

- b. Revising the definition of “Responsible party;”

The changes to read as follows:

§ 553.3 How are the terms used in this regulation defined?

* * * * *

Annual CPI-U means the Annual Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All items, 1982–84 = 100, published by the U.S. Department of Labor, Bureau of Labor Statistics.

* * * * *

Current period means the year in which the Annual CPI-U was most recently published.

* * * * *

Previous period means the year in which the previous limit of liability was established, or last adjusted by statute or regulation, whichever is later.

Responsible party has the meaning in 33 U.S.C. 2701(32)(C), (E) and (F). This definition includes, as applicable, lessees, permittees, right-of-use and easement holders, and pipeline owners and operators. The owner of operating rights in a lease is a responsible party with respect to facilities that serve or served an area and depth in which it holds operating rights, but not with respect to any facility that only serves parts of the lease to which it does not hold operating rights.

* * * * *

- 4. Add subpart G to part 553 to read as follows:

Subpart G—Limit of Liability for Offshore Facilities

Sec.

553.700 What is the scope of this subpart?

553.701 To which entities does this subpart apply?

553.702 What limit of liability applies to my offshore facility?

553.703 What is the procedure for calculating the limit of liability adjustment for inflation?

553.704 How will BOEM publish the offshore facility limit of liability adjustment?

Subpart G—Limit of Liability for Offshore Facilities

§ 553.700 What is the scope of this subpart?

This subpart sets forth the limit of liability for damages for offshore facilities under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701 *et seq.*) (OPA), as adjusted, under section 1004(d) of OPA (33 U.S.C. 2704(d)). This subpart also sets forth the method for adjusting the limit of liability for damages for offshore facilities for inflation, by regulation, under section 1004(d) of OPA (33 U.S.C. 2704(d)).

§ 553.701 To which entities does this subpart apply?

This subpart applies to you if you are a responsible party for an offshore facility, other than a deepwater port under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), but including an offshore pipeline, or an abandoned offshore facility, including any abandoned offshore pipeline.

§ 553.702 What limit of liability applies to my offshore facility?

Except as provided in 33 U.S.C. 2704(c), the limit of OPA liability for a responsible party for any offshore facility, including any offshore pipeline, is the total of all removal costs plus \$133.65 million for damages with respect to each incident.

§ 553.703 What is the procedure for calculating the limit of liability adjustment for inflation?

The procedure for calculating limit of liability adjustments for inflation is as follows:

(a) *Formula for calculating a cumulative percent change in the Annual CPI-U.* BOEM calculates the cumulative percent change in the Annual CPI-U from the year the limit of liability was established by statute, or last adjusted by regulation, whichever is later (*i.e.*, the Previous Period), to the year in which the Annual CPI-U is most recently published (*i.e.*, the Current Period), using the following formula: Percent change in the Annual CPI-U = [(Annual CPI-U for Current Period – Annual CPI-U for Previous Period) ÷ Annual CPI-U for Previous Period] × 100. This cumulative percent change value is rounded to one decimal place.

(b) *Significance threshold.* (1) A cumulative increase in the Annual CPI-U equal to three percent or more constitutes a significant increase in the Consumer Price Index within the meaning of 33 U.S.C. 2704(d)(4).

(2) Not later than every three years from the year the limit of liability was last adjusted for inflation, BOEM will evaluate whether the cumulative percent change in the Annual CPI-U since that year has reached a significance threshold of three percent or greater.

(3) For any three-year period evaluated under paragraph (b)(2) of this section in which the cumulative percent increase in the Annual CPI-U is less than three percent, BOEM will publish a notice of no inflation adjustment to the offshore facility limit of liability for damages in the **Federal Register**.

(4) Once the three-percent threshold is reached, by final rule BOEM will

increase the offshore facility limit of liability for damages in § 553.702 by an amount equal to the cumulative percent change in the Annual CPI-U from the year the limit was established by statute, or last adjusted by regulation, whichever is later.

(5) Nothing in this paragraph (b) will prevent BOEM, in BOEM's sole discretion, from adjusting the offshore facility limit of liability for damages for inflation by regulation issued more frequently than every three years.

(c) *Formula for calculating inflation adjustments.* BOEM calculates adjustments to the offshore facility limit of liability in § 553.702 for inflation using the following formula:

New limit of liability = Previous limit of liability + (Previous limit of liability × the decimal equivalent of the percent change in the Annual CPI-U calculated under paragraph (a) of this section), then rounded to the closest \$100

§ 553.704 How will BOEM publish the offshore facility limit of liability adjustment?

