

Total Estimated Number of Annual Burden Hours: 91 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Authority: The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018-19660 Filed 9-10-18; 8:45 am]

BILLING CODE 4310-05-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-18-043]

Government in the Sunshine Act Meeting Notice

Agency Holding the Meeting: United States International Trade Commission.

Time and Date: September 21, 2018 at 11:00 a.m.

Place: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205-2000.

Status: Open to the public.

Matters to be Considered:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 701-TA-609 and 731-TA-1421 (Preliminary)(Steel Trailer Wheels from China). The Commission is currently scheduled to complete and file its determinations on September 24, 2018; views of the Commission are currently scheduled to be completed and filed on October 1, 2018.

5. *Outstanding action jackets:* None. In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 7, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018-19861 Filed 9-7-18; 4:15 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Renewal of the Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to obtain approval from the Office of Management and Budget (OMB) to renew the information collection that implements standard procedures for supply and service contractors seeking approval to develop affirmative action programs based on functional or business units. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice or by accessing it at www.regulations.gov.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 13, 2018.

ADDRESSES: You may submit comments by any of the following methods:

Electronic comments: The federal eRulemaking portal at www.regulations.gov. Follow the instructions found on that website for submitting comments.

Mail, Hand Delivery, Courier: Addressed to Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C-3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. For faster submission, we encourage commenters to transmit their comment electronically via the www.regulations.gov website.

Comments that are mailed to the address provided above must be postmarked before the close of the comment period. All submissions must include OFCCP's name and the OMB Control number for identification. Comments, including any personal information provided, become a matter of public record and will be posted on www.regulations.gov. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT:

Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C-3325, 200 Constitution Avenue NW, Washington, DC 20210. Telephone: (202) 693-0103 (voice) or (202) 693-1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (large print, braille, audio recording) upon request by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

1. Background: OFCCP administers and enforces the three nondiscrimination and equal employment opportunity laws listed below.

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)

These authorities prohibit employment discrimination and require affirmative action to ensure that equal employment opportunities are available regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran by federal contractors. Additionally, federal contractors and subcontractors are prohibited from, discriminating against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers. E.O. 11246 applies to federal contractors and subcontractors and to federally assisted construction contractors holding a Government contract in excess of \$10,000, or Government contracts which have, or can reasonably be expected to have, an aggregate total value exceeding \$10,000 in a 12-month period. E.O. 11246 also applies to government bills of lading, depositories of federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds. Section 503 prohibits employment discrimination against applicants and

employees because of physical or mental disability and requires affirmative action to ensure that persons are treated without regard to disability. Section 503 applies to federal contractors and subcontractors with contracts in excess of \$15,000. VEVRAA prohibits employment discrimination against protected veterans and requires affirmative action to ensure that persons are treated without regard to their status as a protected veteran. VEVRAA applies to federal contractors and subcontractors with contracts of \$150,000 or more.

II. Review Focus: OFCCP is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the compliance and enforcement functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: OFCCP seeks approval of this information collection in order to carry out and enhance its responsibilities to enforce the anti-discrimination and affirmative action provisions of the three legal authorities it administers.

Type of Review: Renewal.

Agency: Office of Federal Contract Compliance Programs.

Title: Agreement Approval Process for Use of Functional Affirmative Action Programs.

OMB Number: 1250-0006.

Agency Form Number: None.

Affected Public: Business or other for-profit entities.

Total Respondents: 85.

Total Annual responses: 85.

Estimated Total Burden Hours: 862.

Frequency: Annual.

Total Burden Cost: \$29,455.

Debra A. Carr,

Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2018-19680 Filed 9-10-18; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2013-0027]

Addendum to the Memorandum of Understanding With the Department of Energy (August 28, 1992); Oak Ridge, Tennessee Properties

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This is a notice of an addendum to the interagency Memorandum of Understanding (MOU) between the U.S. Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) and the U.S. Department of Energy (DOE). The MOU establishes specific interagency procedures for the transfer of occupational safety and health coverage for privatized facilities, properties, and operations from DOE to OSHA and state agencies acting under state plans approved by OSHA.

DATES: The expansion of the scope of recognition becomes effective on September 11, 2018.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: meilinger.frankis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, OSHA Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, U.S. Department of Labor, telephone: (202) 693-2110 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

DOE and OSHA entered into a MOU on August 10, 1992, delineating regulatory authority over the occupational safety and health of contractor employees at DOE government-owned or leased, contractor-operated (GOCO) facilities. In general, the MOU recognizes that DOE exercises statutory authority under section 161(f) of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2201(f)), relating to the occupational safety and health of private-sector employees at these facilities.

Section 4(b)(1) of the Occupational Safety Health Act of 1970 (OSH Act) (29 U.S.C. 653(b)(1)), exempts from OSHA

authority working conditions with respect to which other federal agencies have exercised statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health. The 1992 MOU acknowledges DOE's extensive program for the regulation of contractor health and safety, which requires contractor compliance with all OSHA standards as well as additional requirements prescribed by DOE, and concludes with an agreement by the agencies that the provisions of the OSH Act will not apply to GOCO sites for which DOE has exercised authority to regulate occupational safety and health under the Atomic Energy Act. The 1992 MOU has expired.

In light of DOE's policy emphasis on privatization activities, OSHA and DOE entered into a second MOU on July 25, 2000, that establishes interagency procedures to address regulatory authority for occupational safety and health at specified privatized facilities and operations on sites formerly controlled by DOE. The July 25, 2000, MOU covers facilities and operations on lands no longer controlled by DOE, which are not conducting activities for or on behalf of DOE and where there is no likelihood that any employee exposure to radiation from DOE sources would be 25 millirems per year (mrem/yr) or more.

II. Notice of Transfer

In an email dated February 2, 2018, DOE requested that OSHA or, as appropriate, the Tennessee Occupational Safety and Health Administration (TOSHA) accept occupational safety and health regulatory authority over employees at the East Tennessee Technology Park in Oak Ridge, Tennessee, six parcels of land pursuant to the MOU on Safety and Health Enforcement at Privatized Facilities and Operations dated July 25, 2000. Other facilities and properties at the East Tennessee Technology Park were transferred to TOSHA jurisdiction under this MOU by **Federal Register** notices 74 FR 120 (January 2, 2009), 74 FR 39977 (August 10, 2009), 76 FR 80408 (December 23, 2011) and 79 FR 29456 (May 22, 2014).

