

explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.773 to read as follows:

§ 165.773 Security Zone; Escorted Vessels in Captain of the Port Zone Jacksonville, Florida.

(a) *Definitions*. The following definitions apply to this section:

COTP means Captain of the Port Jacksonville, FL.

Designated representatives means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels or aircraft, and

federal, state, and local officers designated by or assisting the COTP, in the enforcement of the security zone.

Escorted vessel means a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State, or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia as follows:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.

(3) When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used. In all cases, broadcast notice to mariners will be issued to advise mariners of these restrictions.

Minimum safe speed means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake.

(b) *Regulated Area*. All navigable waters, as defined within Captain of the Port Zone, Jacksonville, Florida as defined in 33 CFR 3.35–20.

(c) *Security Zone*. A 500-yard security zone is established around each escorted vessel within the regulated area described in paragraph (b) of this section. This is a moving security zone when the escorted vessel is in transit and becomes a fixed zone when the escorted vessel is anchored or moored. A security zone will not extend beyond the boundary of the regulated area in this section.

(d) *Regulations*. (1) The general regulations for security zones contained in § 165.33 of this part applies to this section.

(2) A vessel may request the permission of the COTP or a designated representative to enter the security zone described in paragraph (c) of this section. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must

comply with the orders of the COTP or a designated representative. No vessel or person may enter the inner 100-yard portion of the security zone closest to the vessel.

(e) *Notice of Security Zone*. The COTP will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by Broadcast Notice to Mariners. Coast Guard assets or other Federal, State or local law enforcement agency assets will be clearly identified by lights, vessel markings, or with agency insignia. When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used.

(f) *Contact Information*. The COTP Jacksonville may be reached via phone at (904) 564–7513. Any on scene Coast Guard or designated representative assets may be reached via VHF–FM channel 16.

Dated: May 6, 2008.

P.F. Thomas,

Captain, U.S. Coast Guard, Captain of the Port Zone Jacksonville, Florida.

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DEPARTMENT OF LABOR

Veterans' Employment and Training Service

41 CFR Part 61–300

RIN 1293–AA12

Annual Report From Federal Contractors

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

ACTION: Final rule.

SUMMARY: The Veterans' Employment and Training Service is publishing a new set of regulations, and adopting a new Federal Contractor Veterans' Employment Report VETS–100A (“VETS–100A Report”) form, to implement the requirement under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (“VEVRAA”) that Government contractors track and annually report the number of employees in their workforces who are veterans covered under the law. The final regulations published today implement amendments to the reporting requirements under VEVRAA that were made by the Jobs for Veterans Act (“JVA”) in 2002. The JVA amendments: Raised the dollar amount of the Government contracts that trigger a contractor's obligation to report on veterans' employment; and changed the

categories of veterans that contractors are to track and report. The final regulations published today apply only to covered Government contracts entered into or modified on or after December 1, 2003. The existing regulations in 41 CFR part 61–250, which require contractors to use the Federal Contractor Veterans' Employment Report VETS–100 (“VETS–100 Report”) form to provide the information on the covered veterans in their workforces, will continue to apply to Government contracts entered into before December 1, 2003.

DATES: *Effective Date:* These regulations are effective June 18, 2008.

FOR FURTHER INFORMATION CONTACT:

Robert Wilson, Chief, Investigations and Compliance Division, Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1312, Washington, DC 20210, RMWilson@dol.gov, (202) 693–4719 (this is not a toll-free number).

For press inquiries, contact Michael Biddle, Office of Public Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1032, Washington, DC 20210, Biddle.Michael@dol.gov, (202) 693–5051 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (“VEVRAA”), 38 U.S.C. 4212(d), requires that Federal contractors report annually to the Secretary of Labor about their employment of certain categories of veterans. The Department of Labor has promulgated regulations found at 41 CFR part 61–250, which require contractors to use the Federal Contractor Veterans' Employment Report VETS–100 (“VETS–100 Report”) form for reporting information on the number of covered veterans in their workforces.

On November 7, 2002, the President signed the Jobs for Veterans Act (JVA) (Pub. L. 107–288, 116 Stat. 2033). Section 2(d)(1)(A) of JVA amended the Federal contractor reporting requirements contained in 38 U.S.C. 4212(d). Section 2(b)(3) of JVA made the amendments applicable to Government contracts entered into on or after December 1, 2003.

Prior to amendment by JVA, VEVRAA required contractors with a Government contract of \$25,000 or more to report at least annually to the Secretary on the number of employees in their workforces, by job category and hiring location, who are “special disabled veterans, veterans of the Vietnam era,

recently separated veterans, or other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.” In addition, prior to amendment by JVA, VEVRAA required contractors to report on the number of employees hired during the period covered by the report who belong to the specified categories of covered veterans.

The JVA amendments to VEVRAA made two changes to the reporting requirements applicable to contracts entered into on or after December 1, 2003. First, the JVA amendments increased from \$25,000 to \$100,000, the dollar amount of the contract that subjects a Government contractor to the requirement to report the number of employees in their workforces who are covered veterans.

Second, the JVA amendments changed the categories of covered veterans under VEVRAA and thus the categories of veterans that contractors are required to track and report on annually. JVA eliminated the coverage category of Vietnam era veterans. However, many Vietnam era veterans may remain covered in other categories. JVA added a new category of covered veterans—those “veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985.” In addition, the JVA amendments expanded the coverage of recently separated veterans from one year after discharge or release from active duty, to three years. Finally, JVA expanded the coverage of veterans with disabilities. Prior to amendment by JVA, VEVRAA covered veterans rated as having 10% to 20% serious employment handicap or a disability rated 30% or more by the Department of Veterans Affairs. As a result of the JVA amendments, all veterans who were discharged or released from active duty because of a service-connected disability are covered under VEVRAA.