BOEM will publish CPI adjustments to the offshore facility limit of liability in § 553.702 through the publication of final rules in the **Federal Register**.

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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: Notice of proposed rulemaking.

SUMMARY: The Veterans' Employment and Training Service (VETS) is publishing this Notice of Proposed Rulemaking (NPRM) to propose revisions to the regulations implementing the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (“VEVRAA”). 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 the Act, and the total number of those employees who were hired during the period covered by the report. The NPRM proposes rescinding the regulations which prescribe the

reporting requirements applicable to Government contracts and subcontracts entered into before December 1, 2003, because VETS believes the regulations have become obsolete.

In addition, the NPRM proposes revisions to the regulations which prescribe the reporting requirements applicable to Government contracts and subcontracts of \$100,000 or more entered into or modified on or after December 1, 2003. The NPRM proposes revising the annual report prescribed by the regulations to require contractors and subcontractors to report the specified information for protected veterans in the aggregate rather than for each of the categories of veterans protected under the statute. The NPRM also proposes renaming the annual report prescribed by the regulations the Federal Contractor Veterans' Employment Report VETS-4212 ("VETS-4212 Report"). Further, the NPRM proposes to revise 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. VETS proposes that contractors begin complying with the reporting requirements in the revised regulations one year after the effective date of the final rule.

DATES: To be assured of consideration, comments must be received on or before April 25, 2014.

ADDRESSES: You may submit comments concerning the NPRM, identified by RIN number 1293-AA20, by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Fax:** (202) 693-1304 (for comments of six pages or less).
- **Email:** Torrans.William@dol.gov. Include "RIN number 1293-AA20" in the subject line of the message.
- **Mail:** William Torrans, Office of National Programs (ONP), Veterans' Employment and Training Service, Room S-1316, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 693-4731.

Comments to OMB concerning information collection requirements should be directed to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Veterans' Employment Training Service, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-6929/Fax: 202-395-6881 (these are not toll-free numbers), email: OIRA_submission@omb.eop.gov.

Please submit your comments by only one method. Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning VETS at (202) 693-4731 or TTY (202) 693-4760. (These are not toll-free numbers).

Instructions: The Department's policy is that all comments received, including any personal information provided, are considered part of the public record and available for public inspection online at <http://www.regulations.gov> and in the Department's public docket. Those submitting comments should not include any personally identifying information (such as your name, address, etc.) they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via www.regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via www.regulations.gov are immediately available for public inspection.

Docket: For access to the docket to read background documents or comments received go to the Federal eRulemaking portal at <http://www.regulations.gov>. The docket materials will be available for public inspection during normal business hours at Room S-1316, 200 Constitution Avenue NW., Washington, DC 20210, or electronically at <http://www.regulations.gov>. Upon request, individuals who require assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this NPRM will be made available in the following formats: large print, electronic file on computer disc, and audiotape. To schedule an appointment to review the comments and/or to obtain this NPRM in an alternate format, please contact VETS at the telephone numbers or address listed above.

FOR FURTHER INFORMATION CONTACT:

General information and media inquiries: Contact William Torrans, Office of National Programs, Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-1316, Washington, DC 20210, Torrans.William@dol.gov, (202) 693-4731 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, ("VEVRAA"), 38 U.S.C. 4212(d), obligates Federal contractors¹ that are subject to the statute's affirmative action provisions in 38 U.S.C. 4212(a) to report annually to the Secretary of Labor on their employees and new hires who belong to the specific categories of veterans protected under the statute. VETS has promulgated two sets of regulations to implement statutory reporting requirements under VEVRAA before and after amendment in 2002 by the Jobs for Veterans Act, ("JVA") (Pub. L. 107-288).

Prior to the JVA amendments, VEVRAA required contractors to annually report the number of employees in their workforces and new hires during the reporting period, by job category and hiring location, 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 by the four categories of veterans protected under VEVRAA pre-JVA and by the nine occupational categories used in the EEO-1 Standard Employer Information Report EEO-1 Report ("EEO-1 Report") prior to its revision in 2007.