The six parcels of land, which are located at the East Tennessee Technology Park in Oak Ridge, Tennessee, and were transferred by deed to the Community Reuse Organization of East Tennessee (CROET) are described as follows:

- *Land Parcel ED-11* Consists of five tracts of land separated by roadways: ED-11A (11.67 acres), ED-11B (2.25 acres), ED-11C (0.49 acres), ED-11D



DIRECTIVE (DIR) XXXX-XX

A Directive (DIR) is intended to provide guidance to OFCCP staff or federal contractors on enforcement and compliance policy or procedures. A DIR does not change the laws and regulations governing OFCCP's programs and does not establish any legally enforceable rights or obligations.

Effective Date: (Click here to enter date)

1. **SUBJECT:** Functional Affirmative Action Programs (FAAPs).
2. **PURPOSE:** To establish policies and procedures for requesting and maintaining FAAP Agreements.
3. **REFERENCES:** None
4. **AFFECTED POLICY:** Directive (DIR) 2013-01 Revision 1, *Functional Affirmative Action Programs* (April 28, 2016).

Federal Contract Compliance Manual (FCCM), § 5, Functional Affirmative Action Program Compliance Evaluations (October 2014).

5. **BACKGROUND:** OFCCP is encouraging the use of functional or business unit based affirmative action programs (AAPs). A functional AAP agreement can be an attractive alternative to having an establishment-based AAP for several reasons. OFCCP's FAAP program allows a company that is a covered federal contractor or subcontractor to organize its AAP to reflect how the company operates functionally and not where its facilities and people are physically located.¹ A company with a FAAP may find that it is easier to organize and analyze data, identify issues, establish clear lines of responsibility for implementing its AAP, and monitor progress. There is also the benefit of having the flexibility to combine the use of FAAPs and establishment-based AAPs.

This Directive establishes a FAAP request process that is simple, fluid, and collaborative. OFCCP and the contractor work together to reach decisions related to the request and how it might be implemented once approved. This supports the prompt, transparent, and consistent application of OFCCP's policies and procedures. Moreover, OFCCP can provide compliance assistance before, during, and after the FAAP agreement request process.

OFCCP's Executive Order 11246 regulations permit federal supply and service contractors to develop AAPs based on a business function or business unit. Generally, to be suitable for a FAAP, the functional or business unit must exist and operate autonomously. In addition, it must:

¹ Hereafter, the term "contractor" is used to refer to covered federal contractors and subcontractors unless otherwise expressly stated.

- Have at least 50 employees;
- Have its own managing official; and
- Have the ability to track and maintain its own personnel activity.

This approach is different from the other most commonly used approach of creating AAPs based on the contractor's establishments or locations.² Specifically, the regulation at 41 CFR 60-2.1(d)(4) provides:³

If a contractor wishes to establish an affirmative action program other than by establishment, the contractor may reach agreement with OFCCP on the development and use of affirmative action programs based on functional or business units. The Deputy Assistant Secretary, or his or her designee, must approve such agreements. Agreements allowing the use of functional or business unit affirmative action programs cannot be construed to limit or restrict how the OFCCP structures its compliance evaluations.

Any supply and service contractor subject to OFCCP's AAP requirements may request a FAAP agreement that permits the development and use of AAPs based on functional or business units. Some contractors may find it appropriate to develop AAPs based solely on functional or business units, while others may elect to use a combination of both functional units and establishment-based AAPs. In the absence of an approved FAAP agreement, the regulations require contractors to develop, implement, and maintain separate AAPs for each physical location or establishment with 50 or more employees.

6. ROLES AND RESPONSIBILITIES:

- a. The **Contractor** is responsible for:
 - i. Submitting a complete and timely request for a FAAP agreement.
 - ii. Implementing the FAAP agreement after receiving a copy of the agreement signed by the Director of OFCCP.
 - iii. Certifying in writing, as a part of the FAAP agreement certification process, that there are no changes in the contractor's functional or business units, structure or organization, or other circumstances that would affect the FAAP.
 - iv. Managing and monitoring all personnel actions, including recordkeeping and

² The establishment-based AAP provisions are found at 41 CFR 60-1.40 and 41 CFR 60-2.1 through 60-2.17; 60-300.40 through 60-300.45; and 60-741-40 through 60-741.47.

³ The reference the Deputy Assistant Secretary in the FAAP approval process is obsolete. The Director of OFCCP performs this role following the abolishment of the Employment Standards Administration (ESA) on November 8, 2009. When ESA was abolished its four major program components, OFCCP, the Office of Labor Management Standards, the Office of Workers' Compensation Programs, and the Wage and Hour Division, all became stand-alone programs reporting directly to the Secretary of Labor.

affirmative action responsibilities for all functional or business units regardless of size.

- v. Complying with the affirmative action requirements of EO 11246, as well as Section 503 of the Rehabilitation Act of 1973, as amended (Section 503) and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA) if the contractor meets the written AAP thresholds for these laws.⁴
 - vi. Identifying and providing information about the forms and formats (e.g., Excel, Word, Access, the use of third party vendors for payroll and human resources data reporting, etc.) in which the contractor maintains information requested by OFCCP. The contractor will provide information in one or more of the available forms and formats, as requested by OFCCP.
 - vii. Submitting all requested information, including applicant flow, hire, promotion, and termination, and compensation data, electronically (e.g., email or uploaded to site) to OFCCP. If electronic submission is not possible or feasible, the contractor and OFCCP should agree to an acceptable alternative.
- b. **OFCCP** is responsible for:
- i. Notifying the contractor upon receiving its request for a FAAP agreement.
 - ii. Reviewing and recommending action on a contractor's request to develop, modify, and certify a FAAP agreement.
 - iii. Approving or otherwise disposing of requests related to FAAP agreements.
 - iv. Using the information that a contractor provides in support of its request for a FAAP agreement solely to evaluate that request.
 - v. Determining whether a contractor is currently reporting its compliance under the requirements of a conciliation agreement when determining whether to approve a FAAP agreement.
 - vi. Providing compliance assistance and conducting compliance evaluations.

7. DEFINITIONS:

To ensure clarity and consistency in the implementation of the FAAP program, definitions for commonly used terms in OFCCP programs are provided below.