On August 8, 2006, VETS published a Notice of Proposed Rulemaking (NPRM), (71 FR 44945), to implement the changes made by JVA to the reporting requirements under VEVRAA. The NPRM proposed to adopt a new set of regulations that would be codified in a new 41 CFR part 61–300. The NPRM also proposed to adopt a new form for reporting the information on veterans' employment required by the JVA amendments to VEVRAA and name it the “VETS–100A Report.”

VETS received a total of six comments: Two from employer

associations whose members include Federal contractors, one from a management consulting firm that specializes in human resources, one from a government agency, one from a human resources professional, and one from an attorney. Generally, the comments discussed the confusion that might result from VETS maintaining two sets of VEVRAA regulations and requested clarification of certain provisions. VETS reviewed and carefully considered the comments in the development of this final rule.

VETS recognized that contractors will need time to update their recordkeeping systems to collect the data required by the VETS–100A Report, and stated in the NPRM that the reporting requirements in the new part 61–300 would become effective for the calendar year 2007, and would be reported in the VETS–100A Report to be filed by September 30, 2008. We received two comments on the proposed effective date of the final rule. One commenter asked that VETS extend the effective date of the new reporting requirements to 2008, and the date for filing the VETS–100A Report for the first time to September 30, 2009, in order to allow contractors sufficient time to adjust their computer systems. Another commenter requested that VETS clarify in the final rule that contractors do not have to begin collecting and maintaining data required for the 2008 VETS–100A Report until the first day of the 12-month period for which new hire data will be reported on the 2008 report.

When the effective dates stated in the NPRM were proposed, VETS anticipated that today's final rule and its information collection requirements would be effective by a date that would allow contractors sufficient time to collect the data needed to complete and file a VETS–100A Report for the 2008 reporting cycle. The VETS–100A Report calls for contractors to provide data on veterans' employment for a 12-month period ending on a date in the report year between July 1 and August 31 that represents the end of a payroll period. However, today's final rule will not take effect in time for contractors to collect data for the entire 12-month period ending on a date between July 1 and August 31, 2008. Accordingly, VETS has decided to extend the effective date for the reporting requirements in the new part 61–300 regulations. Contractors are to collect and maintain the data prescribed by the new part 61–300 regulations beginning in the calendar year 2008, and report the data in the VETS–100A Report to be filed by September 30, 2009.

Overview of the Final Rule

The final regulations implementing the JVA changes to the reporting requirements under VEVRAA will be codified in a new 41 CFR part 61-300. As was explained in the NPRM, the provisions in part 61-300 are modeled after the existing regulations in part 61-250 implementing the reporting requirements under VEVRAA prior to amendment by JVA. The part 61-300 regulations differ from the regulations in part 61-250 in two ways: The part 61-300 regulations reflect the changes to the requirements under VEVRAA made by JVA, and certain provisions in the part 61-300 have been revised to improve the readability of the rule. The Section-by-Section Analysis of the NPRM highlighted the differences between the provisions in the proposed rule and existing part 61-250. Throughout the regulation, changes have been made to clarify the wording in accordance with plain language principles. Unless specified below, the minor language differences are not intended to create a difference in substantive meaning between the final rule and parallel provisions in part 61-250.

The final rule, for the most part, adopts the provisions that were proposed in the NPRM. However, a few provisions have been modified in response to the public comments. The discussion that follows identifies the significant issues raised in the comments received in response to the NPRM, provides VETS responses to those comments, and explains any resulting changes to the proposed rule.

Section-by-Section Analysis of Comments and Revisions

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

This section outlines the purpose and scope of the regulations. Proposed paragraph (a) states that each contractor or subcontractor who enters into a contract on or after December 1, 2003, in the amount of \$100,000 or more with any department or agency of the United States, and who is subject to 38 U.S.C. 4212(a) (the affirmative action provisions of VEVRAA), must submit a report according to the requirements of part 61-300. In addition, proposed paragraph (a) states that any contractor or subcontractor whose only contract was entered into before December 1, 2003, must follow the regulations in part 61-250. Further, proposed paragraph (a) provides that any contractor that has a contract of \$25,000 or more entered into before December 1, 2003, and has a contract of \$100,000 or

more entered into on or after December 1, 2003, is required to file both the VETS-100 Report and the VETS-100A Report as instructed in parts 61-250 and 61-300.

Three commenters—two employer associations and a consulting firm—were critical of the requirement in paragraph (a) that contractors holding a covered contract entered into before December 1, 2003, as well as a covered contract entered into on or after December 1, 2003, comply with both the regulations in existing part 61-250 and new part 61-300. They maintained that it would be confusing and burdensome for contractors to collect and report data about the same workforce on both the VETS-100 Report required under part 61-250 and the VETS-100A Report prescribed by new part 61-300 for the same reporting period, where each form calls for data on the number of employees in four different categories of covered veterans, and only one of those categories is found on both forms. All of the commenters offered a recommendation for minimizing the recordkeeping and reporting burden.

One commenter asserted that VETS has flexibility, and as a matter of enforcement policy the agency could adopt a rule that requires contractors to comply with only one set of VEVRAA regulations. The commenter argued that VETS could state in the final rule that contractors with a contract of at least \$100,000 entered into on or after December 1, 2003, are required to file only the VETS-100A Report, even if the contractors also have covered contracts that were entered into before December 1, 2003. Further, the commenter stated that the final rule could provide that, if a contractor with contracts subject to the regulations in part 61-250 enters into a contract that is subject to new part 61-300 regulations after the start of the Affirmative Action Program (AAP) year, the contractor has the option of continuing to comply only with the reporting requirements under the part 61-250 regulations until the end of the AAP year.