The JVA amendments increased from \$25,000 to \$100,000, the amount of the contract that triggers the reporting requirement, 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 and new hires during the reporting period, by job category and hiring location, who are "qualified covered veterans." 38 U.S.C. 4212(d)(1). The statute defines "covered veteran" as any of the following veterans: disabled veterans, Armed Forces service medal veterans, veterans who served on active duty during a war or in a campaign or expedition for

¹ Unless otherwise specified, the term "contractors" refers to Federal contractors and subcontractors.

which a campaign badge has been authorized, and recently separated veterans. 38 U.S.C. 4212(a)(3). The JVA reporting requirements are implemented by the regulations in part 61–300 and are applicable to Government contracts of \$100,000 or more entered into on or after December 1, 2003. In addition, 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. The VETS–100A Report was modeled after the VETS–100 Report, and as a result, contractors are asked to provide data on veterans' employment by the ten 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.

The instructions for completing the 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. So, for example, an employee who is a disabled veteran and an Armed Forces service medal veteran would be counted in each category. 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 they 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 calculate 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 would be preferable for contractors to report the total number of protected veterans employed and hired by Federal contractors in the annual reports required under VEVRAA, rather than the total number of veterans protected under each category. Accordingly, VETS is proposing to revise the manner in which contractors report on their employment and hiring of employees who belong 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 would 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 requires VETS to publicly disclose on the agency's Web site 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 and in many instances the category might include only one employee. In their current format, the reports disclose the number of employees who are disabled veterans and in some cases it would be possible for others to discern their identity. For instance, where the VETS–100A Report shows for the hiring location a total of two employees in the Executive/Senior Level Officials and Managers category and one disabled veteran, the identity of the disabled veteran could be easily discovered. While some employees may have no problem with co-workers knowing they are veterans, they may prefer to keep private their status as disabled veterans.

In addition, VETS believes its annual report to Congress regarding the implementation of the reporting requirements under VEVRAA would be more meaningful if VETS could provide data regarding the total number of protected veterans employed and newly hired by Federal contractors. VETS currently includes in the annual report to Congress required under 38 U.S.C. 4107 data showing the number of veterans in each of the categories found on the VETS–100 and VETS–100A Reports. If data on the total number of protected veterans employed and newly hired by Federal contractors were available, it would be feasible to include in the annual report cross-year comparisons of Federal contractors' employment and hiring of protected veterans. Information on the total number of protected veterans employed in Federal contractor workforces from year to year would show trends in their employment of protected veterans, and analyses of those trends could 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 Federal contractors employed or hired during the reporting period would 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). The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) administers and enforces the affirmative action requirements under VEVRAA. OFCCP also has promulgated two sets of implementing regulations: The regulations found in 41 CFR part 60–250 implementing VEVRAA prior to amendment by the JVA, and regulations found in 41 CFR part 60–300 implementing the JVA amendments.

OFCCP's existing regulations require contractors with 50 or more employees and contracts that meet the dollar thresholds specified in the regulations (\$50,000 or more under the part 60–250 regulations and \$100,000 or more under the part 60–300 regulations) to develop and maintain affirmative action programs. As part of their affirmative action programs, contractors are required to undertake appropriate outreach and recruitment activities that are designed to effectively recruit protected veterans. 41 CFR 60–250.44(f) and (g) and 60–300.44(f) and (g). In addition, OFCCP's regulations require contractors to develop and implement audit and reporting systems to measure the effectiveness of their affirmative action programs and the degree to which their objectives have been attained. 41 CFR 60–250.44(h) and 60–300.44(h). VETS believes that it would be most appropriate 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 to attract protected veterans.

VETS recognizes that the proposed changes to the manner in which contractors report on their employment of protected veterans may require contractors to change their recordkeeping systems. Accordingly, to ensure that contractors have sufficient time to make any needed adjustments, VETS proposes that contractors begin complying with the reporting requirements in the revised part 61–300 regulations one year after the effective date of the final rule.