⁴ The contractor can comply with its Section 503 and VEVRAA written AAP obligations by either creating and maintaining Section 503 and VEVRAA FAAPs for the same functional or business units that are covered by its EO 11246 FAAPs or creating and maintaining establishment-based Section 503 and VEVRAA AAPs for each of its establishments. The contractor must inform OFCCP which method it will use to comply with its Section 503 and VEVRAA obligations during the FAAP negotiation or certification process. Under either approach, the contractor must make its AAPs and FAAPs available for review at each of its establishments.

Certification – A written notice from the contractor to OFCCP confirming that the contractor will continue to operate under a functional or business unit structure. OFCCP will review the notice and determine whether to issue a new FAAP agreement for new five-year term.

Compliance Evaluation – The investigation and review process used by OFCCP to determine if a federal contractor is complying with the nondiscriminatory and affirmative action employment obligations outlined in 41 CFR Chapter 60. A compliance evaluation consists of any one or any combination of the following investigative procedures: compliance review, off-site review of records, compliance check, or focused review.⁵

Compliance Review – A comprehensive analysis of the hiring and employment practices of the contractor, including the contractor's written affirmative action program (AAP), and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages: desk audit, onsite review and offsite analysis.⁶

Establishment - A facility or unit that produces goods or services, such as a factory, office, store, or mine. In most instances, the unit is a physically separate facility at a single location. In appropriate circumstances, OFCCP may consider as an establishment several facilities located at two or more sites when the facilities are in the same labor market or recruiting area. OFCCP will determine whether it is appropriate to group facilities into a single establishment on a case-by-case basis.⁷

Functional or Business Unit - A component within an organization that operates autonomously in the ordinary course of the organization's business. A functional or business unit should also have identifiable personnel practices or transactional activities specific to the functional or business unit (c.g., applicant flow, hires, promotions, compensation determinations, terminations, etc.) that are distinguishable from other parts of the contractor. Functions or business units should be identified and defined based on the organization's existing business operations, personnel practices and management structures.

Modification – A modification to a FAAP agreement is necessary when a contractor makes a change to its functional units or structure that creates, eliminates, or changes one or more functional units. This change could be the result of a reorganization, merger, acquisition, or divesture.

8. **POLICY**: A contractor's Executive Order 11246 FAAP must include the required AAP elements described in 41 CFR 60-2. If a contractor is also required to have an AAP under Section 503, VEVRAA, or both, contractor must develop FAAPs that meet the requirements in Subpart C of 41 CFR 60-300 and Subpart C of 41 CFR 60-741, as applicable.

A contractor must follow the policies and procedures established in this Directive to obtain an agreement to establish a FAAP. Certain basic principles apply to the FAAP process.

- The approval of FAAP agreement requests, modifications, and certifications by OFCCP

⁵ See 41 CFR 60-1.20(a), 60-300.60(a), and 60-741.60(a).

⁶ See 41 CFR 60-1.20(a)(1), 60-300.60(a)(1) and 60-741.60(a)(1).

⁷ See FCCM, Key Words and Phrases.

is not automatic. The Director of OFCCP, or his or her designee, must affirmatively approve these submissions. The denial of a request does not prohibit a contractor from seeking a FAAP agreement for a subsequent AAP year.

- A FAAP agreement must cover all employees in the contractor's workforce that are in the identified functional or business units. However, this does not mean that the entire workforce must be covered by FAAPs. In some cases, it may be appropriate for a contractor to use both FAAPs and establishment-based AAPs.
 - Only functional or business units identified in the approved FAAP agreement are covered by that agreement.
 - A contractor must continue to develop, implement, and maintain AAPs for each establishment until the FAAP agreements become effective (i.e., when signed by OFCCP's Director).
 - A FAAP agreement expires five years after its effective date, unless certified by the end of that period.
 - A FAAP agreement does not relieve a contractor of its obligation to comply with the regulations at 41 CFR Chapter 60. OFCCP does not negotiate its procedures for determining compliance with its regulations.
 - A FAAP agreement cannot contain provisions that limit OFCCP's access or the manner and means by which it initiates and conducts compliance evaluations. These matters are non-negotiable.
 - FAAP units that have undergone a compliance evaluation will be exempt from another evaluation for 36 months from the date OFCCP closed the previous evaluation. This exemption does not prohibit OFCCP from conducting complaint investigations and compliance evaluations based on credible third party evidence.
9. **PROCEDURES:** Contractors requesting, modifying, certifying, or terminating a functional AAP agreement must follow the procedures outlined in this Directive.

a. Procedures for Requesting a Functional AAP Agreement:

1. The contractor requesting a FAAP agreement must submit a written request to the Director of OFCCP. The request must include proof of contract coverage and the name and contact information for the corporate representative responsible for overseeing the contractor's request for the FAAP agreement. The contractor must address the written request to the Director of OFCCP and submit it by email to OFCCP_FAAP-UNIT@dol.gov.
2. The contractor's request must describe in detail how the proposed functions correlate to the contractor's specific organizational structure. In addition, the request must include an organizational chart, specific information about the functional or business units, functional unit locations and addresses, the number of employees, a transition

plan describing the process and timeframes in which the organization will move from establishment-based AAPs to FAAPs. Attachment A, *Documentation to Submit with a FAAP Request*, lists specific items for documenting the request. OFCCP may, if it is necessary, request additional information before making a final determination on the contractor's request.⁸

3. OFCCP must receive the request for a FAAP agreement no later than 120 calendar days prior to the expiration of the contractor's current corporate headquarters AAP. If the contractor making the request is a first-time contractor, OFCCP must receive the request within 120 calendar days from the award of the Federal contract. OFCCP will deny a request that is not timely submitted.
4. OFCCP will send written notification to the contractor when the requested FAAP agreement is approved; the actual agreement will be attached to this notice. The contractor must sign the FAAP agreement and return it to OFCCP for signature by the agency's Director. The agency will provide a copy of the agreement, with all of the required signatures, to the contractor. The FAAP agreement is effective on the date it is signed by OFCCP's Director. The contractor has 120 calendar days from the effective date to implement its FAAP. The contractor must notify OFCCP when its FAAP is implemented.
5. OFCCP will continue to schedule and conduct establishment-based compliance evaluations during the review and approval stage of a FAAP agreement request, and the 120 calendar day FAAP implementation period. Should a scheduling letter be received during the review and approval stages (i.e., after submission of the FAAP request but before the effective date of the agreement) the evaluation will be completed as establishment-based evaluation. A contractor receiving a scheduling letter during the 120 calendar day FAAP implementation period may have its scheduled establishment-based compliance evaluation administratively closed.
6. The denial of a contractor's request does not prohibit the contractor from seeking a FAAP agreement for a subsequent AAP year.