VETS disagrees with the assertion that the final rule could provide that contractors need comply with the reporting requirements of only one set of VEVRAA regulations. Some employees may be counted in more than one of the covered veteran categories. For example, an employee may be both a Vietnam era veteran and an other protected veteran. Thus, some veterans in the pre-JVA categories will be included in one or more of the categories covered under the JVA as well. However, a small number of Vietnam era veterans do not belong to

any other covered veteran category and would not be tracked and reported if VETS were to adopt a rule requiring contractors with contracts entered into both before and on or after December 1, 2003, to comply only with the new part 61-300 regulations. Conversely, some categories of veterans that are covered under the JVA were not previously covered under VEVRAA, and therefore, would not be tracked and reported if VETS were to allow contractors to comply only with the existing part 61-250 regulations.

The rulemaking authority of VETS can only be exercised in a manner that carries out the provisions of the statute. Here, Congress expressly made the JVA reporting requirements applicable to contracts entered into on or after December 1, 2003, and thereby provided that contracts entered before December 1, 2003, would continue to be subject to the pre-JVA reporting requirements. Consequently, VETS has no authority to allow contractors with contracts entered into both before and on or after December 1, 2003, to track and report only the categories of covered veterans covered under the JVA. Likewise, VETS cannot adopt a rule that allows contractors with contracts entered into both before and on or after December 1, 2003, to track and report only the pre-JVA categories. Accordingly, the final rule provides that a contractor with covered contracts entered into both before and on or after December 1, 2003, must comply with the regulations in existing part 61-250 and new part 61-300 and file both the VETS-100 Report and the VETS-100A Report. However, a contractor that is covered under existing part 61-250 that enters into a contract of \$100,000 or more after the start of the AAP year does not have to file a VETS-100A Report during that year. The instructions for completing the VETS-100A Report state “[e]ntering into a covered federal contract or subcontract during a given calendar year establishes the requirement to file a VETS-100A Report during the following calendar year.”

Another commenter recommended that VETS adopt a rule allowing contractors to comply with only one set of VEVRAA regulations. This commenter suggested that VETS permit those contractors that are subject to both sets of regulations “to use the regulations covering the majority of their employees.” The commenter stated that this approach would allow contractors to submit a report for all employees based on whether a majority of their employees are covered under contracts dated prior to December 1, 2003, or after that date. The date of the

Government contract determines the categories of veterans contractors must track and report. However, the date of the Government contract does not affect whether the particular employees are covered by the reporting requirement. Once a business or organization is awarded a covered Government contract, all of the establishments or facilities of the business or organization are subject to the same regulatory requirements, regardless of where the Government contract is to be performed. Consequently, if a contractor is subject to the reporting requirements under VEVRAA, the contractor is required to report the number of employees in its entire workforce, by job category, and by hiring location, who belong to the specified categories of covered veterans. Thus, the commenter's suggestion that contractors be permitted to comply with the regulations that cover the "majority of their employees" misconstrues the scope of coverage under VEVRAA, and does not address the concern about the burdens of dual reporting.

The remaining commenter recommended that to minimize duplicative reporting for those with covered contracts entered into both before December 1, 2003, and on or after that date, VETS should clarify that modification of a pre-December 1, 2003, contract for at least \$100,000 will incorporate the VETS-100A reporting requirements in today's final rule. We agree that modification of an otherwise covered contract on or after December 1, 2003, will substitute the VETS-100A requirements of 41 CFR 61-300 for the VETS-100 requirements of 41 CFR 61-250 in the modified contract.

Two Department of Labor agencies have promulgated regulations implementing 38 U.S.C. 4212. VETS has published regulations at 41 CFR part 61-250 (and now 41 CFR part 61-300) implementing the reporting requirements, and OFCCP has published regulations at 41 CFR parts 60-250 and 60-300 implementing the affirmative action provisions. Because the requirements of Section 4212 apply to the same Federal contractors and apply to the same categories of veterans, VETS and OFCCP use the same definitions for common terms found in both rules. Section 61-300.2(a) of the final rule states that, unless otherwise indicated, the terms set forth in part 61-300 have the same meaning as those set forth in part 60-300. Accordingly, the definitions pertinent to contract coverage under part 61-300 are contained in 41 CFR 60-300.2.

The term "Government contract" is defined at 41 CFR 60-300.2(i) as "any agreement or modification thereof

between any contracting agency and any person for the purchase, sale, or use of personal property or nonpersonal services (including construction)." A "modification" is "any alteration in the terms and conditions of a contract, including supplemental agreements, amendments and extensions." 41 CFR 60-300.2(i)(1) JVA applies to Government contracts entered on or after December 1, 2003. Because a contract modification is a "Government contract" JVA applies to modifications of otherwise covered contracts made on or after December 1, 2003.

Consequently, modification of a contract that would otherwise be covered by 41 CFR 61-300 on or after December 1, 2003, but for the date the contract was entered into would have the effect of modifying the VEVRAA reporting clause; the new VETS-100A requirements of 41 CFR 61-300 would be applicable to the modified contract, rather than the old VETS-100 requirements of 41 CFR 61-250.

The effect of contract modification is addressed in § 61-300.10, which provides that the VETS-100A reporting clause must be included in each covered Government contract or subcontract "and modifications, renewals, or extensions thereof if not included in the original contract." To further clarify the effect of modifying a contract on the reporting requirements applicable after modification, language has been added to § 61-300.1(a) addressing the issue. In the final rule, § 61-300.1(a) has been revised to state "[e]ach contractor or subcontractor who enters into or modifies a contract or subcontract on or after December 1, 2003, in the amount of \$100,000 or more with any department or agency of the United States * * * must submit a report according to the requirements of part 61-300." In addition, § 61-300.1(a) of the final rule states "[a]ny contractor or subcontractor whose only contract with any department or agency * * * was entered into before December 1, 2003 (and not modified as described above), must follow part 61-250."

