

[Federal Register: June 22, 2005 (Volume 70, Number 119)]
[Rules and Regulations]
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[DOCID:fr22jn05-28]

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Part III

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Parts 60-1, 60-250 and 60-741

Affirmative Action and Nondiscrimination Obligations of Contractors and
Subcontractors; Compliance Evaluations in All OFCCP Programs; Final
Rule

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DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60-1, 60-250 and 60-741

RIN 1215-AB28, 1215-AB27, 1215-AB23

Affirmative Action and Nondiscrimination Obligations of
Contractors and Subcontractors; Compliance Evaluations in All OFCCP

Programs

AGENCY: Office of Federal Contract Compliance Programs, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), to give the Office of Federal Contract Compliance Programs (OFCCP) authority to use additional investigative procedures to determine a contractor's compliance with Section 503. In this regard, this rule adopts the ``compliance evaluation approach'' that is incorporated in the regulations implementing Executive Order 11246, as amended, and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA), respectively.

In addition, this final rule revises the compliance check procedure found in the current Executive Order 11246 and VEVRAA implementing regulations. The compliance check is one of the four investigative procedures currently used by OFCCP to determine a contractor's compliance with Executive Order 11246 and the affirmative action provisions of VEVRAA. This final rule makes a few other minor and non-substantive revisions to the regulations in 41 CFR Parts 60-1, 60-250, and 60-741.

DATES: Effective Date: These regulations are effective: July 22, 2005.

FOR FURTHER INFORMATION CONTACT: Joseph J. DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP, Room C-3325, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693-0102 (voice), (202) 693-1337 (TTY). Copies of this rule, including copies in alternative formats, may be obtained by calling (202) 693-0102 (voice), or (202) 693-1337 (TTY). The alternate formats available are large print, electronic file on computer disk, and audiotape. The rule also is available on the Internet at <http://www.dol.gov/esa/ofcc>.

SUPPLEMENTARY INFORMATION:

Current Regulations and Rulemaking History

Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503 of the Act), requires parties holding a nonexempt Government contract or subcontract in excess of \$10,000 to take affirmative action to employ and advance in employment qualified individuals with disabilities. The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) administers Section 503 and has published implementing regulations at 41 CFR part 60-741, 61 FR 19336 (May 1, 1996).

The compliance review is used to evaluate contractor compliance under all the laws administered and enforced by OFCCP. The compliance review had been the primary method of evaluating compliance under Executive Order 11246 and the affirmative action provisions of VEVRAA until OFCCP, through amendments to both sets of regulations, introduced additional procedures for evaluating contractors' compliance with their nondiscrimination and affirmative action obligations. Prior to the amendments, both the scope and content of compliance reviews were

prescribed in the Executive Order regulations. Compliance reviews were to be a comprehensive evaluation of a contractor's employment practices and were to consist of a desk audit, an on-site review and, if necessary, an off-site analysis. The amendments made to the Executive Order and VEVRAA regulations give OFCCP greater flexibility in the manner in which it assesses a contractor's compliance.

The term ``compliance evaluation'' has been adopted in the regulations implementing Executive 11246 and the affirmative action provisions of VEVRAA. ``Compliance evaluation'' refers to any one of the four investigative methods OFCCP may utilize to determine a contractor's compliance with its nondiscrimination and affirmative action obligations. In addition to the comprehensive compliance review, three abbreviated methods for evaluating a contractor's compliance are authorized under the regulations implementing Executive Order 11246 and the affirmative action provisions of VEVRAA: Off-site review of records, compliance check, and focused review. OFCCP has found that the compliance evaluation approach for determining compliance has resulted in improved efficiency and better targeting of agency resources.

Under the current regulations implementing Section 503 the compliance review is still the primary method used to determine whether a contractor maintains nondiscriminatory employment practices and is taking affirmative action to employ and advance in employment qualified individuals with disabilities. The current regulation at 41 CFR 60-741.60 provides that the compliance review shall consist of a comprehensive analysis and evaluation of the contractor's employment practices. However, unlike the prior Executive Order regulations, the current regulations do not prescribe the content of the compliance review under Section 503. Thus, under the current Section 503 regulations, if OFCCP can make a determination about compliance based upon a review and analysis of the documentation submitted in response to the scheduling letter, the agency may complete the Section 503 compliance review without making an on-site visit to the contractor's establishment.