Section-by-Section Analysis

41 CFR Part 61–250

VETS is proposing to rescind as obsolete the regulations in part 61–250. As previously mentioned, 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 and have a value of \$100,000 or more. VETS does not believe any 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.² Thus, unless special excepted contracts exist, contracts covered exclusively by the part 61–250 regulations have already expired or will have expired by the time the final rule rescinding the regulations becomes effective. Any existing contract that was 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) to revise regulations implementing the affirmative action provisions of VEVRAA. The final rule rescinds 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 over \$100,000 would be covered under OFCCP's part 60–300 regulations). (78 FR 58619)

41 CFR Part 61–300

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

This section outlines the purpose and scope of the regulations. The proposed rule would make revisions to paragraph (a) that are necessitated by the proposed rescission of the part 61–250 regulations. The references to the part 61–250 regulations and the Jobs for Veterans Act have been deleted from

proposed paragraph (a) because the proposal eliminates the need to distinguish the coverage of the part 61–300 regulations from that of the part 61–250 regulations. In addition, proposed paragraph (a) briefly describes the reporting obligations under VEVRAA and states that contractors and subcontractors must provide the required information on veterans' employment by filing the VETS–4212 Report in accordance with the requirements of § 61–300.11.

The proposed rule would carry forward paragraph (b) of the existing regulation without change. As discussed below in the Section-by-Section Analysis of § 61–300.2, the proposed rule would add a definition for the term “protected veteran.” Accordingly, the term “protected veteran” has been substituted for “veteran” in proposed 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. The proposed rule would restructure and renumber the definitions so that they are in alphabetical order and easier to find. In addition, the proposed rule would eliminate 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” would be added under the proposed rule.

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 “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 58620) 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 proposed paragraph (b)(1) of § 61–300.2.

Proposed paragraph (b)(4) sets forth a definition for “electronic filing.” Under the proposed rule, “electronic filing” means using the VETS web-based filing system to file the VETS–4212 Report. The proposed rule would also define “electronic filing” to include transmitting or delivering the VETS–4212 Report as an electronic data file.

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 define it to mean a veteran belonging to any of the four categories specified in the statute. To maintain consistency, VETS proposes to replace the term “covered veteran” with “protected veteran.” Thus, proposed 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.

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, by job category and hiring location, the total number of employees and new hires during the reporting period who are “disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.” Proposed paragraphs (a)(1) and (2) of the clause require contractors to provide the total number of employees and new hires “who are protected veterans.” In addition, proposed paragraph (a)(4) of the clause sets forth the definition of “protected veteran” found in proposed § 61–300–2.

The proposed rule would revise paragraphs (b), (c), and (e) of the reporting requirements clause to refer to the “VETS–4212 Report.” Further, proposed paragraph (e) does not include

² 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.

the term “covered incumbent veterans” because the proposed rule would adopt the term “protected veteran.” No other changes are being proposed to the reporting requirements clause in § 61–300.10.

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

Existing § 61–300.11 addresses the VETS–100A Report and when and how contractors should file the reports. The proposed rule would substantially revise this section. The title to the section in the proposed rule would be revised to refer to filing the VETS–4212 Report. References to the report “form” have been removed from proposed § 61–300.11 because the proposed rule, as does the existing regulations, would allow the VETS–4212 Report to be filed electronically as well as in paper format.

Proposed 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. Under the proposed rule, the VETS–4212 Report would not be included in the regulations nor published in an appendix. Thus, proposed paragraph (a) of § 61–300.11 provides a description of the information requested in the VETS–4212 Report. Removing the VETS–4212 Report from the regulations would make it easier for the agency to make future revisions to the annual report that do not require notice and comment rulemaking. The public still would have an opportunity to comment on subsequent changes to the annual report under the Paperwork Reduction Act clearance procedures. Proposed paragraph (a) of this section further states that contractors must complete a VETS–4212 Report for each hiring location in the manner described in the instructions published on the VETS Web site and included in paper versions of the VETS–4212 Report.

The proposed rule would revise paragraph (b) of this section to refer to the VETS–4212 Report. Proposed paragraph (b) continues to provide that VETS–4212 Reports must be filed by September 30.

Proposed paragraph (c) of this section sets forth the methods for filing the VETS–4212 Report. Proposed paragraph (c)(1) states that electronic filing via the VETS web-based filing system is the preferred method for filing VETS–4212 Reports. Proposed 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 proposed paragraph (c)(1)(ii). Under existing § 61–300.11(b) contractors with 10 or more hiring locations that submit computer-generated reports to comply with the reporting obligation are required to submit the reports in an electronic data file. Similarly, proposed paragraph (c)(1)(ii) requires contractors with 10 or more hiring locations to submit their VETS–4212 Reports in the form of an electronic data file and provides that the electronic data file may be submitted through the web-based filing system, transmitted electronically as an email 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. The proposed rule also would encourage contractors with fewer than 10 hiring locations to submit VETS–4212 Reports in the form of an electronic data file. Proposed paragraph (c)(2) addresses “alternative filing methods” and provides that the VETS–4212 Report may also be filed in paper format. Proposed paragraph (c)(2) explains that paper versions of the VETS–4212 Report may be downloaded from the VETS Web site or requested by writing to VETS at the address stated in the proposed regulation.