Paragraph (c) of this section states that reporting requirements of part 61-300 will be deemed waived in those instances where the Deputy Assistant Secretary for Federal Contract Compliance has granted a waiver under 41 CFR 60-300.4(b)(1) (waiver granted in the "national interest") or under 41 CFR 60-300.4(b)(3) (separate facility waiver). Paragraphs (b) and (d) refer to the obligations of contractors to comply with the regulations implementing the affirmative action provisions of VEVRAA found in 41 CFR part 60-300 that are administered by OFCCP.

Except for the clarification set forth in paragraph (a) regarding the reporting requirements that apply to contract modifications entered into on or after December 1, 2003, § 61-300.2 is adopted in the final rule as proposed.

Section 61-300.2 What definitions apply to this part?

In the NPRM, VETS proposed to incorporate many of the definitions in existing § 61-250.2 without any changes. The proposal called for some definitions to be incorporated in § 61-300.2 with modifications necessary to implement the JVA. Likewise, some definitions in existing § 61-250.2 were not carried over to § 61-300.2.

Paragraph (b)(4) defines "disabled veteran," paragraph (b)(5) defines "other protected veteran," paragraph (b)(6) defines "Armed Forces service medal veteran," paragraph (b)(7) defines "recently separated veteran," paragraph (b)(8) defines "covered veteran," and paragraph (b)(9) defines the term "qualified," as required by the JVA.

The definition of "eligibility period" has not been carried over from the part 61-250 regulations because it is not used in this regulation. Lastly, a definition for the phrase "covered incumbent veteran," has been added to paragraph (b)(14) to provide a shorthand phrase that can be used for collectively referring to all categories of protected veterans.

Two comments addressed the proposed definition of the term "job category" in paragraph (b)(3), which referenced the job categories that are used in the EEO-1 Standard Employer Information Report EEO-1 Report ("EEO-1 Report"). The commenters pointed out that the job categories described in proposed paragraph (b)(3) were used for the final time in the EEO-1 Report filed for the 2006 reporting period, which ended on September 30, 2006. On November 28, 2005, EEOC published a notice setting forth the final revisions to the EEO-1 Report (70 FR 71294), which were approved by OMB following a 30-day period for public comment. Employers, including Government contractors with 50 or more employees and a contract of \$50,000 or more, must use the revised EEO-1 Report form beginning with the report that must be filed by September 30, 2007. The approved revisions to the EEO-1 Report include an increase in the number of job categories as a result of dividing the Officials and Managers category into two subgroups—Executives/Senior Level Officials and Managers and First/Mid Level Officials and Managers, as well as changes in the definitions of the job categories. The

revisions to the EEO-1 job categories and other changes are discussed in the **Federal Register** notice published on November 28, 2005 (70 FR 71294); available on EEOC's Web site at <http://www.eeoc.gov/eeo1/index.html>.

The commenters urged VETS to change the definition of job category in the final rule to reflect the revised EEO-1 job categories. In response to these comments, VETS has revised the definition of "job category" in paragraph (b)(3) of the final rule. In addition, during the course of reviewing the revisions made to EEO-1 job categories we noted that the definition of "employee" in proposed paragraph (b)(2) was consistent with the definition of "employee" used in the 2006 EEO-1 Report, but did not track the definition of that term found in the EEO-1 Report for 2007. Accordingly, in the final rule, the definition of "employee" in paragraph (b)(2) has been revised to conform to the definition of "employee" adopted in the revised EEO-1 Report. Finally, VETS added clarifying language to the definitions for the terms "disabled veteran" in paragraph (b)(4) and "recently separated veteran" in paragraph (b)(7) to indicate that the reporting requirements under VEVRAA apply to veterans of the United States armed forces, as opposed to veterans of the armed forces of other nations. The definitions for the terms "other protected veteran" in paragraph (b)(5) and "Armed Forces service medal veteran" in paragraph (b)(8) already contain this clarification.

The remaining definitions in § 61-300.2 have been adopted in the final rule as proposed.

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 is identical to existing § 61-250.10 except for updates necessary to implement the JVA. Section 61-300.10 sets forth 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). Paragraph (a)(1) states that covered contractors and subcontractors agree to report at least annually the total number of employees who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans. Paragraph (a)(1) differs from the parallel provision of part 61-250 in that the word "total" has

been added to clarify that the report must reflect the total number of employees in the workforce of the contractor.

Paragraph (b) provides that the required information on veterans' employment is to be reported by completing the VETS-100A Report form. Paragraph (c), which prescribes the date for filing a VETS-100A Report, is the same as the parallel provision in § 61-250.10 except for editing to improve readability and designating the name of the report as "VETS-100A Report."

Paragraphs (d) and (e) are identical to the parallel provisions in § 61.250.10, except that this section references the "VETS-100A Report." Paragraph (d) addresses the dates of the reporting period, and paragraph (e) discusses the methods contractors may use to acquire information about the veterans status of their employees.

No comments were received on this section. Accordingly, the final rule adopts § 61-300.10 as proposed.

Section 61-300.11 On what form must the data required by this part be submitted?

This section states that the data on veterans employment specified in the reporting requirements clause set forth in § 61-250.10 must be reported on the VETS-100A Report. A major difference between this section and existing § 61-250.11 involves the instructions for completing the report. Some instructions for completing the VETS-100 Report are located in the regulations (§ 61-250.11) and additional instructions are located in the VETS-100 Report form (Appendix A.) The instructions for completing the VETS-100A Report are provided only in Appendix A (discussed below), and not in the regulations. Paragraph (a) provides that a copy of the VETS-100A Report and instructions may be found in Appendix A.