b. Modifying a Functional AAP Agreement:

1. A change in the functional or business units, or structure or organization of a contractor that affects an existing FAAP agreement requires a modified agreement. A contractor is required to notify OFCCP, in writing, within 60 days of the effective date of the change. The FAAP agreement will be modified to reflect the changes.
2. The modification notice must include a description of and the reason for the change. If functional units were changed, added, and/or removed the contractor's notice must state when the new FAAPs will be in place. If functional units were removed, the contractor must identify where those employees will be covered in the new

⁸ The FAAP Branch will determine whether it is necessary to conduct a FAAP conference to discuss the materials in the FAAP request. If the FAAP Branch determines that a conference is necessary, the FAAP Branch will discuss with the contractor the most appropriate format for conducting the conference. In addition to face-to-face meetings, alternative formats for conducting the conference include teleconference or web-based conferencing.

FAAP structure. If there was a merger, acquisition, and/or downsizing, the contractor must provide OFCCP the name of the newly merged or acquired company and the contractor's plan to incorporate the former company's employees into its AAP structure. Any resulting functional or business unit name change, and changes in managing officials, employee counts, and addresses should be included in the modification notice.

3. Modifications to the FAAP agreement do not extend the five-year term of a FAAP agreement.
4. OFCCP could schedule a contractor for a compliance evaluation should the contractor fail to submit a modification notice. Should there be repeated failures to inform OFCCP of a modification, the agency could terminate the contractor's FAAP agreement.

c. Certifying a Functional AAP Agreement:

1. The contractor must certify in writing, and submit electronically via email to OFCCP, that there were no changes made to its functional or business structure, structure or organization, or other circumstances that affect the existing FAAP agreement. The certification must also state that the contractor wishes to continue to operate under a functional AAP structure.
2. If there were changes that resulted in the modification, addition or elimination of functional units or establishment-based AAPs, the contractor is required to submit a written statement providing the rational for the changes. The certification must include updated information regarding employee counts, facility names, and facility addresses included in each functional unit. OFCCP will review the information and confirm that the changes meet the criteria outlined in Section 9 of this Directive. OFCCP will work closely with the contractor's designated representative to ensure timely and proper processing of the certification request.
3. The contractor must provide updated information concerning at least one federal contract or subcontract of \$50,000 or more, identifying the name of the federal contracting agency, the contract number, the contract period, and the name of the prime contractor if the contractor is a subcontractor.
4. The contractor must submit the certification at least 120 calendar days prior to the expiration of the existing FAAP agreement. The failure to make a timely certification will cause the FAAP agreement to expire at the end of its five-year term. The contractor is then required to develop establishment-based AAPs and may be scheduled for compliance evaluations under the Federal Contractor Selection System (FCSS). In the event OFCCP is unable to make a decision on a timely submitted certification before the agreement expiration date, the contractor will continue to operate under the existing FAAP agreement until its request is approved or denied.
5. Should OFCCP not certify the agreement, it will provide the contractor with at least

90 calendar days written notification.

6. An existing FAAP agreement is certified only after it is signed by the contractor and OFCCP's Director. The effective date is the date it is signed by OFCCP's Director. Once certified, the existing FAAP agreement is authorized for another five-year term.
7. During an open compliance evaluation of a functional unit, OFCCP may extend the term of an existing FAAP agreement until the evaluation has been completed, if necessary.

d. Termination of a functional AAP agreement:

1. Either party may terminate a FAAP agreement with 90 calendar days written notice submitted by email. The notice must provide a brief explanation of the reason for the termination and the effective date of the termination.
2. OFCCP may terminate a FAAP agreement when the contractor fails to account for all of its employees in a functional or establishment AAP. OFCCP may also terminate an agreement when a contractor repeatedly fails to notify OFCCP of a modification to its functional or business units, or structure or organization that affects a FAAP agreement. Two or more such instances during the term of the agreement could constitute a repeated failure to inform OFCCP of modifications.
3. Upon termination of a FAAP agreement, all of the contractor's employees are required to be covered by establishment-based AAPs. The establishment-based AAPs shall be in place no later than 120 calendar days from either OFCCP's or the contractor's notification that the FAAP agreement has been terminated.

8. ATTACHMENTS: A and B

CRAIG E. LEEN

Acting Director

Office of Federal Contract Compliance Programs

DATE

Attachment A

Documentation to Submit with the FAAP Request

1. The contractor must provide a statement that it is a covered federal contractor or subcontractor under 41 CFR 60-1, 60-2, 60-300, 60-741 or some combination of these laws as enforced by OFCCP. The statement must include specific information on at least one federal contract or subcontract of \$50,000 or more, identifying the name of the federal contracting agency, the contract number, the contract period, and the name of the prime contractor if the contractor is a subcontractor.
2. A copy of the contractor's most recent Consolidated EEO-1 Report.
3. An organizational chart that clearly identifies all of the proposed functional or business units to be covered by the requested FAAP and how they are related to each other within the corporation's overall structure.
4. A narrative description of the "business or function" of each proposed FAAP unit and how it meets the definition of a functional or business unit set forth above.
5. For each proposed functional or business unit provide the company or subsidiary name, street address, and total number of employees at each location covered in the functional unit, and name and address of the managing official.⁹
6. A statement identifying the location, including the city and state, where each proposed FAAP unit will maintain its employee personnel records and applicant processing activities.
7. If the contractor proposes to maintain some establishment-based AAPs, provide a list of the locations with establishment-based AAPs. This includes the physical address, number of employees, phone number of the establishment's managing official and AAP contact, and the EEO-1 unit number for each establishment.
8. A statement addressing how the contractor plans to transition from establishment-based AAPs to functional AAPs, including its timeline for completion.
9. The dates of the proposed AAP year for the functional programs.
10. Copies of unit-specific personnel policies relevant to evaluating the proposed functions or business units, including policies related to recruitment, hiring, promotion, compensation, and termination where different from the corporate policies.

⁹ Information for each proposed functional unit including the description, addresses, and names of managing officials and contact persons should be provided as a flat file or database. Employees based remotely should be included in the facility to which they report.

