PART 61-300 - ANNUAL REPORT FROM FEDERAL CONTRACTORS**

Sec.

61-300.1 What is the purpose and scope of this part?

61-300.2 What definitions apply to this part?

61-300.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?

61-300.11 When and how should Federal contractors and subcontractors file VETS-4212 Reports?

61-300.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?

61-300.99 What is the OMB control number for this part?

Authority: 38 U.S.C. 4211 and 4212.

**§ 61-300.1 What is the purpose and scope of this part?**

(a) This part 61-300 implements 38 U.S.C. 4212(d). Each contractor or subcontractor who enters into a contract or subcontract in the amount of \$100,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction), and who is subject to 38 U.S.C. 4212(a), must report annually to the

Secretary of Labor information on the number of employees in its workforce who belong to the categories of veterans protected under the Act, and the number of those employees who were hired during the period covered by the report. Each contractor or subcontractor must provide the required information on veterans' employment by filing the Federal Contractor Veterans' Employment Report VETS-4212 (VETS-4212 Report), in accordance with the requirements of § 61-300.11.

(b) Notwithstanding the regulations in this part, the regulations at 41 CFR part 60-300, administered by OFCCP continue to apply to contractors' and subcontractors' affirmative action obligations regarding protected veterans.

(c) Reporting requirements of this part regarding protected veterans will be deemed waived in those instances in which the Director of OFCCP has granted a waiver under 41 CFR 60-300.4(b)(1), or has concurred in the granting of a waiver under 41 CFR 60-300.4(b)(3), from compliance with all the terms of the equal opportunity clause for those establishments not involved in Government contract work. Where OFCCP grants only a partial waiver, compliance with these reporting requirements regarding protected veterans will be required.

(d) 41 CFR part 60-300, subpart C and Appendix B to part 60-300 provide guidance concerning the affirmative action obligations of Federal contractors toward applicants for employment who are protected veterans.

### **§ 61-300.2 What definitions apply to this part?**

(a) For the purposes of this part, the definitions for the terms "contract," "contractor," "Government contract," "subcontract," and "subcontractor" are the same as those set forth in 41 CFR part 60-300.

(b) For purposes of this part:

(1) Active duty wartime or campaign badge veteran means a veteran who served on active duty in the U.S. military, ground, naval, or air service during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

(2) Armed Forces service medal veteran means a veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209, 3 CFR, 1996 Comp., p. 159).

(3) Disabled veteran means:

(i) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(4) Electronic filing or "e-filing" means filing the VETS-4212 Report via the VETS web-based filing system. E-filing also includes transmitting or delivering the VETS-4212 Report as an electronic data file. Instructions for electronically filing the VETS-4212 Report are found on VETS' website at: <http://www.dol.gov/vets/vets100filing.htm>.

(5) Employee means any individual on the payroll of an employer who is an employee for purposes of the employer's withholding of Social Security taxes except insurance sales agents who are considered to be employees for such purposes solely because of the provisions of 26 U.S.C. 3121 (d)(3)(B) (the Internal Revenue Code). Leased employees are included in this definition. Leased employee means a permanent employee provided by an employment agency

for a fee to an outside company for which the employment agency handles all personnel tasks including payroll, staffing, benefit payments and compliance reporting. The employment agency shall, therefore, include leased employees in its VETS-4212 Report. The term employee shall not include persons who are hired on a casual basis for a specified time, or for the duration of a specified job (for example, persons at a construction site whose employment relationship is expected to terminate with the end of the employee's work at the site); persons temporarily employed in any industry other than construction, such as temporary office workers, mariners, stevedores, lumber yard workers, etc., who are hired through a hiring hall or other referral arrangement, through an employee contractor or agent, or by some individual hiring arrangement, or persons (except leased employees) on the payroll of an employment agency who are referred by such agency for work to be performed on the premises of another employer under that employer's direction and control.