Another difference between this section and existing § 61-250.11 is that paragraph (a) states that the report is "provided" annually to contractors who are included in the VETS-100 database, while existing § 61-250.11(a) states that the VETS-100 Report is "mailed" annually to contractors who are included in the VETS-100 database. The use of the term "provided" will allow VETS greater flexibility in distribution format of the VETS-100A Report. Paragraph (a) also states that VETS' failure to provide a contractor with a VETS-100A Report does not excuse a contractor from the requirement of submitting a VETS-100A Report.

Paragraph (b) is identical to paragraph (b) in existing § 61-250.11.

Paragraph (c) contains the same information found in existing paragraph (c) of existing § 61-250.11(c), however, the text has been simplified in accordance with plain language principles. Paragraphs (d) and (e) are also identical to the parallel provisions in § 61-250.11, except that an updated Internet address has been provided for requesting copies of the VETS-100A Report form.

Section 61-300.11 is adopted in the final rule without change.

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

This section is identical to existing § 61-250.20. No comments were received on this section. Accordingly, it is adopted in the final rule as proposed.

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

This section has been revised in the final rule to indicate that OMB has assigned Control Number 1293-0005 to the information collection requirements of this part.

Appendix A to Part 61-300—Federal Contractor Veterans' Employment Report VETS-100A

Appendix A contains the VETS-100A Report form as well as the instructions for completing the report form. Appendix A to the final rule differs substantially from Appendix A to the existing part 61-250 regulations. A section-by-section description of those differences was provided in the NPRM's preamble discussion of Appendix A. As was previously mentioned, a major difference between the two Appendices is that all the instructions for completing the VETS-100A Report form are set forth in Appendix A to part 61-300, while the instructions for completing the VETS-100 Report are found in both § 61-250.11 and Appendix A to part 61-250. Other differences between Appendix A to the final rule and Appendix A to the existing part 61-250 regulations reflect the changes made by JVA to the contract coverage threshold and the categories of covered veterans.

VETS received a few comments on Appendix A. One commenter noted that the VETS-100A Report contained the category "newly separated veterans" while the term used in the statute and the part 61-300 regulations is "recently separated veterans." VETS has corrected this error in the final rule. Other comments recommended several minor

technical corrections to the VETS-100A Report form, which have been incorporated in the final rule.

In addition, VETS revised proposed Appendix A to reflect the changes made to § 61-300.1(a) and § 61-300.2 in response to the public comments. Thus, in the instructions regarding "Who must file" and "How to prepare forms" VETS clarified that modification of an otherwise covered contract on or after December 1, 2003, will mean that the contractor must comply with the VETS-100A Report requirements of 41 CFR part 61-300, and not the VETS-100 Report requirements of 41 CFR part 61-250. Further, the definition of "job categories" set forth in the instructions has been changed to reflect the job categories adopted in the revised EEO-1 Report, and the revised EEO-1 job categories have been added to the VETS-100A Report form set forth in Appendix A.

Regulatory Procedures

Paperwork Reduction Act

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). This final rule adopts a new set of regulations to implement the JVA amendments to the reporting requirements under VEVRAA, and is applicable to covered Government contracts entered into or modified on or after December 1, 2003. The information collection in this final rule relates to the requirement under the JVA amendments that contractors track and report annually the number of new hires and incumbent employees, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans (within three years from the date of discharge or release from active duty). This final rule adopts a new form titled the "Federal Contractor Veterans' Employment Report VETS-100A Report" ("VETS-100A Report") for reporting the information on veterans' employment required by the JVA amendments.

This final rule impacts the information collection request for the Federal Contractor Veterans' Employment Report VETS-100 ("VETS-100 Report") that is currently approved under OMB No. 1293-0005. The existing regulations in 41 CFR part 61-250, which apply to covered contracts of \$25,000 or more entered into before December 1, 2003, require contractors to use the VETS-100 Report for reporting information on the number of new hires

and incumbent employees who are special disabled veterans, veterans of the Vietnam era, other protected veterans, and recently separated veterans (within one year from the date of discharge or release from active duty). Some contractors with Government contracts that were entered into before December 1, 2003, are still subject to the VETS-100 reporting requirement in 41 CFR part 61-250. Therefore, VETS has determined that it will be necessary to maintain two sets of regulations to implement the reporting requirements under VEVRAA, and use two different forms for providing the required information on the employment of covered veterans.

On October 2, 2007, VETS issued a **Federal Register** notice (72 FR 56103) providing a 60-day public comment period under the Paperwork Reduction Act (PRA) on its proposal to revise the currently approved information collection request for the VETS-100 Report to include the VETS-100A Report. In the **Federal Register** notice, VETS invited the public to comment on: (1) Whether the proposed collection of information is necessary to the proper performance of the agency, including whether the information will have practical utility; (2) the accuracy of agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

One comment was received in response to the 60-day notice from the management consulting firm specializing in human resources that also submitted comments in response to the NPRM. The consulting firm again asserted that the proposed regulations "would place an enormous burden on contractors" by requiring those contractors that have contracts dated prior to December 1, 2003, and contracts dated after that date, to file both the VETS-100 Report and the VETS-100A Report. The consulting firm maintained that the lack of correlation between the two reports places great burden on contractors to collect and maintain two sets of data.

VETS appreciates the burdens imposed on those contractors that are required to file both the VETS-100 and the VETS-100A Reports, but the agency is constrained to carry out the

provisions of the statute. However, as previously explained in the preamble, VETS estimates that only a small percentage of contractors will be required to file both reports. Because a contract modification is a "Government contract," modification of a contract that otherwise would be covered under the JVA amendments but for the date the contract was entered into renders the contract subject to the VETS-100A reporting requirements, rather than the VETS-100 reporting requirements. Consequently, VETS estimates that the vast majority of contractors (80%) will file either the VETS-100 Report or the VETS-100A Report, but not both.