Attachment B

Discussion Items for the FAAP Negotiation Process

1. The reporting hierarchy of the functional or business units.
2. Personnel procedures including recruitment; hiring; promotion; compensation; termination; record retention and data analysis as they apply to each functional or business unit, including identification of units that have differing personnel or compensation practices.
3. How the contractor anticipates complying with the affirmative action requirements of Section 503 and VEVRAA.
4. How each functional unit manages its human resources and equal employment opportunity responsibilities.

**U.S. Department of Labor
Office of Federal Contract Compliance Programs
Agreement Approval Process for Use of Functional Affirmative Action Programs**

OMB Number 1250-0006

A. JUSTIFICATION

The U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) is requesting Office of Management and Budget (OMB) approval of **862** hours in reporting burden for the process that allows federal contractors and subcontractors¹ to develop functional affirmative action programs (FAAPs). The requested hours constitute a decrease from the previous request of **1,297** hours. Supply and service contractors subject to affirmative action program (AAP) requirements may request a FAAP agreement, which permits the development and use of AAPs based on functional or business units. A functional or business unit refers to a component within an organization that operates autonomously in the ordinary course of the organization's business. Under OFCCP's regulations, contractors must have an agreement approved by the OFCCP Director in order to develop and operate under a FAAP.

1. Legal and Administrative Requirements

OFCCP administers and enforces the three equal employment opportunity laws² listed below, which prohibit employment discrimination and set affirmative action requirements by contractors.

- Executive Order 11246, as amended (EO 11246),
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), and
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (VEVRAA).

EO 11246 prohibits contractors from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, and national origin. EO 11246 also requires contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. Additionally, it prohibits contractors from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers, subject to certain limitations. EO 11246 applies to contractors, and to federally assisted construction contractors holding a

¹ Hereafter all references to "contractors" will include federal contractors and subcontractors unless otherwise stated.

² OFCCP promulgated regulations implementing these programs consistent with the Administrative Procedure Act. These regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60.

41 CFR 60, <https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=b686ff45080d69713c00bf18b651cc37&mc=true&tpl=/ecfrbrowse/Title41/41chapter60.tpl> (last accessed August 7, 2018).

government contract in excess of \$10,000, or government contracts that have, or can reasonably expect to have, an aggregate total value exceeding \$10,000 in a 12-month period. EO 11246 also applies to government bills of lading, depositories of federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. savings bonds and notes in any amount.

Section 503 prohibits contractors from discriminating against applicants and employees on the basis of disability and requires contractors to take affirmative action to employ, and advance in employment, qualified individuals with disabilities. Its requirements apply to contractors with a government contract in excess of \$15,000.³

VEVRAA prohibits contractors from discriminating against protected veterans, namely, disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans. VEVRAA also requires contractors to take affirmative action to employ, and advance in employment, qualified protected veterans. Its requirements apply to contractors with a government contract of \$150,000 or more.⁴

This information collection request (ICR) outlines the legal authority, procedures, burden, and cost associated with requesting a new FAAP agreement as well as modifying, certifying, and terminating an existing agreement. Supply and service contractors that are subject to the AAP requirements of EO 11246⁵ may request an agreement with OFCCP that allows them to develop, implement, and maintain an AAP based on functional or business units.⁶ To develop a FAAP, contractors must have an agreement approved by the Director of OFCCP. All FAAPs must include the required AAP elements outlined in 41 CFR 60-2, and if applicable, 41 CFR 60-300 and 41 CFR 60-741, Subparts C.

OFCCP is proposing in this ICR to change the current requirement that contractors certify every three years that there have been no changes made to the functional units, business structure, or other circumstances that affect their existing FAAP agreements. This certification would be required every five years. Lengthening the amount of time contractors are able to maintain the same FAAP agreement reduces their burden. Other proposed significant changes in the ICR include:

- Eliminating the requirement that FAAP contractors undergo at least one compliance evaluation during the term of their agreements;

³ Effective October 1, 2010, the coverage threshold under Section 503 increased from \$10,000 to \$15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See*, Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 75 FR 53129 (Aug. 30, 2010).

⁴ Effective October 1, 2015, the coverage threshold under VEVRAA increased from \$100,000 to \$150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See*, Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).

⁵ 41 CFR Part 60-2, Affirmative Action Programs

⁶ FAAP agreements are only available to supply and service contractors.

- Expanding the exemption period for FAAP units that have undergone a compliance evaluation from 24 months to 36 months from the date OFCCP closed the previous evaluation;
- Eliminating consideration of a contractor's equal employment EEO compliance history when deciding whether to approve a FAAP request;
- Removing the three-year waiting period for reapplying for a FAAP following termination of an agreement; and
- Eliminating the annual requirement for contractors to modify their FAAP agreements.

In addition, OFCCP is proposing several minor revisions to clarify the information in the FAAP Directive (titled "Functional Affirmative Action Programs (FAAPs)") that sets forth the program's requirements.⁷ The revised Directive, which is published with this statement for public comment, will be issued once the agency obtains approval from OMB for this ICR.

Guidance and Regulatory Requirements

Specifics on the FAAP process are found in the Directive that sets forth the criteria OFCCP considers when determining whether a contractor qualifies for a FAAP agreement. At minimum, in order to be considered for a FAAP agreement, the contractor's functional or business unit must:

1. Currently exist and operate autonomously;
2. Have at least 50 employees;
3. Have its own managing official; and
4. Have the ability to track and maintain its own personnel activity.

41 CFR Part 60-2 prescribes the scope of the EO 11246 AAP requirements, including the purpose and contents of an AAP and coverage requirements. The recordkeeping burden for developing, maintaining, and updating an AAP is covered by a separate information collection.⁸

Section 60-2.1(d)(4) allows for the development of AAPs based on functional or business units.

Contractor recordkeeping requirements (60-1.12), the requirement to develop and maintain an AAP (60-1.40), and the AAP scope, requirements, purpose, and contents (60-2.1 and 60-2.10 through 2.17) are approved under the information collection that contains the recordkeeping and reporting requirements for supply and service contractors.⁹

Requesting a FAAP Agreement

⁷ A version of this Directive is currently in effect under the existing approval of this information collection. Directive (DIR) 2013-01 Revision 1, Functional Affirmative Action Programs (FAAPs), https://www.dol.gov/ofccp/regs/compliance/directives/Dir2013_01_Revision1.pdf (last accessed August 7, 2018).