(6) Hiring location (this definition is identical to establishment as defined by the instructions for completing Employer Information Report EEO-1, Standard Form 100 (EEO-1 Report)) means an economic unit which produces goods or services, such as a factory, office, store, or mine. In most instances the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity. Units at different locations, even though engaged in the same kind of business operation, should be reported as separate establishments. For locations involving construction, transportation, communications, electric, gas, and sanitary services, oil and gas fields, and similar types of physically dispersed industrial activities, however, it is not necessary to list separately each individual site, project, field, line, etc., unless it is treated by the contractor as a separate legal entity. For these physically dispersed activities, list as establishments only those relatively permanent main or branch offices, terminals, stations,

etc., which are either:

- (i) Directly responsible for supervising such dispersed activities; or
- (ii) The base from which personnel and equipment operate to carry out these activities.

(Where these dispersed activities cross State lines, at least one such establishment should be listed for each State involved).

(7) Job category means any of the following: Officials and managers (Executive/Senior Level Officials and Managers and First/Mid-Level Officials and Managers), professionals, technicians, sales workers, administrative support workers, craft workers, operatives, laborers and helpers, and service workers, as required by the EEO-1 Report, as follows:

(i) Officials and managers as a whole are to be divided into the following two subcategories: Executive/Senior Level Officials and Managers and First/Mid-Level Officials and Managers.

(A) Executive/Senior Level Officials and Managers means individuals, who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products and services, within the parameters approved by boards of directors of other governing bodies. Residing in the highest levels of organizations, these executives plan, direct, or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals within two reporting levels of the Chief Executive Officer (CEO), whose responsibilities require frequent interaction with the CEO. Examples of these kinds of managers are: Chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

(B) First/Mid-Level Officials and Managers means individuals who serve as managers, other than those who serve as Executive/Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations. These managers receive directions from Executive/Senior Level management and typically lead major business units. They implement policies, programs and directives of Executive/Senior Level management through subordinate managers and within the parameters set by Executives/Senior Level management. Examples of these kinds of managers are: Vice presidents and directors; group, regional or divisional controllers; treasurers; and human resources, information systems, marketing, and operations managers. The First/Mid-Level Officials and Managers subcategory also includes those who report directly to middle managers. These individuals serve at functional, line of business segment or branch levels and are responsible for directing and executing the day-to-day operational objectives of enterprises/organizations, conveying the directions of higher level officials and managers to subordinate personnel and, in some instances, directly supervising the activities of exempt and non-exempt personnel. Examples of these kinds of managers are: First-line managers; team managers; unit managers; operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers.

(ii) Professionals means individuals in positions that require bachelor and graduate degrees, and/or professional certification. In some instances, comparable experience may establish a person's qualifications. Examples of these kinds of positions include: accountants and auditors; airplane pilots and flight engineers; architects; artists; chemists; computer programmers;

designers; dieticians; editors; engineers; lawyers; librarians; mathematical scientists; natural scientists; registered nurses; physical scientists; physicians and surgeons; social scientists; teachers; and surveyors.

(iii) Technicians means individuals in positions that include activities requiring applied scientific skills, usually obtained by post-secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required. Examples of these types of positions include: drafters; emergency medical technicians; chemical technicians; and broadcast and sound engineering technicians.

(iv) Sales workers means individuals in positions including non-managerial activities that wholly and primarily involve direct sales. Examples of these types of positions include: advertising sales agents; insurance sales agents; real estate brokers and sales agents; wholesale sales representatives; securities, commodities, and financial services sales agents; telemarketers; demonstrators; retail salespersons; counter and rental clerks; and cashiers.

(v) Administrative support workers means individuals in positions involving non-managerial tasks providing administrative and support assistance, primarily in office settings. Examples of these types of positions include: office and administrative support workers; bookkeeping; accounting and auditing clerks; cargo and freight agents; dispatchers; couriers; data entry keyers; computer operators; shipping, receiving and traffic clerks; word processors and typists; proofreaders; desktop publishers; and general office clerks.

