

**DEPARTMENT OF LABOR****Office of Federal Contract Compliance Programs****41 CFR Part 60-250**

RIN 1215-AA62

**Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era**

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

**SUMMARY:** This final rule incorporates a statutory change in the definition of "veteran of the Vietnam era" as that definition relates to Federal contractors' and subcontractors' affirmative action obligations with respect to such veterans, by eliminating the coverage cut-off date of December 31, 1994. This rule also incorporates a statutory change in the mandatory job listing provision by eliminating the \$25,000 per year salary ceiling and otherwise broadening the scope of job openings that must be listed with the state employment service by Federal contractors and subcontractors.

**EFFECTIVE DATE:** This regulation is effective January 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Annie A. Blackwell, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, Room C-3325, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219-9430 (voice) and 1-800-326-2577 (TDD). Copies of this final rule are available in the following formats: electronic file on computer disk, large print and audio tape. They may be obtained at the above office.

**SUPPLEMENTARY INFORMATION:****A. Veteran of the Vietnam Era**

Before it was amended in 1992, the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act at 38 U.S.C. 4212 (Section 4212 or VEVRAA) contained a sunset provision in the definition of "veteran of the Vietnam era" that stipulated that no veteran could be considered a "veteran of the Vietnam era" for the purposes of the law after December 31, 1994. This sunset provision is codified in our current regulatory definition of "veteran of the Vietnam era" found at 41 CFR 60-250.2.

Section 502 of the Veterans' Benefits Act of 1992 (Pub. L. 102-568, 106 Stat. 4320, 4340 (1992)), repealed the

December 31, 1994, sunset date. The regulation published today amends OFCCP's definition of "veteran of the Vietnam era" to make it consistent with the 1992 amendment.

**B. Mandatory Listing**

Prior to amendments in 1994, Section 4212 required that Federal contractors and subcontractors covered by the Act must list "all \* \* \* suitable employment openings" with the appropriate local employment service office. The Act required those offices, in turn, to give priority referrals to veterans for such openings. This obligation to list job openings with the local employment service office is often referred to as the "mandatory listing" requirement. Although Section 4212 did not define the term "all \* \* \* suitable employment openings," this term was defined in OFCCP's regulations at 41 CFR 60-250.4(h).

Section 702(a) of the Veterans' Benefits Improvements Act of 1994 (Pub. L. 103-446, 108 Stat. 4645, 4674 (1994)) expanded the scope of employment openings to be listed with the state employment service office by dropping the word "suitable" from the statutory phrase "all \* \* \* suitable employment openings," broadly defining the term "all \* \* \* employment openings," and limiting the exceptions to the mandatory listing requirement. The amendment eliminated the salary ceiling of \$25,000 per year which was in the OFCCP regulations, and now requires the listing of all employment openings except executive and top management positions, positions that will be filled from within the contractor's organization, and positions lasting three days or less. The regulation published today amends the regulations prescribing the employment openings to be listed with the state employment service to make them consistent with the 1994 amendment.

The statutory amendments to the mandatory listing requirement do not include all of the exceptions to mandatory listing permitted by OFCCP in its current implementing regulations. Today's final rule incorporates only those exceptions to mandatory listing that are contained in the 1994 amendment.

One exception to mandatory listing expressly contained in the current regulations, but not expressly stated in the 1994 amendment, is an exception for openings in an educational institution which are restricted to students of that institution. In OFCCP's view, such openings fall within the exception to mandatory listing for

openings for positions that will be filled from within the contractor's organization.

**Waiver of Proposed Rulemaking**

This rule is a nondiscretionary, ministerial action which merely incorporates, without change, two statutory amendments into pre-existing regulations. Publication in proposed form serves no useful purpose, and therefore is unnecessary within the meaning of the Administrative Procedure Act (5 U.S.C. 553(b)(B)). We, therefore, find good cause to waive notice of proposed rulemaking.

**Effective Date**

Pursuant to 5 U.S.C. 553(d) the undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that this rule is a nondiscretionary, ministerial action which merely incorporates, without change, a statutory amendment into preexisting regulations. Accordingly, this regulation will be effective upon publication.

**Executive Order 12866**

This final rule is not a significant regulatory action within the meaning of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget.

**Paperwork Reduction Act**

Because this rule does not contain information collection requirements, it is not subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act.

**List of Subjects in 41 CFR Part 60-250**

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Veterans.

Signed at Washington, DC, on this 29th day of December 1994.

**Robert B. Reich,**

*Secretary of Labor.*

**Bernard E. Anderson,**

*Assistant Secretary for Employment Standards.*

**Shirley J. Wilcher,**

*Deputy Assistant Secretary, Office of Federal Contract Compliance Programs.*

**PART 60-250—[AMENDED]**

For the reasons set forth above, 41 CFR part 60-250 is amended as set forth below.

1. The authority citation for part 60-250 is revised to read as follows:

**Authority:** 38 U.S.C. 4211 and 4212; 29 U.S.C. 793; Executive Order 11758 (39 FR 2075, January 15, 1974); 3 CFR 1971-1975 Comp. p. 841); Pub. L. 102-568 and P.L. 103-446.

2. Section 60-250.2 is amended by revising the definition of "Veteran of the Vietnam era" to read as follows:

**§ 60-250.2 Definitions.**

\* \* \* \* \*

*Veteran of the Vietnam era* means a person who:

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge, or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

\* \* \* \* \*

3. Section 60-250.4 is amended by revising paragraphs (b) and (h) of the Affirmative Action clause to read as follows:

**§ 60-250.4 Affirmative action clause.**

\* \* \* \* \*

(a) \*

(b) The contractor agrees to list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local office of the State employment service system wherein the opening occurs.

\* \* \* \* \*

(h) As used in this clause: (1) "All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary

employment of more than three days' duration, and part-time employment.

(2) "Appropriate office of the state employment service system" means the local office of the Federal-state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) "Positions that will be filled from within the contractor's organization" means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

\* \* \* \* \*

[FR Doc. 95-209 Filed 1-4-95; 8:45 am]

BILLING CODE 4510-27-M