On October 12, 2000, OFCCP issued a notice of proposed rulemaking (NPRM), 65 FR 60816, to revise certain regulations implementing Section 503. The NPRM proposed to formally adopt the compliance evaluation approach and expressly authorize off-site reviews of records, compliance checks, and focused reviews under Section 503. In addition, the NPRM proposed to revise the compliance check procedure found in the regulations implementing Executive Order 11246 and the affirmative action provisions of VEVRAA by removing the requirement that OFCCP visit a contractor's establishment during a compliance check. The NPRM proposed other minor and non-substantive revisions to the regulations in 41 CFR parts 60-250 and 60-741. The comment period closed on December 11, 2000. Comments were received from two organizations: One representing Government contractors and the other representing human resource professionals. Both sets of comments were considered in the development of this final rule.

Overview of the Final Rule

The final rule, for the most part, adopts the revisions that were proposed in the NPRM. The final rule revises the regulation at 41 CFR 60-741.60 to authorize the use of additional investigative procedures for evaluating compliance under Section 503. In addition, the final rule revises the compliance check provisions contained in 41 CFR 60-1.20 and 41 CFR 60-250.60 by eliminating the on-site visit requirement. The final rule replaces the term ``compliance review'' with ``compliance evaluation,'' as

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appropriate, in certain sections of the regulations. Further, the rule corrects a drafting oversight by including the term ``compliance evaluation'' in the definition section of the VEVRAA regulations at 41 CFR 60-250.2.

The final rule also makes substantive revisions to the compliance evaluation regulations in response to the public comments. In particular, the final rule revises the compliance check provisions by conforming the scope of the procedure to OFCCP's current and historical use of the compliance check, i.e., a determination of whether the contractor maintains records, consistent with the record retention regulations. In addition, in response to the commenters, the final rule revises the confidentiality provision in the 41 CFR 60-1.20(g). These changes are explained in more detail in the Analysis of the Comments and Revisions.

Further, the final rule makes a ``housekeeping'' revision to the regulations in 41 CFR Parts 60-1, 60-250, and 60-741 that was not proposed in the NPRM. The final rule removes from the regulations all references to the ``Letter of Commitment.'' In August 1998, OFCCP discontinued the use of the Letter of Commitment as a resolution document. (Transmittal Number 226, ADM Notice, ``Discontinuing the Use of the Letter of Commitment,' ' August 5, 1998). The minor technical violations formerly incorporated into the Letter of Commitment are now summarized in the closure letter. Since OFCCP no longer uses the Letter of Commitment, the final rule removes the references to the term found in the following regulations: 41 CFR 60-1.33, 60-1.34, 60-250.62, 60-250.63, 60-741.62 and 60-741.63.

OFCCP has determined that the amendments to remove references to the Letter of Commitment need not be published in an NPRM for public comment, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. These amendments are technical and non-substantive, and do not affect any rights or interests of parties. Further, removing references to the Letter of Commitment from the regulations will ensure that the public has updated information about the agency's enforcement procedures. Accordingly, there is good cause for finding that the notice and public comment procedure is unnecessary and contrary to the public interest, pursuant to section 553(b)(B) of the APA.

The discussion below identifies the comments received in response to the NPRM and provides OFCCP's response to those comments. For an explanation of provisions adopted unchanged from the proposed rule and on which no comments were made, see the NPRM preamble.

Analysis of the Comments and Revisions

Section 60-741.60 Compliance Evaluations

Proposed 41 CFR 60-741.60 authorizes OFCCP to use compliance evaluations to determine if a contractor is complying with its obligations under Section 503 and its implementing regulations. Consistent with the regulations implementing Executive Order 11246 and the affirmative action provisions of VEVRAA, proposed Sec. 60-741.60(a) specified that the compliance evaluation methods available to OFCCP include a compliance review, an off-site review of records, a compliance check, and a focused review. Proposed Sec. 60-741.60(a) also contained descriptions of the activities contemplated under each of the four compliance evaluation methods.

OFCCP explained in the preamble discussion that the revisions to the Section 503 regulations are necessary to harmonize the procedures

used when enforcing Section 503, the Executive Order, and VEVRAA. The revisions would ensure that the agency could use parallel procedures to simultaneously evaluate contractor compliance under all three laws. At the same time, the revisions would give OFCCP leeway to develop and pursue enforcement initiatives that focus only on contractor compliance with Section 503 and its implementing regulations.

Both commenters favored the proposal to adopt the compliance evaluation approach under Section 503. The commenters acknowledged that conforming the compliance evaluation regulations under Section 503 to those under the regulations implementing Executive Order 11246 and the affirmative action provisions of VEVRAA would make for a consistent regulatory enforcement structure. Aside from the statements in support, there were no other specific comments on this aspect of the proposal. Accordingly, Sec. 60-741.60 is adopted in the final rule as proposed.