The consulting firm also argued that it is burdensome for contractors to report on the VETS-100A Report the total number of employees in the workforce, when there is no such requirement under the VETS-100 Report. The JVA amendments to VEVRAA require that contractors report on the total number of employees in their workforces by job category and hiring location, and the VETS-100A merely implements the statutory requirement. The VETS-100 Report implements the reporting requirements prior to amendment by the JVA, which did not call for contractors to report on their total employment. Further, the consulting firm asserted that the proposed regulations do not provide clear guidance on what contractors are obligated to do to comply with the proposed new regulations. However, VETS maintains that the final regulations and the instructions for completing the VETS-100A Report adequately explain what is required for reporting on veterans' employment. VETS will provide additional technical support through the <http://www.VETS100.com> Web site to further assist contractors in understanding the reporting requirements.

Finally, the consulting firm maintained that the Department "substantially underestimated" the time and costs for contractors required to comply with reporting requirements of two sets of regulations. We disagree. The consulting firm seemed to believe that most contractors will have to file both the VETS-100 and VETS-100A Reports, but as explained above, VETS estimates that fewer contractors will be subject to filing both the VETS-100 and the VETS-100A Reports than the consulting firm's comment suggests. Further, that number will decrease as the contracts entered into before December 1, 2003, are either completed or modified.

On February 15, 2008, VETS submitted the information collection

request for the VETS-100 and the VETS-100A Reports to the Office of Management and Budget (OMB) for review and clearance in accordance with the PRA. VETS also published a notice in the **Federal Register** (73 FR 8905, February 15, 2008) advising the public the information collection request for the VETS-100 and VETS-100A Reports had been submitted to OMB, and inviting the public to submit comments within 30 days. In its final submission to OMB, VETS estimated that a total of 264,000 reports will be filed annually and that the total annual filing burden will be 156,000 hours. On April 23, 2008, OMB approved the information collection request for the VETS-100 Report and the VETS-100A Report under OMB Control Number 1293-0005.

Executive Order 12866

The Department is issuing this final rule in conformance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, but is not economically significant as defined in section 3(f)(1). Therefore, the information enumerated in section 6(a)(3)(C) of the order is not required. Pursuant to Executive Order 12866, this rule has been reviewed by the Office of Management and Budget.

Unfunded Mandates

Executive Order 12875—This rule will not create an unfunded Federal Mandate upon any State, local, or tribal government.

Unfunded Mandate Reform Act of 1995—This rule does not include any Federal mandate that may result in increased expenditures by State, local and tribal governments in the aggregate of \$100 million or more, or increased expenditures by the private sector of \$100 million or more.

Executive Order 13132, Federalism

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." This rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Regulatory Flexibility Act

This rule does not substantively change existing reporting requirements

for Federal contractors. Therefore, the Department concludes that this rule will not have a significant economic impact on a substantial number of small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

List of Subjects in 41 CFR Part 61-300

Government contracts, Reporting and recordkeeping requirements, Veterans.

Signed at Washington, DC, this 12th day of May, 2008.

John M. McWilliam,

Deputy Assistant Secretary of Labor for Veterans' Employment and Training Service.

■ Accordingly, for the reasons stated in the preamble, Chapter 61 of Title 41 of the Code of Federal Regulations is amended by adding part 61-300 to read as follows:

PART 61-300—ANNUAL REPORT FROM FEDERAL CONTRACTORS

Sec.

61-300.1 What are 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 On what form must the data required by this part be submitted?

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?

Appendix A to Part 61-300—Federal Contractor Veterans' Employment Report VETS-100A

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

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

(a) This part 61-300 implements 38 U.S.C. 4212(d) as amended by the Jobs for Veterans Act. Each contractor or subcontractor who enters into or modifies a contract or subcontract on or after December 1, 2003, 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 submit a report according to the requirements of part 61-300. Any contractor or subcontractor whose only contract with any department or agency of the United States for the procurement of personal property and non-personal

services (including construction) was entered into before December 1, 2003 (and not modified as described above) must follow part 61-250 implementing 38 U.S.C. 4212(d). Any contractor or subcontractor who has both a contract subject to part 61-250 and a contract subject to part 61-300 is required to file both the VETS-100 Report and the VETS-100A Report.

(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 veterans.

(c) Reporting requirements of this part regarding veterans will be deemed waived in those instances in which the Deputy Assistant Secretary, 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 veterans will be required.

(d) 41 CFR 60-300.42 and Appendix B to part 60-300 provide guidance concerning the affirmative action obligations of Federal contractors and subcontractors toward applicants for employment who are qualified covered veterans.

§ 61-300.2 What definitions apply to this part?

(a) For the purposes of this part, and unless otherwise indicated in paragraph (b) of this section, the terms set forth in this part have the same meaning as those set forth in 41 CFR part 60-300.

(b) For purposes of this part:

(1) *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.)

(2) *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-100A 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.

(3) *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 Employer Information

Report EEO-1, Standard Form 100 (EEO-1 Report), as follows:

(i) *Officials and managers* as a whole is 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 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; pipelayers, 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.

(4) *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.

(5) *Other protected 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.

(6) *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).

(7) *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.

(8) *Covered veteran* means a veteran as defined in paragraphs (b)(4) through (b)(7) of this section.

(9) *Qualified* means, with respect to an employment position, having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.

(10) *OFCCP* means the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor.

(11) *VETS* means the Office of the Assistant Secretary for Veterans'

Employment and Training Service, U.S. Department of Labor.

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

(14) *Covered incumbent veteran* means a veteran as defined in paragraphs (b)(4) through (b)(7) of this section who is employed by a covered contractor.