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 required by the regulations. The proposed rule would carry forward this section without change, except that the word “filed” has been substituted for “submitted” and proposed § 61–300.20 refers to the VETS–4212 Report.

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

The proposed rule would make 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. The proposed 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 proposed 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.

Based on the analysis below, in which VETS estimates the impact of complying with the requirements contained in this proposed rule on small entities that are Federal contractors, VETS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

In making this certification, VETS determined the approximate number of regulated small entities that will be impacted by the proposed rule. Based on information in the VETS-100 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 proposed 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.³ Using this size standard, VETS assumes that 8,000 of the Federal contractors and subcontractors that will be subject to the proposed rule are small entities.⁴ VETS seeks comment on this assumption. While the RFA does not specifically define "substantial number," VETS concludes that the proposed rule may impact a substantial number of small entities.

However, VETS has determined that the impact on small entities affected by the proposed rule will not be significant. The objective of the proposal 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 Action section, the proposal 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 and subcontractors may need to adjust their human resources (HR) information systems to provide the information requested in the proposed VETS-4212 Report and therefore estimates one-time implementation costs would total \$5.1 million. VETS estimates that Federal

contractors and subcontractors subject to the VETS-4212 reporting requirement would have recurring annual costs of about \$2.7 million. Thus, VETS estimates that the first-year compliance costs for the proposed rule 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 proposed rule will not have a significant economic impact on a substantial number of small entities. VETS invites comment from members of the public who believe there will be a significant economic impact on small entities that are Federal contractors.

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 and 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 must use to annually report on their veterans' employment—are currently approved under OMB Control No. 1293-0005.

The proposed rule contains information collections that are subject to review and approval by OMB under the PRA. Proposed § 61-300.11 requires contractors to use a simplified collection instrument that would be 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 NPRM does not include the collection instrument in the regulations so that any future changes could be made without notice and comment rulemaking under the Administrative Procedure Act. However, the public would still be able to comment on any proposed changes to the collection instrument under the PRA clearance procedures.

The recordkeeping and reporting burden for the collection of information in proposed § 61-300.11 is imposed through the preparation and submission of the proposed 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 proposed 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 Web site, <http://www.reginfo.gov/public/do/PRAMain>, on the day following publication of this NPRM, or by contacting William Torrains, at the addresses or telephone number provided at the beginning of the preamble.

VETS encourages comments from the public on the continued collections of information for the VETS-100A Report as well as those in the proposed rule, including comments about the specific format and content of the VETS-4212 Report that VETS is proposing that contractors use to annually report information on their employment of protected veterans. Written comments and suggestions from the public concerning the proposed information collection instrument, the VETS-4212 Report, may also be submitted to OMB at: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Veterans' Training and Employment Service, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-6929/Fax: 202-395-6881 (these are not toll-free numbers), email: OIRA_submission@omb.eop.gov. OMB requests that comments be received within 30 days of the publication of the proposed rule to ensure their consideration. Please note that comments submitted to OMB are a matter of public record. To help ensure proper consideration, comments to the OMB should mention OMB Control Number 1293-0005. Comments may also be sent directly to VETS in the same way as all other comments (i.e., using any of the methods identified shown in the **ADDRESSES** section in the beginning of the preamble).

³ SBA Office of Advocacy *Frequently Asked Questions about Small Business*, September 2012, available at <http://www.sba.gov/advocacy/7495/29581>.

⁴ 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.

The Department and OMB are particularly interested in comments that:

(1) Evaluate whether the proposed information collection is necessary to the proper performance of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the projected burden of the proposed collection of information, including the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize 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).

Contractors and other members of the public are encouraged to provide data where estimates are provided or assumptions are described. This data could help VETS refine estimates of the amount of time needed to fulfill the reporting requirements. The Department 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 proposed rule is not effective until the final regulations become effective and VETS publishes a **Federal Register** Notice announcing OMB's approval of the proposed new information collection instrument.