Section 60-1.20 and 60-250.60 Compliance Evaluations

The current regulations at 41 CFR 60-1.20(a)(3) and 60-250.60(a)(3) describe a compliance check as a ``visit to the [contractor's] establishment'' to ascertain whether data and other information previously submitted are accurate and complete; whether the contractor has maintained records consistent with the record retention requirements in Sec. 60-1.12 and Sec. 60-250.80; and whether the contractor has developed affirmative action programs consistent with the regulations. OFCCP proposed to revise the regulations at 41 CFR 60-1.20(a)(3) and 60-250(a)(3) by eliminating the requirement that OFCCP visit a contractor's establishment when the compliance check procedure is used to assess compliance. OFCCP has found that, in many instances, the assessments made with a compliance check procedure can be made without making an on-site visit.

OFCCP stated in the NPRM that the proposed change would allow the agency greater flexibility when using the compliance check method to assess a contractor's compliance status. The NPRM explained that, with the elimination of the on-site requirement, the contractor still would be required to provide OFCCP access to the requested documents, but at the contractor's option the documents may be provided either on-site or off-site. One commenter believed that other statements in the preamble implied that OFCCP, rather than the contractor, would decide how the requirements of the compliance check would be satisfied. The commenter stated that the final rule should unequivocally state that the contractor could elect whether to provide documents on-site at the establishment being evaluated or submit them to an OFCCP office. To that end, the commenter recommended that the ``contractor's option'' be added to the text of the compliance check regulation.

OFCCP wishes to clarify that contractors will have the option of either providing requested documents on-site or submitting them to an OFCCP office or other designated location when the compliance check is the method used to investigate compliance. Accordingly, the final rule adds the ``contractor's option'' language to the text of the compliance check regulation.

The NPRM also explained that eliminating the on-site visit requirement would not expand the scope of the examination contemplated under the compliance check procedure. Under OFCCP's current procedure, the compliance check involves a perfunctory assessment of whether the contractor maintains certain records as required under the Executive Order regulations. Procedures for conducting the ``Compliance Check to Ensure Maintenance of Records Consistent with 41 CFR 60-1.12'' are set forth in OFCCP's Federal Contract Compliance Manual (FCCM), which is

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www2.dol.gov/esa/regs/compliance/ofccp/fccm/fccmanul.htm. The Compliance Manual explains that the Compliance Officer is only inspecting records to ensure compliance with 41 CFR 60-1.12 during the compliance check, and identifies three categories of records to be inspected during the compliance check: A report of results under the prior Affirmative Action Program (AAP); examples of job advertisements, including listings with state employment services; and examples of accommodations made for persons with disabilities. See FCCM, Section 2T00. In contrast to OFCCP's historical and current procedures, the regulations provide that the compliance check may be used to ascertain: (1) Whether data and other information previously submitted by the contractor are complete and accurate; (2) whether the contractor has maintained records consistent with the regulations; and (3) whether the contractor has developed AAPs consistent with the regulations.

Both commenters wanted to conform the scope of the compliance check to what is and has been OFCCP's practices, as reflected in the Compliance Manual. One commenter asked that OFCCP incorporate in the final regulation the language from the Compliance Manual that states that the compliance check is a limited inspection of certain records. The other commenter requested assurances that OFCCP would maintain the practice of requesting only the records that are currently specified in the Compliance Manual.

As was stated in the NPRM, OFCCP has no intention of expanding the scope of the examination contemplated under the compliance check procedure. Accordingly, OFCCP has decided to adopt the recommendation that the final rule state that the compliance check will be used to determine whether the contractor is maintaining records, as required under the regulations. However, OFCCP declines to adopt the recommendation that the final rule limit the records inspected during the compliance check to the three categories of records currently specified in the Compliance Manual. OFCCP announced in the Compliance Manual that the future procedures might focus on the review of other records the contractor is required to retain. One of the records currently identified in the Compliance Manual has been eliminated under the new regulations in Part 60-2. Obviously, this regulatory change in Part 60-2 will necessitate a change in the records currently identified in the Compliance Manual. OFCCP would seek authorization under the Paperwork Reduction Act prior to implementing any changes in the records inspected during the compliance check. During the Paperwork Reduction Act authorization, OFCCP would provide notice to the public and an opportunity to comment on any change in the records to be inspected during the compliance check.