§ 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 action clause required by 41 CFR 60–300.5. The reporting requirements clause is as follows:

Employment Reports on Disabled Veterans, Other Protected Veterans, Armed Forces Service Medal Veterans, and Recently Separated Veterans

(a) The contractor or subcontractor 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 or subcontractor, by job category and hiring location, and the number of such employees by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans;

(2) The total number of new employees hired by the contractor or subcontractor during the period covered by the report, and of such employees, the number who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and

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

(b) The above items must be reported by completing the form entitled "Federal Contractor Veterans" Employment Report VETS–100A."

(c) VETS–100A Reports must be submitted 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-100A 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 covered incumbent 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.

§ 61-300.11 On what form must the data required by this part be submitted?

(a) Data items required in paragraph (a) of the contract clause set forth in § 61-300.10 must be reported for each hiring location on the VETS-100A Report. This form is provided annually to those contractors who are included in the VETS-100 database. VETS failure to

provide a contractor with a VETS-100A Report does not excuse the contractor from the requirement to submit a VETS-100A Report. The form, and instructions for preparing it, are set forth in Appendix A to 41 CFR part 61-300—Federal Contractor Veterans' Employment Report VETS-100A and Instructions.

(b) Contractors and subcontractors that submit computer-generated output for more than 10 hiring locations to satisfy their VETS-100A reporting obligations must submit the output in the form of an electronic file. This file must comply with current Department of Labor specifications for the layout of these records, along with any other specifications established by the Department for the applicable reporting year. Contractors and subcontractors that submit VETS-100A Reports for 10 locations or less are exempt from this requirement, but are strongly encouraged to submit an electronic file. In these cases, state consolidated reports count as one location each.

(c) VETS-100A Reports must be submitted 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) VETS or its designee will use all available information to distribute the required forms to contractors identified as subject to the requirements of this part.

(e) It is the responsibility of each contractor or subcontractor to obtain necessary supplies of the VETS-100A

Report before the annual September 30 filing deadline. Contractors and subcontractors who do not receive forms should request them in time to meet the deadline. VETS-100A Report forms may be obtained by mailing a request to: Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attn: VETS-100A Report Form Request; or on the Internet at the Internet address <http://vets.dol.gov/vets100/vets100login.htm>.

§ 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 report 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.

Appendix A to Part 61-300—Federal Contractor Veterans' Employment Report Vets-100A

BILLING CODE 4510-79-P

WHO MUST FILE

This VETS-100A Report is to be completed by each federal contractor or subcontractor with a contract or subcontract entered into or modified on or after December 1, 2003, 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). Entering into a covered federal contract or subcontract during a given calendar year establishes the requirement to file a VETS-100A Report during the following calendar year. A VETS-100 Report is to be completed by each federal contractor or subcontractor with a contract or subcontract of \$25,000 or more entered into before December 1, 2003 with any department or agency of the United States for the procurement of personal property and non-personal services (including construction) and which did not become subject to 41 CFR part 61-300 through contract modification.

WHEN/WHERE TO FILE

This annual report must be filed no later than September 30. Mail to the address pre-printed on the front of the form.

LEGAL BASIS FOR REQUIREMENTS

Title 38, United States Code, Section 4212(d), as amended by the Jobs for Veterans Act (PL 107-288) enacted in 2002, requires federal contractors covered under the Act's affirmative action provisions in Section 4212(a) to report at least annually the numbers of employees in the workforce by job category and hiring location, and the number of such employees, by job category and hiring location, who are qualified covered veterans. Federal contractors must report the total number of new hires during the period covered by the report and the number of such employees who are qualified covered veterans. Additionally, federal contractors must report on the maximum and minimum number of employees during the period covered by the report. The Department of Labor has promulgated regulations to implement the requirements of 38 U.S.C. 4212, as amended by the Jobs for Veterans Act. The regulations at 41 CFR Part 61-300 require the submission of this VETS-100A Report to comply with the requirements of 38 U.S.C. 4212(d), as amended.

HOW TO SUBMIT THE VETS-100A REPORT

Single-establishment employers must file one completed VETS-100A Report. All multi-establishment employers, i.e., those doing business at more than one hiring location, must file (A) one VETS-100A Report covering the principal or headquarters office: (B) a separate VETS-100A Report for each hiring location employing 50 or more persons: and (C) EITHER, (i) a separate VETS-100A Report for each hiring location employing fewer than 50 persons, OR (ii) consolidated reports that cover hiring locations within one State that have fewer than 50 employees. Each state consolidated report must also list the name and address of the hiring locations covered by the report. Company consolidated reports such as those required by EEO-1 reporting procedures are NOT required

for the VETS-100A Report. Completed reports for the headquarters location and all other hiring locations for each company should be mailed in one package to the address indicated on the front of the form. Employers may submit their reports via the Internet at <http://vets.dol.gov/vets100/>. A company number is required in order to use this method of submission. This number is provided to employers on the VETS-100A Report mailed annually to those employers listed in the VETS-100 Report database. Other employers may obtain a company number by e-mailing their request to <http://vets.dol.gov/vets100/vets100login.htm>.

Employers that submit computer-generated output for more than 10 hiring locations to satisfy their VETS-100A reporting obligations must submit the output in the form of an electronic file. This file must comply with current DOL specifications for the layout of these records, along with any other specifications established by the Department for the applicable reporting year. Employers that submit VETS-100A Reports for ten locations or less are exempt from this requirement, but are strongly encouraged to submit an electronic file. In these cases, state consolidated reports count as one location each.

RECORD KEEPING

Employers must keep copies of the completed annual VETS-100A Report submitted to DOL for a period of one year.

HOW TO PREPARE THE FORMS

Multi-establishment employers submitting hard copy reports should produce facsimile copies of the headquarters form for reporting data on each location.