⁸ OMB Control Number 1250-0003, Supply and Service Recordkeeping and Reporting Requirements, expires June 30, 2019.

⁹ *Ibid.*

Contractors that want to enter into a FAAP agreement with OFCCP must submit a written request to the Director of OFCCP no later than 120 calendar days prior to the expiration of the current corporate headquarters AAP. A first first-time contractor that meets the AAP threshold must submit a request within 120 days from the award of the federal contract. The request must include the name and contact information for the corporate representative responsible for overseeing the contractor's request for the FAAP agreement.

The list below contains the documentation that must be submitted with the written request for a FAAP agreement.¹⁰

- The contractor must show proof that they are a covered contractor by providing specific contract information, as described in the Directive;
- A copy of the contractor's most recent consolidated Employer Information Report (EEO-1 Report);
- An organizational chart that identifies all of the proposed functional or business units to be covered by the requested FAAP and how they are related to each other within the corporation's overall structure;
- A narrative description of the function or business of each proposed FAAP unit and how it meets the definition of a functional or business unit¹¹;
- The company or subsidiary name, street address, and total number of employees at each location covered in the functional unit, and the name and address of the managing official for each proposed functional or business unit;
- A statement explaining where each proposed FAAP unit will maintain its employee personnel records and applicant processing activities;
- If the contractor proposes to maintain some establishment-based AAPs, it must provide a list of locations with establishment-based AAPs, including for each: the physical address, number of employees, phone number of the establishments' managing official, and AAP contact and the EEO-1 unit number for each establishment;
- A statement addressing how the contractor plans to transition from establishment-based AAPs to FAAPs, including a timeline for completion;
- The dates of the proposed FAAP year; and
- If different from corporate policies, copies of unit-specific personnel policies relevant to evaluating the proposed functions or business units, including policies related to recruitment, hiring, promotion, compensation, and termination.

In addition to the items outlined above, OFCCP and the contractor will discuss information related to reporting hierarchy, personnel procedures, how the contractor anticipates complying with the AAP requirements of Section 503 and VEVRAA, and how each functional or business unit manages its human resources and equal employment opportunity responsibilities during the FAAP negotiation process.¹²

¹⁰ See Directive, Attachment A

¹¹ The definitions are provided in the Directive.

¹² See Directive, Attachment B

Modifying a FAAP Agreement

If the contractor undergoes a merger, acquisition, and/or downsizing, they must notify OFCCP within 60 days of the effective date of the change(s) with the name of the newly merged or acquired company and the contractor's plan to incorporate the former company's employees into its AAP structure. Any resulting functional or business unit name change, and changes in managing officials, employee counts, and addresses should be included in the modification notice. OFCCP may schedule a contractor for a compliance evaluation should the contractor fail to submit a modification notice. Alternatively, should there be repeated failures to inform OFCCP of a modification, the contractor's FAAP agreement could be terminated.

Certifying a FAAP Agreement

The contractor must certify in writing every five years (currently every three years), at least 120 calendar days prior to the expiration of the existing FAAP agreement, that there have been no functional or business units, or structure or organization, or other circumstances affecting the existing FAAP agreement. If circumstances have changed (e.g., elimination of functional or business units) the contractor must provide written rationale for the changes. The contractor must also provide updated information on other elements during the certification as described in the Directive. Certified FAAP agreements will be reissued for another five-year term.

Terminating a FAAP Agreement

OFCCP or the contractor may terminate a FAAP agreement. Either party terminating the agreement must provide 90 calendar days written notice in advance explaining the reason(s) for the termination and its effective date. Upon termination of a FAAP agreement, all employees are required to be covered by establishment-based AAPs. The establishment-based AAPs shall be in place no later than 120 days from either OFCCP's or the contractor's notification that the FAAP agreement has been terminated.

OFCCP is proposing in this ICR to no longer terminate FAAP agreements because contractors violated the laws and regulations enforced by OFCCP.

2. Use of Collected Material

OFCCP uses the information provided by contractors during the FAAP agreement process to assess whether they qualify for a FAAP and the information provided by contractors during the modification and certification stages to confirm that they are eligible to continue to maintain a FAAP. While establishment-based AAPs are mandatory for contractors who meet the jurisdictional thresholds, the FAAP program is voluntary and is designed to allow for flexibility in creating and maintaining an AAP.

3. Use of Information Technology

OFCCP prefers that FAAP agreement requests and documentation are submitted in an electronic format, via email. If not maintained in an electronic format, all documents must be submitted in the form and format in which they are maintained.

Pursuant to the Government Paperwork Elimination Act (GPEA), government agencies must provide the option of using and accepting electronic documents and signatures, and electronic recordkeeping, where practicable.¹³ OFCCP fulfills the GPEA requirements by permitting electronic transmission of contractors' documentation.

4. Description of Efforts to Identify Duplication

The reporting requirements in this ICR result exclusively from EO 11246, Section 503, and VEVRAA and their implementing regulations. No duplication of effort exists because no other federal agencies administer and enforce these regulations.¹⁴

5. Impact on Small Businesses

The impact of this information collection on small businesses is minimal for the following reasons:

- Contractors with fewer than 50 employees are exempt from the AAP requirement.
- When preparing an EO 11246 AAP, contractors with fewer than 150 employees are permitted to use their EEO-1 categories as job groups, thus reducing burden related to job group formulation.
- The number of contractors who request a FAAP is a negligible portion of OFCCP's contractor universe.
- By the nature of the FAAP program, very small contractors would generally not request a FAAP agreement because the process entails grouping together employees from different groups, establishments, functional, and business units.
- Contractors that exercise the option to develop FAAPs benefit from the flexibility the program allows to tailor AAPs to specific organizational needs.

6. Consequences of a Less Frequent Collection

The approval process for obtaining a FAAP agreement allows OFCCP to determine if contractors seeking permission to use functional or business unit AAPs can participate in the program. Modifications and five-year certifications are needed to ensure that OFCCP has current information regarding contract coverage and information on each functional or business

¹³ Government Paperwork Elimination Act (Public Law 105-277, 1998), <https://www.gpo.gov/fdsys/pkg/PLAW-105publ277/pdf/PLAW-105publ277.pdf> (last accessed August 7, 2018).

