

DEPARTMENT OF LABOR**Veterans' Employment and Training Service**

RIN 1293-AA07

Annual Report From Federal Contractors**AGENCY:** Veterans' Employment and Training Service, Department of Labor.**ACTION:** Notice of guidance.

SUMMARY: The Veterans' Employment and Training Service (VETS) is providing guidance on methodologies for calculating the maximum and minimum number of employees for the Federal Contractor Veterans' Employment Report VETS-100.

EFFECTIVE DATE: This guidance is effective February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Norman Lance, Chief, Investigation and Compliance Division, VETS, at (202) 693-4731 or by e-mail at Lance-Norman@dol.gov. Individuals with hearing impairments may call (800) 670-7008 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 4212(d).

Background: The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (VEVRAA) contains affirmative action and reporting requirements for Federal contractors and subcontractors regarding several classes of protected veterans. One VEVRAA requirement is that covered Federal contractors and subcontractors file an annual Federal Contractor Veterans' Employment Report VETS-100 (VETS-100 Report). Prior to the enactment of the Veterans Employment Opportunities Act of 1998 (VEOA), the VETS-100 Report required contractors to report, for each hiring location, the number of protected veterans by job category, and number of new hires, including protected veterans hired during the reporting period covered by the report. VEOA amended the VEVRAA's reporting requirements by adding the requirement that the maximum number and minimum number of persons employed during the reporting period be included in the VETS-100 Report.

VETS published a Notice of Proposed Rulemaking (65 FR 59684, October 5, 2000) to implement the provisions of VEOA, including the requirement for reporting the maximum and minimum number of employees. The Notice of Proposed Rulemaking did not contain guidance on how covered contractors were to determine the maximum and minimum number of employees. A

commenter asserted that the proposed rule was unclear about how the maximum and minimum number of employees had to be determined, and asked for clarification. To respond to the concerns of the commenter, VETS added clarifying language to the final rule (66 FR 51998, October 11, 2001) explaining how the maximum and minimum number of employees had to be determined.

After publication of the final rule, it was brought to the attention of VETS that the revised language might have inadvertently increased the record keeping burden on some contractors. To permit contractors flexibility in how they determine the maximum and minimum number of employees, VETS published an Interim Final Rule (66 FR 65452, December 19, 2001) that withdrew the language specifying how contractors were to determine the maximum and minimum number of employees. The basic statutory requirement to report the maximum and minimum number of employees remained.

In the preamble to the interim final rule, VETS requested comments about the methods covered contractors and subcontractors proposed to use to calculate the maximum and minimum number of employees. VETS intended to consider these comments in the development of guidance or regulations about the issue. VETS was concerned that the request for comments solely within the preamble to the interim final rule might be overlooked. Consequently, VETS published a Notice on March 8, 2002 (67 FR 10804) reiterating the request for comments about how to determine the maximum and minimum number of employees.

Development of Guidance: VETS received four comments: two from human resource consultants, one from an association representing human resource professionals, and one from an association that represents employers. Commenters described the practical difficulties with creating a "one size fits all" procedure for reporting the maximum and minimum number of employees. For example, some contractors utilize payroll records to track the number of employees while others use headcounts. Some contractors maintain records by organizational unit while others maintain records by physical location. Some contractors count everyone on payroll as "active employees" while others count as employees only those actually paid in a particular period, and do not count employees on temporary leaves of absence or on other unpaid leave status. Two commenters

recommended methodologies for computing the maximum and minimum number of employees. Additionally, one commenter requested that VETS eliminate the maximum and minimum number of employees reporting requirement. The final commenter asked how to determine the maximum and minimum number when an employer exercises the option to consolidate hiring locations by state.

VETS is unable to eliminate the reporting requirement for the maximum and minimum number of employees because this reporting requirement is mandated by VEOA. As discussed below, contractors determining the maximum and minimum number of employees when exercising the option to consolidate hiring locations by state may calculate their maximum and minimum number of employees by any reasonable method of computation. We appreciate receiving the thoughtful comments. We have considered all concerns and recommendations made by the commenters in developing VETS policy.

Guidance: VETS understands that contractors and subcontractors have developed many different methods to count the maximum and minimum number of employees in their workforces during the VETS-100 reporting period. Consequently, VETS has decided to permit contractors to utilize any reasonable method for contractors to compute the maximum and minimum number of employees in their workforces. Consideration of whether a procedure is reasonable will include how the employer normally maintains records about its employees and whether the employer has been consistent in its methodology for counting employees across reporting cycles.

The following are examples of methodologies identified in the public comments that VETS determined would be reasonable approaches for computing the maximum and minimum number of employees for the VETS-100 Report. These examples are provided as illustrations only and other reasonable methods are considered acceptable. Further, the examples assume that they are based on the current record keeping practice of the employer and that the employer consistently uses the same method from year to year.

Methodology Based on Organizational Structure

* The number of active employees are identified each month by job categories within an establishment and then totaled. At the end of the reporting period, the largest number recorded is