(vi) Craft workers means individuals in positions that include higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers. Examples of these types of positions include: boilermakers; brick and stone

masons; carpenters; electricians; painters (both construction and maintenance); glaziers; pipe layers, plumbers, pipefitters and steamfitters; plasterers; roofers; elevator installers; earth drillers; derrick operators; oil and gas rotary drill operators; and blasters and explosive workers. This category also includes occupations related to the installation, maintenance and part replacement of equipment, machines and tools, such as: automotive mechanics; aircraft mechanics; and electric and electronic equipment repairers. This category also includes some production occupations that are distinguished by the high degree of skill and precision required to perform them, based on clearly defined task specifications, such as: millwrights; etchers and engravers; tool and die makers; and pattern makers.

(vii) Operatives means individuals in intermediate skilled occupations and includes workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: textile machine workers; laundry and dry cleaning workers; photographic process workers; weaving machine operators; electrical and electronic equipment assemblers; semiconductor processors; testers, graders and sorters; bakers; and butchers and other meat, poultry and fish processing workers. This category also includes occupations of generally intermediate skill levels that are concerned with operating and controlling equipment to facilitate the movement of people or materials, such as: bridge and lock tenders; truck, bus or taxi drivers; industrial truck and tractor (forklift) operators; parking lot attendants; sailors; conveyor operators; and hand packers and packagers.

(viii) Laborers and helpers means individuals with more limited skills who require only brief training to perform tasks that require little or no independent judgment. Examples include: production and construction worker helpers; vehicle and equipment cleaners; laborers; freight, stock and material movers; service station attendants; construction laborers; refuse and

recyclable materials collectors; septic tank servicers; and sewer pipe cleaners.

(ix) Service workers means individuals in positions that include food service, cleaning service, personal service, and protective service activities. Skill may be acquired through formal training, job-related training or direct experience. Examples of food service positions include: cooks; bartenders; and other food service workers. Examples of personal service positions include: medical assistants and other healthcare support positions; hairdressers; ushers; and transportation attendants. Examples of cleaning service positions include: cleaners; janitors; and porters. Examples of protective service positions include: transit and railroad police and fire fighters; guards; private detectives and investigators.

(8) NAICS means the North American Industrial Classification System.

(9) OFCCP means the Office of Federal Contract Compliance Programs, U.S. Department of Labor.

(10) Protected veteran means a veteran who is protected under the non-discrimination and affirmative action provisions of the Act; specifically, a veteran who may be classified as a “disabled veteran,” “recently separated veteran,” “active duty wartime or campaign badge veteran,” or an “Armed Forces service medal veteran,” as defined in this section.

(11) Recently separated veteran means a veteran during the three-year period beginning on the date of such veteran’s discharge or release from active duty in the U.S. military, ground, naval or air service.

(12) States means each of the several States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

(13) VETS means the Office of the Assistant Secretary for Veterans’ Employment and

Training Service, U.S. Department of Labor.

**§ 61-300.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?**

Each contractor or subcontractor described in § 61-300.1 must submit reports in accordance with the following reporting clause, which must be included in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract). Such clause is considered as an addition to the equal opportunity clause required by 41 CFR 60-300.5. The reporting requirements clause is as follows:

EMPLOYER REPORTS ON EMPLOYMENT OF PROTECTED VETERANS

(a) The contractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The total number of employees in the workforce of such contractor, by job category and hiring location, and the total number of such employees, by job category and hiring location, who are protected veterans;

(2) The total number of new employees hired by the contractor during the period covered by the report, and of such employees, the number who are protected veterans; and

(3) The maximum number and minimum number of employees of such contractor at each hiring location during the period covered by the report.

(4) The term “protected veteran” refers to a veteran who may be classified as a “disabled veteran,” recently separated veteran, “active duty wartime or campaign badge veteran,” or an “Armed Forces service medal veteran,” as defined in 41 CFR 61-300.2.

(b) The above items must be reported by completing the report entitled “Federal Contractor Veterans’ Employment Report VETS-4212.”