¹⁴ The Employer Information Report (EEO-1) is promulgated jointly by OFCCP and the Equal Employment Opportunity Commission (EEOC), see 41 CFR 60-1.7(a). That report is certified under OMB Control No. 3046-0007 through a collection that is sponsored by the EEOC.

unit's structure, size, and managing official. To carry out its mission, OFCCP must verify that contractors maintain annual AAPs, personnel records, and other related data. Lack of this data would lead to less efficiency in determining contractor compliance and increased burdens both for contractors and the Federal Government.

7. Special Circumstances

There are no special circumstances for the collection of this information.

8. Consultation Outside the Agency

Pursuant to the Paperwork Reduction Act of 1995, as amended (PRA), OFCCP invites the public to submit comments on this proposed information collection. The comments the agency receives will be addressed under this paragraph during the 30-day Federal Register publication of this ICR.

9. Gift Giving

OFCCP does not provide gifts or payments to respondents.

10. Confidentiality of Information

The information obtained from a contractor will be evaluated pursuant to the public inspection and copying provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Labor's implementing regulations at 29 CFR Part 70. It is required that impacted contractors be notified in writing when a FOIA request has been made for contractor data. OFCCP makes no decision to disclose such data, until the contractor has had an opportunity to submit objections to the release of the information.

11. Questions of Sensitive Nature

This information collection does not contain any questions of a sensitive nature. The respondents of the information collection will provide information that correlates with the criteria of requesting a FAAP agreement and all required documentation. It is intended to verify contractor eligibility and determine whether the contractor has met the requirements of the FAAP criteria, as outlined in 41 CFR Part 60-2 and FAAP Directive.

12. Information Collection Hour Burden

The burden associated with this information collection is related to reporting. The recordkeeping burden related to developing, updating, and maintaining AAPs is included in OFCCP's ICR for supply and service contractors, as mentioned above.

To obtain approval to create an AAP based on a functional or business unit, a contractor must send a written request to the OFCCP Director that includes the supporting documentation, for which the burden is assessed below. The reporting burden in this section accounts for the request for approval and the retrieval of the information needed by OFCCP to make its determination. The estimates of time necessary to complete each step of the process are based on OFCCP's experience with the FAAP program.

OFCCP currently has FAAP agreements with 71 contractors that cover 1,932 functional units. OFCCP estimates that there will be approximately five requests for new FAAP agreements each year, an estimate that is based on the number of agreements requested in the previous three years.

Requesting a FAAP Agreement

Contractors that want to request a FAAP agreement are required to submit a written request to the OFCCP Director, as mentioned above. The request must include the name and contact information for the corporate representative responsible for overseeing the contractor's request for the FAAP agreement. OFCCP estimates that it takes 0.75 hour per contractor to prepare a written request of one page.

Accompanying the request for approval, contractors must submit the following items, found in **Attachment A** of the Directive.

A Statement of Proof

The contractor must show proof that they are a covered federal contractor by providing a statement that includes specific contract information, as described in the Directive. OFCCP estimates that it takes 1 hour per contractor to prepare this statement.

Most Recent Consolidated EEO-1 Report

The contractor is required to provide a copy of its most recent consolidated EEO-1 Report. The burden for developing a consolidated EEO-1 Report is covered under OMB Control Number 3046-0007. Therefore, there is no burden associated with collecting the records or completing this report. However, OFCCP estimates that it takes 0.5 hour per contractor to produce the report.

Organizational Chart

The contractor is required to provide a copy of its organizational chart that clearly identifies all of the proposed functional or business units to be covered by the requested FAAP and how they are related to each other within the corporation's overall structure. OFCCP estimates that it takes 1 hour per contractor to develop and provide this item.

Description of the Function or Business

The contractor is required to provide a narrative description of the function or business of each proposed FAAP unit and how it meets the definition of a functional or business unit. OFCCP estimates that it takes 11 hours per contractor to develop and provide this item.

Unit Information and Total Number of Employees

The contractor is required to provide the company or subsidiary name, street address, and total number of employees at each location covered in the functional unit¹⁵, and the name and address of the managing official for each proposed functional or business unit.¹⁶ OFCCP estimates that it takes 4 hours per contractor to provide this information.

Statement Identifying the Location of Personnel Records

The contractor is required to provide a statement addressing the location, to include city and state, where each proposed FAAP unit will maintain its employee personnel records and applicant processing activities. OFCCP estimates that it takes 1 hour per contractor to provide this information.

List of Establishment Based AAPs

If the contractor proposes to maintain some establishment-based AAPs, it must provide a list of the locations with establishment-based AAPs, including for each: the physical address, number of employees, phone number of the establishment's managing official and AAP contact, and the EEO-1 unit number for each establishment. OFCCP estimates that it takes 1.5 hours per contractor to provide this item.

Transition Plan

A requesting contractor is required to provide a statement addressing how it plans to transition from establishment-based AAPs to FAAPs and include a timeline for completion. OFCCP estimates that it takes 2.5 hours per contractor to develop this plan.

Dates of the Proposed AAP Year

The contractor is required to provide the dates of the proposed FAAP year. OFCCP estimates that it takes 0.5 hour per contractor to provide this information.

Copies of Personnel Policies

To evaluate if the FAAP meets the criteria detailed in the directive, OFCCP requests copies of unit-specific personnel policies relevant to evaluating the proposed functions or business units, including policies related to recruitment, hiring, promotion, compensation, and termination, where different from corporate policies. OFCCP estimates that it takes 1 hour per contractor to produce this information.

¹⁵ Employees who are based remotely should be included in the facility to which they report.

¹⁶ Information for each proposed FAAP including the description, addresses, and names of managing officials and contact persons should be provided as a flat file or database.

In addition to the written request, contractors are also required to discuss the following items, found in **Attachment B**, when negotiating the agreement.

Reporting Hierarchy

OFCCP requires that the contractor be prepared to explain the reporting hierarchy of the FAAP. This includes reporting within the unit and, as appropriate, reporting to the parent entity. OFCCP estimates that it takes 1 hour per contractor to provide this information.

Personnel Procedures

To assess whether the proposed FAAP meets the criteria of operating autonomously, OFCCP requests that contractors be prepared to discuss their personnel procedures for recruitment, hiring, promotion, compensation, termination, record retention, and data analysis as they apply to each functional or business unit. If functional or business units have different personnel or compensation practices, OFCCP requires the contractor to identify them. OFCCP estimates that it takes 2.5 hours per contractor to provide this information.