Paperwork Burden and Compliance Costs

Estimate of the Burden for the Collection of Information

The paperwork burden that would result from the proposed rule is made up 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 proposed revisions to § 61–300.11 and the proposed 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 annually file the proposed VETS–4212 Report.

The currently approved Information Collection Request for the VETS–100 and VETS–100A Report contains 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 proposed VETS–4212 Report are based on data showing the actual number of respondents and VETS–100 and VETS–100A Reports filed in 2012.

One-Time Implementation Burden and Costs

In 2012, approximately 14,700 contractors filed the VETS–100A Report, while nearly 6,000 filed the VETS–100 Report.⁵ Accordingly, based on the number of contractors that filed annual reports in 2012, VETS estimates that 15,000 contractors would file the proposed VETS–4212 Report.

VETS assumes that contractors subject to the VETS–4212 reporting requirement would make adjustments to their human resources (HR) information systems to provide the data requested in the proposed 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 filed their annual reports electronically, and therefore VETS estimates that 98% or 14,700 contractors would electronically file the proposed VETS–4212 Report. VETS believes it will take a Software Developer about eight 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 × 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 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 proposed 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. × 14,700 contractors = 117,600 implementation work hours
- Hours for HR specialist: 2 Hrs. × 300 contractors = 600 implementation work hours
- Salary for Software Designer: \$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 proposed rule would require contractors with a contract of \$100,000 or more to file the proposed VETS–4212 Report for each of their hiring locations. Table 1 shows 14,700 contractors submitted approximately 315,000 VETS–100A Reports in 2012.⁶ Based on the number of VETS–100A Reports filed in 2012, VETS estimates contractors filing the proposed VETS–4212 Report on average will have 21 hiring locations. Consequently, VETS estimates that contractors subject to the VETS–4212 reporting requirement would file approximately 315,000 reports.

⁵ The VETS–100 Reporting System shows 5,960 contractors filed VETS–100 Reports, and 14,714 contractors filed VETS–100A Reports in 2012.

These numbers have been rounded for purposes of this analysis.

⁶ The VETS–100 Reporting system shows contractors submitted 75,123 VETS–100 Reports

and 314,825 VETS–100A Reports in 2012. For purposes of this analysis the numbers have been rounded.

TABLE 1—VETS–100 AND VETS–100A REPORTS FILED IN 2012

Submission from Federal contractors	VETS–100	VETS–100A	Totals
Total Respondents	6,000	14,700
Total Annual Responses	75,000	315,000	390,000
• Electronic Response	73,500	308,700	382,200
• Paper Response	1,500	6,300	7,800

The proposed 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 proposed VETS–4212 Report that would replace the currently approved VETS–100A 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 proposed VETS–

4212 Report and 40 minutes (a reduction of 20 minutes per report) to complete a paper version of the proposed 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 proposed VETS–4212 Report would total \$2,712,843.

In addition, VETS recognizes that the 300 contractors that file paper versions

of the proposed 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 ($300 \times 21 \times \$.08$). In addition, VETS estimates an average mailing cost of \$1.92 for each submission. The estimated cost for mailing would be \$576 ($300 \times \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 PROPOSED 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 × 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 NPRM is expected to reduce burden hours from the currently approved 199,350 to 107,100 total burden hours (a decrease of 46 per cent). The reduction in burden hours comes from two sources: the

proposed 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 proposed VETS–

4212 Report. Over a ten-year period, the proposed 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 SAVINGS

Submission from Federal contractors	Currently approved ICR for OMB No. 1293–0005	VETS–4212 estimate	Estimated burden hours and cost savings
Burden Hours:			
• 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
Burden Costs:			
• Annual Salary Equivalent Burden Cost (\$25.33) ⁷	\$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	\$5,049,535	\$2,712,843	\$2,336,692

TABLE 3—ESTIMATED BURDEN HOURS SAVINGS—Continued

Submission from Federal contractors	Currently approved ICR for OMB No. 1293-0005	VETS-4212 estimate	Estimated burden hours and cost savings
Ten-Year Salary Equivalent Cost Savings	\$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.

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 proposed 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 that requires a tribal summary impact statement. The proposed 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 proposed rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

Executive Order 13045 (Protection of Children)

This proposed rule would have no environmental health risk or safety risk that may disproportionately affect children.