Type of Reporting Organization Indicate the type of contractual relationship (prime contractor or subcontractor) that the organization has with the Federal Government. If the organization serves as both a prime contractor and a subcontractor on various federal contracts, check both boxes.

Type of Form If a reporting organization only has a covered contract that was entered into or modified on or after December 1, 2003, it then must use a VETS-100A Report. If a reporting organization only has a covered contract that was entered before December 1, 2003, (and did not become subject to 41 CFR part 61-300 through contract modification) it must use a VETS-100 Report. If a reporting organization has a covered contract entered both before and on or after December 1, 2003, it then must use both a VETS-100 and a VETS-100A Report.

If a reporting organization submits only one VETS-100A Report for a single location, check the Single Establishment box. If the reporting organization submits more than one form, only one form should be checked as Multiple Establishment-Headquarters. The remaining forms should be checked as either Multiple Establishment-Hiring Location or Multiple Establishment-State Consolidated. For state consolidated forms, the number of hiring locations included in that report should be entered in the space provided. For each form, only one box should be checked within this block.

COMPANY IDENTIFICATION INFORMATION:

Company Number Do not change the Company Number that is printed on the form. If there are any questions regarding your Company Number, please call the VETS-100 staff at (703) 461-2460 or e-mail HELPDESK@VETS100.COM.

Twelve Month Period Ending Enter the end date for the twelve month reporting period used as the basis for filing the VETS-100A Report. To determine this period, select a date in the current year between July 1 and August 31 that represents the end of a payroll period. The selected date will be the basis for reporting Number of Employees, as described below. The twelve-month period preceding that date will be your twelve-month period covered. This period is the basis for reporting New Hires, as described below. Any federal contractor or subcontractor who has written approval from the Equal Employment Opportunity Commission to use December 31 as the ending date for the EEO-1 Report may also use that date as the ending date for the payroll period selected for the VETS-100A Report.

Name and Address for Single Establishment Employers COMPLETE the identifying information under the Parent Company name and address section. LEAVE BLANK all of the identifying information for the Hiring Location.

Name and Address for Multi Establishment Employers **For parent company headquarters location**, COMPLETE the name and address for the parent company headquarters, LEAVE BLANK the name and address of the Hiring Location. **For hiring locations of a parent company**, COMPLETE the name and address for the Parent Company location, COMPLETE the name and address for the Hiring Location.

NAICS Code, DUNS Number, and Employer ID Number Single Establishment and Multi Establishment Employers must COMPLETE the Employer ID Number, NAICS Code, DUNS Number, if available, as described below.

NAICS Code Enter the six (6) digit NAICS Code applicable to the hiring location for which the report is filed. If there is not a separate NAICS Code for the hiring location, enter the NAICS Code for the parent company.

Dun and Bradstreet I.D. Number (DUNS) If the company or any of its establishments has a Dun and Bradstreet Identification Number, please enter the nine (9) digit number in the space provided. If there is a specific DUNS Number applicable to the hiring location for which the report is filed, enter that DUNS Number. Otherwise, enter the DUNS number for the parent company.

Employer I.D. Number (EIN) Enter the nine (9) digit number assigned by the I.R.S. to the contractor. If there is a specific EIN applicable to the hiring location for which the report is filed, enter that EIN. Otherwise, enter the EIN for the parent company.

INFORMATION ON EMPLOYEES

Counting Veterans. Some veterans will fall into more than one of the qualified covered veteran categories. For example, a veteran may be both a disabled veteran and an other protected veteran. In such cases the veteran must be counted in each category.

Number of Employees. Provide all data for regular full-time and part-time employees who were disabled veterans, other protected veterans, Armed Forces service medal veterans, or recently separated veterans employed as of the ending date of the selected payroll period. Do not include employees specifically excluded as indicated in 41 CFR 61-300.2(b)(2). Employees must be counted by qualified covered veteran status for each of the 10 occupational categories (Lines 1-10) in columns L, M, N, and O. Column P must count all employees, including qualified covered veterans, in each of the 10 occupational categories (Lines 1-10). Blank spaces will be considered zeros.

New Hires. Report the number of regular full-time and part-time employees who were hired, both veterans and non-veterans, as well as those who were hired by veteran category, and who were included in the payroll for the first time during the 12-month period preceding the ending date of the selected payroll period. The total line in columns Q, R, S, T, and U (Line 11) is required. Enter all applicable numbers, including zeros.

Maximum/Minimum Employees. Report the maximum and minimum number of regular employees on board during the twelve-month period covered by this report, as indicated by 41 CFR 61-300.10(a)(3).

DEFINITIONS:

'Hiring location' means an establishment as defined at 41 CFR 61-300.2(b)(1).

'Job Categories' 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 and are defined in 41 CFR 61-300.2(b)(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.

'Other Protected 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. For those with Internet access, the information required to make this determination is available at <http://www.opm.gov/veterans/html/vgmedal2.htm>. A replica of that list is enclosed with the annual VETS-100A mailing. A copy of the list also may be obtained by sending an e-mail to OtherVets@vets100.com or by calling (703) 461-2460 and requesting that a copy be mailed to you.

'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 Fed. Reg. 1209) at <http://www.opm.gov/veterans/html/vgmedal2.asp>

'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,

'Covered Veteran' means a veteran as defined in the four veteran categories above.

A copy of 41 CFR part 61-300 can be found at http://www.dol.gov/dol/allcfr/vets/Title_41/Chapter_61.htm.

Public reporting burden for this collection is estimated to average 60 minutes per paper response, and 30 minutes per electronic response, including the time for reviewing instructions, searching existing data source, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Department of Labor, Office of Information Management, Room N-1301, 200 Constitution Avenue, NW, Washington D.C. 20210 or electronically transmitted to www.vets100.cudenver.edu. All completed VETS-100A Reports should be sent to the address indicated on the front of the form.