Further, one commenter asked that OFCCP include in the compliance check regulation a confidentiality provision similar to the one found in the Part 60-2 regulations. The commenter presumably is referring to the confidentiality provision included in the Equal Opportunity Survey regulation at 41 CFR 60-2.18(d). The current compliance evaluation regulation at 41 CFR 60-1.20(g) includes a confidentiality provision. The language in Sec. 60-1.20(g) differs from the language in Sec. 60-2.18(d), but OFCCP follows the same set of procedures when responding to all requests to disclose information submitted by contractors. OFCCP believes the language in Sec. 60-2.18(d) is preferable because it clearly describes the agency's policy and practice regarding the release of information provided by the contractor. Accordingly, the final rule conforms the confidentiality provision in 41 CFR 60-1.20(g) to the confidentiality provision in 41 CFR 60-2.18(d).

The additional changes made to the compliance evaluation regulation today do not alter existing agency practice, nor do they affect the substantive obligations of contractors under the laws OFCCP

administers.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB has determined that this rule is a ``significant regulatory action'' as defined in section 3(f) of the Order. However, this rule is not an economically significant regulatory action under the Order, and therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

This rule does not substantively change existing obligations for Federal contractors; it will only specify the procedures the agency may use to evaluate a Federal contractor's compliance with existing requirements. Accordingly, the Department certifies that the rule will not have a significant economic impact on a substantial number of small business entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, the rule does not include any Federal mandates that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector, of \$100,000,000 or more in any one year.

Paperwork Reduction Act

Today's rule will have a negligible impact, if any, on the information collection requirements currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501, et seq.). Information collection requirements for compliance evaluations are currently approved under OMB control number 1215-0072. The currently approved inventory includes a burden estimate for compliance checks, which is based on the assumption that it takes the average contractor approximately four-tenths of an hour to find and make available the documents requested during a compliance check. OFCCP intends to perform 2,500 compliance checks per year. OFCCP queried its field staff and estimates that a contractor will take approximately .5 hours to find and make available the necessary material. The reporting burden is $2,500 \times .5 \text{ hours} = 1,250 \text{ hours}$. The rule to revise the compliance check procedure by removing the on-site visit requirement will mean that, during some compliance checks, contractors will submit documents to an OFCCP office rather than make them available for an OFCCP compliance officer to review on-site. OFCCP estimates that the revision to the compliance check procedure will not result in a net change in the burden hours associated with compliance checks. OFCCP will submit for approval to OMB the information collection provisions of this rule as necessary.

Executive Order 13132 (Federalism)

OFCCP has reviewed this rule in accordance with Executive Order

13132 regarding federalism, and has determined that it does not have ``federalism implications.'' The rule does not ``have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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List of Subjects

41 CFR Part 60-1

Administrative practice and procedure, Equal employment opportunity, Government contracts, Reporting and recordkeeping requirements.

41 CFR Part 60-250

Administrative practice and procedure, Equal employment opportunity, Government contracts, Veterans, Reporting and recordkeeping requirements.

41 CFR Part 60-741

Administrative practice and procedure, Equal employment opportunity, Government contracts, Individuals with disabilities, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 15th day of June 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Charles E. James, Sr.

Deputy Assistant Secretary for Federal Contract Compliance

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Accordingly, for the reasons set forth in the Preamble, this rule amends Title 41 of the Code of Federal Regulations, chapter 60, Parts 60-1, 60-250 and 60-741, under authorities cited as set forth below:

PART 60-1--OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

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1. The authority citation for part 60-1 continues to read as follows:

Authority: Sec. 201, E.O. 11246 (30 FR 12319), as amended by E.O. 11375 (32 FR 14303) and E.O. 12086 (43 FR 46501).

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2. In Sec. 60-1.20 paragraph (a)(3) and paragraph (g) are revised to read as follows:

Sec. 60-1.20 Compliance evaluations.

(a) * * *

(3) Compliance check. A determination of whether the contractor has maintained records consistent with Sec. 60-1.12; at the contractor's option the documents may be provided either on-site or off-site; or

* * * * *

(g) Public Access to Information. OFCCP will treat information obtained in the compliance evaluation as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. It is the practice of OFCCP not to release data where the contractor is still in business, and the contractor indicates, and through the Department of Labor review process it is determined, that the data are confidential and sensitive and that the release of data would subject the contractor to commercial harm.

Sec. 60-1.33 [Amended]

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3. Section 60-1.33 is amended by removing paragraph (b), and by removing the designation ``(a)'' from the first paragraph.

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4. Section 60-1.34 is amended by removing paragraph (b), removing the paragraph (a) designation, redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a) through (d) respectively, and revising the section heading to read as follows:

Sec. 60-1.34 Violation of a Conciliation Agreement.

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PART 60-250--AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

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5. The authority citation for part 60-250 continues to read as follows:

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971-1975 Comp., p. 841.)

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6. In Sec. 60-250.2 paragraph (v) is added to read as follows:

Sec. 60-250.2 Definitions.