Environmental Impact Assessment

A review of this proposed 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 1500 *et seq.*; and DOL NEPA procedures, 29 CFR part 11, indicates the proposed 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 proposed 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 proposed 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 proposed rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The proposed 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 in 41 CFR Parts 61-250 and 61-300

Government contracts, reporting and recordkeeping requirements, Veterans.

Signed at Washington, DC, this 11th day of February 2014.

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, VETS proposes to amend Title 41 of the Code of Federal Regulations, Chapter 61 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 are the purpose and scope of this part?

61-300.2 What definitions apply to this part?

⁷ The Supporting Statement for 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 proposed 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.

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 are 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 annually report 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 60–300.42 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' Web site 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 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.

(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 Web site and included in the paper version of the VETS–4212 Report.

(b) 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 contract or subcontract.

(c)(1) *Electronic filing.* The preferred method for filing VETS–4212 Reports is electronically through the VETS web-based filing system. Instructions for e-filing the VETS–4212 Report are found on the VETS Web site at: <http://www.dol.gov/vets/vets100filing.htm>.

(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 that complies with current Department of Labor specifications for the format of these records, and any other specifications established by the Department for the applicable reporting year. Contractors and subcontractors with fewer than 10 hiring locations are strongly encouraged to submit their VETS–4212 Reports in the form of an electronic data file, but are not required to do so. 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 email

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) The VETS-4212 Report may also be filed in paper format. Contractors and subcontractors may download a paper version of the VETS-4212 Report from the VETS Web site 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 email 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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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket Number MARAD-2014-0011]

Proposed Policy: "Other Relevant Criteria" for Consideration When Evaluating the Economic Soundness of Applications Under the Title XI Maritime Guaranteed Loan Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Proposed policy.

SUMMARY: This document provides interested parties with the opportunity to comment on the proposed policy regarding the factors the Maritime Administration ("MARAD") will consider in its review of applications for the Title XI Maritime Guaranteed Loan Program ("Title XI"). MARAD's proposed policy is intended to further promote the modernization of the U.S. Merchant Marine and U.S. shipyards through the construction or reconstruction (to include repowering) of vessels.

DATES: Comments must be received on or before March 26, 2014. MARAD will consider comments filed after this date to the maximum extent practicable.

ADDRESSES: Comments identified by Department of Transportation ("DOT") Docket Number MARAD-2014-0011 may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search MARAD-2014-0011 and follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope.
- *Hand Delivery/Courier:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

Note: If you fax, mail or hand deliver your input we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your inputs by mail or hand delivery, submit them in an

unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Special Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments and additional information on the process, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Owen Doherty, Acting Administrator for Business and Finance Development, Maritime Administration, Telephone: 202-366-1883, Email: owen.doherty@dot.gov. If you have questions on viewing the Docket, call Barbara Hairston, Acting Program Manager, Docket Operations, telephone: 202-366-9826. Additional background information may be found at www.MARAD.dot.gov.

SUPPLEMENTARY INFORMATION: The primary purpose of Title XI is to promote the growth and modernization of the U.S. Merchant Marine and U.S. shipyards. Title XI promotes such growth and modernization by providing loan guarantees to sustain vessel construction and repair capacity, create jobs, support development and utilization of emerging technologies, as well as encouraging private investment in the maritime industry. The legislative history of Title XI reflects the evolution of the program over its 78 year history to respond to these contemporary issues and national priorities.¹ Additions over time have included job creation, new vessel safety measures, small shipyard growth, environmental technologies, increased efficiency in the maritime industry through modernization and national defense.

Under 46 U.S.C. 53702(a), Title XI is a discretionary program. Chapter 537 of Title 46 of the United States Code and part 298 of title 46 of the Code of Federal Regulations (CFR) detail the

¹ For example, the Ship Financing Act of 1972 demonstrated Congress' focus on new environmental technologies, among other things, by making pollution treatment, abatement, or control vessels eligible for Title XI guarantees. See Public Law 92-507, section 1, 86 Stat. 909, as amended, now codified at 46 U.S.C. 53701(14)(K). In the 1990s, Congress amended Title XI to redevelop the U.S. maritime industrial base and rebuild the nation's shipyards. See National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, section 1352, 107 Stat. 1812. In recent years, Title XI's focus on national security has grown with priorities focused on national defense tank vessels and naval auxiliary vessels. See National Defense Authorization Act for Fiscal Year 2004, Public Law 108-36, section 3544, 117 Stat. 1392, as amended, now codified at 46 U.S.C. 53706(c)(1).