(c) VETS-4212 Reports must be filed no later than September 30 of each year following a calendar year in which a contractor or subcontractor held a covered contract or subcontract.

(d) The employment activity report required by paragraphs (a)(2) and (a)(3) of this clause must reflect total new hires and maximum and minimum number of employees during the 12-month period preceding the ending date that the contractor selects for the current employment report required by paragraph (a)(1) of this clause. Contractors may select an ending date:

(1) As of the end of any pay period during the period July 1 through August 31 of the year the report is due; or

(2) As of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1, Standard Form 100 (EEO-1 Report).

(e) The number of veterans reported according to paragraph (a) above must be based on data known to contractors and subcontractors when completing their VETS-4212 Reports. Contractors' and subcontractors' knowledge of veterans status may be obtained in a variety of ways, including, in response to an invitation to applicants to self-identify in accordance with 41 CFR 60-300.42, voluntary self-disclosures by employees who are protected veterans, or actual knowledge of an employee's veteran status by a contractor or subcontractor. Nothing in this paragraph (e) relieves a contractor from liability for discrimination under 38 U.S.C. 4212.

[End of Clause]

### **§ 61-300.11 When and how should Federal contractors and subcontractors file VETS-4212 Reports?**

(a) The VETS-4212 Report must be used to report the information on veterans' employment required in paragraph (a) of the contract clause set forth in § 61-300.10. The VETS-4212 Report requires contractors and subcontractors to provide the total number of employees in their workforces by job category and hiring location; the total number of such employees, by job category and hiring location, who are protected veterans; the total number of new hires during the period covered by the report; the total number of new hires during the period covered by the report who are protected veterans; and the maximum and minimum number of employees of such contractor or subcontractor during the period covered by the report. Contractors and subcontractors must complete a VETS-4212 Report for each hiring location in the manner

described in the instructions published on the VETS website and included in the paper version of the VETS-4212 Report.

(b) VETS-4212 Reports must be filed between August 1 and September 30 of each year following a calendar year in which a contractor or subcontractor held a contract or subcontract.

(c)(1) Electronic filing. Instructions for e-filing the VETS-4212 Report are found on the Federal Contractor Reporting page on the VETS website at: <http://www.dol.gov/vets/>.

(i) Single hiring location. Contractors and subcontractors doing business at one hiring location may complete and submit a single VETS-4212 Report using the web-based filing system.

(ii) Multiple hiring locations. Contractors and subcontractors doing business at more than 10 locations must submit their VETS-4212 Reports in the form of an electronic data file in accordance with the instructions for filing the VETS-4212 Report. In these cases, state consolidated reports count as one location each. Contractors and subcontractors may submit VETS-4212 Reports in the form of electronic data files through the web-based filing system. Electronic data files also may be transmitted electronically as an e-mail attachment (if they do not exceed the size stated in the specifications), or submitted on compact discs or other electronic storage media.

(2) Alternative filing methods. (i) Contractors and subcontractors with 10 or fewer hiring locations may file their VETS-4212 Report in paper format. Contractors and subcontractors may download a version of the VETS-4212 Report from the VETS website or send a written request for the paper version of the VETS-4212 Report to: Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-1325, Washington, DC 20210, Attn: VETS-4212 Report Form Request.

(ii) VETS-4212 Reports in paper format or electronic data files on compact discs or other

electronic storage media may be delivered by U.S. mail or courier delivery service to the addresses set forth in the instructions for completing the report. Paper copies of the VETS-4212 Reports and electronic data files (if they do not exceed the size stated in the specifications) also may be sent as e-mail attachments to the address indicated in the instructions.

**§ 61-300.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?**

During the course of a compliance evaluation, OFCCP may determine whether a contractor or subcontractor has submitted its VETS-4212 Report(s) as required by this part.

**§ 61-300.99 What is the OMB control number for this part?**

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and its implementing regulations at 5 CFR part 1320, the Office of Management and Budget has assigned Control No. 1293-0005 to the information collection requirements of this part.

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