* * * * *

(v) Compliance evaluation means any one or combination of actions OFCCP may take to examine a Federal contractor or subcontractor's compliance with one or more of the requirements of the Vietnam Era Veterans' Readjustment Assistance Act.

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7. In Sec. 60-250.60 paragraph (a)(3) is revised to read as follows:

Sec. 60-250.60 Compliance evaluations.

(a) * * *

(3) Compliance check. A determination of whether the contractor has maintained records consistent with Sec. 60-250.80; at the contractor's option the documents may be provided either on-site or off-site; or
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8. Section 60-250.62 is amended by removing paragraph (b) and paragraph (a) designation, and by revising the section heading and the first sentence of former paragraph (a) to read as follows:

Sec. 60-250.62 Conciliation Agreements.

If a compliance evaluation, complaint investigation or other review by OFCCP finds a material violation of the Act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. * * *

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9. Section Sec. 60-250.63 is amended by removing paragraph (d), and by revising the section heading to read as follows:

Sec. 60-250.63 Violations of Conciliation Agreements.

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PART 60-741--AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

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10. The authority citation for part 60-741 continues to read as follows:

Authority: 29 U.S.C. 706 and 793; and E.O. 11758 (3 CFR 1971-1975 Comp., p. 841.)

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11. Section 60-741.2 is amended by adding a new paragraph (z) to read as follows:

Sec. 60-741.2 Definitions.

* * * * *

(z) Compliance evaluation means any one or combination of actions OFCCP may take to examine a Federal contractor's or subcontractor's compliance with one or more of the requirements of Section 503 of the Rehabilitation Act of 1973.

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12. In Sec. 60-741.44 paragraph (a)(2) is revised to read as follows:

Sec. 60-741.44 Required contents of affirmative action programs.

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(a) * * *

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(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of Section 503 of the Rehabilitation Act of 1973, as amended (Section 503) or any other Federal, State or local law requiring equal opportunity for disabled persons;

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13. In Sec. 60-741.60 the section heading and paragraph (a) are revised to read as follows:

Sec. 60-741.60 Compliance evaluations.

(a) OFCCP may conduct compliance evaluations to determine if the contractor maintains nondiscriminatory hiring and employment practices and is

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taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated in accordance with this part during employment. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) Compliance review. A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. The desk audit is conducted at OFCCP offices;

(ii) An on-site review, conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) Off-site review of records. An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of Section 503 of the Rehabilitation Act of 1973 and regulations;

(3) Compliance check. A determination of whether the contractor has maintained records consistent with Sec. 60-741.80; at the contractor's option the documents may be provided either on-site or off-site; or

(4) Focused review. An on-site review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

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14. Section 60-741.62 is amended by removing paragraph (b) and the paragraph (a) designation, and by revising the section heading and the first sentence of former paragraph (a) to read as follows:

Sec. 60-741.62 Conciliation agreements.

If a compliance evaluation, complaint investigation or other review by OFCCP finds a material violation of the Act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement will be required. * * *

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15. Section 60-741.63 is amended by removing paragraph (d), and by revising the section heading to read as follows:

Sec. 60-250.63 Violations of Conciliation Agreements.

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16. In Sec. 60-741.65, the first sentence of paragraph (a)(1) is revised to read as follows:

Sec. 60-741.65 Enforcement proceedings.

(a) General. (1) If a compliance evaluation, complaint investigation or other review by OFCCP finds a violation of the act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, to impose appropriate sanctions, or any combination of these outcomes. * *

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17. In Sec. 60-741.68, the fourth sentence of paragraph (a) is revised to read as follows:

Sec. 60-741.68 Reinstatement of ineligible contractors.

(a) * * * Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may

require the contractor to supply additional information regarding the request for reinstatement. * * *

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18. In Sec. 60-741.69, paragraph (a)(2) is revised to read as follows:

Sec. 60-741.69 Intimidation and interference.

(a)* * *

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the act or any other Federal, State or local law requiring equal opportunity for disabled persons;

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19. In Sec. 60-741.80, the last two sentences of paragraph (a) are revised to read as follows:

Sec. 60-741.80 Recordkeeping.

(a) * * * Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor must preserve all personnel records relevant to the complaint, compliance evaluation or action until final disposition of the complaint, compliance evaluation or action. The term ``personnel records relevant to the complaint, compliance evaluation or action'' will include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

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20. In Sec. 60-741.81, the first sentence is revised to read as follows:

Sec. 60-741.81 Access to records.

Each contractor must permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the act or this part. * * *

[FR Doc. 05-12220 Filed 6-21-05; 8:45 am]