Compliance with Section 503 and VEVRAA Requirements

During the FAAP negotiation process, OFCCP discusses with the contractor its plan for complying with the AAP requirements of Section 503 and VEVRAA. OFCCP estimates that it takes 3 hours per contractor to prepare to discuss this item.

Human Resources and Equal Employment Opportunity

OFCCP requires the contractor to provide information during the negotiation process regarding how each functional unit manages its human resources and equal employment opportunity responsibilities. OFCCP estimates that it takes 1.5 hours per contractor to provide this information.

OFCCP estimates the total annual burden for requesting approval of a FAAP agreement, which includes submitting the written request, collecting and submitting the support documentation, and holding subsequent discussions with OFCCP at 164 hours (32.75 hours x 5 contractor requests).

Modifying, Certifying, and Terminating FAAP Agreements

Modifying a FAAP Agreement

Contractors with existing FAAP agreements are no longer required to annually update their agreements to provide current names of functional or business units, managing officials, employee counts, addresses, and updated contract information.

However, the current obligation to notify OFCCP of modifications to the functional or business units, or structure or organization of a contractor that affect an existing FAAP agreement is retained. If the contractor undergoes a merger, acquisition, and/or downsizing, they must notify OFCCP within 60 days of the effective date of the change(s) with the name of the newly merged or acquired company and the contractor's plan to incorporate the former company's employees

into its AAP structure. Any resulting functional or business unit name change, and changes in managing officials, employee counts, and addresses should be included in the modification notice. The FAAP agreement will be modified to reflect the changes. OFCCP estimates that it takes 10 hours per contractor to provide the required information.

OFCCP currently has 71 FAAP agreements, which has been a consistent number over the last three years. Even though the requirement to modify on an annual basis is proposed for removal, OFCCP estimates that 90% of contractors with FAAP agreements will modify the agreement during the course of a year. The annual burden to contractors is estimated as 640 hours (10 hours x 64 contractors).

Certifying a FAAP Agreement

Once approved, FAAP agreements are valid for five-year terms. Prior to the end of the five-year term, contractors must certify in writing (at least 120 calendar days prior to the expiration of the existing agreement) that there have been no changed circumstances to the business structure affecting the existing agreement. As a part of this certification, a contractor is required to include updated information on a federal contract of \$50,000 or more, identifying the name of the federal contracting agency, the contract number, the contract period, and the name of the prime contractor if the contractor is a subcontractor. In addition, the contractor must provide updated information regarding employee counts, facility names, and facility addresses included in each functional or business unit. If the contractor has undergone changes resulting in the addition or elimination of functional or business units or establishment-based AAPs, they will be required to submit a written rationale explaining the changes. OFCCP estimates that it takes 4 hours per contractor to prepare this request.

OFCCP estimates that approximately 14 contractors will certify their FAAP agreement each year. Therefore, the annual burden is estimated as 56 hours (71 FAAP agreements / 5 years = 14.2 contractors per year average; 4 hours x 14 contractors = 56 hours).

Terminating a FAAP Agreement

Contractors may choose to terminate a FAAP agreement because of losing a federal contract, restructuring, merging, or other reasons. The contractor must submit 90 calendar days written notice that they are terminating the agreement along with a brief explanation of the reason(s) for the termination and the effective date of the termination.¹⁷ OFCCP estimates that it takes 0.75 hours per contractor to prepare the notice.

OFCCP estimates that there are approximately two FAAP agreements terminations each year, an estimate that is based on the number agreements that were terminated in the previous three years. OFCCP estimates that it takes 0.75 hour per contractor to terminate an agreement. The annual burden is estimated at approximately 2 hours (0.75 hour x 2 contractors).

¹⁷ Upon termination of a FAAP agreement, all employees are required to be covered by establishment-based AAPs. The burden for establishing a traditional AAP is covered under OMB Control No. 1250-0003, Supply and Service Recordkeeping and Reporting Requirements.

Total Reporting Burden by Contractor Activity

	Total Number of Respondents	Recordkeeping Hours	Reporting Hours	Third Party Disclosure	Total Hours
Requesting a FAAP Agreement	5	0	32.75	0	164
Modifying a FAAP Agreement	64	0	10	0	640
Certifying a FAAP Agreement	14	0	4	0	56
Terminating a FAAP Agreement	2	0	0.75	0	2
Total	85				862

Annualized Cost of the Burden of Hours to Respondents

The estimated annualized cost to contractors is calculated using employee compensation data from the Bureau of Labor Statistics.¹⁸ OFCCP calculates the total estimated annualized cost as follows:

	Hours	Monetization
Requesting a FAAP Agreement	164	\$5,604
Modifying a FAAP Agreement	640	\$21,869
Certifying a FAAP Agreement	56	\$1,914
Terminating a FAAP Agreement	2	\$68
Total	862	\$29,455

13. Information Collection Cost Burden

The information contractors provide to OFCCP related to the FAAP process is maintained in the normal course of business or covered by a different ICR, as explained above.

OFCCP estimates that contractors will have some operating and maintenance costs associated with this collection. The agency prefers that contractors submit required documentation electronically but approximately 50 percent of contractors that request initial FAAP approval still

¹⁸ “Employer Costs for Employee Compensation – March 2018”, Table 5, Private Industry Workers, Bureau of Labor Statistics, <https://www.bls.gov/news.release/pdf/eccc.pdf> (last accessed August 7, 2018). The burden cost was calculated using an hourly rate of \$34.17 for respondents.

send paper copies through the mail and the other 50 percent send it electronically. Contractors generally send the documents electronically when they modify or certify an existing agreement.

OFCCP assesses a cost for the 50 percent of contractors that send paper copies of the documents. OFCCP estimates the supporting documentation for the initial request to be approximately 20 pages, and using a cost of \$0.09 per page,¹⁹ the agency calculates that the copying cost for the initial FAAP agreement request is \$4.50 (20 pages x 2.5 contractors x \$0.09 per page).

In addition, OFCCP estimates an average mailing cost of \$6.70 per contractor, using USPS Priority Mail, flat rate envelope.²⁰ Therefore OFCCP estimates that the cost of mailing the FAAP agreement to OFCCP is \$16.75 (2.5 contractors x \$6.70).

The total estimated operating and maintenance cost for all contractors related to FAAP is an estimated \$21.25 (\$4.50 copying costs + \$16.75 mailing costs).

14. Cost to the Federal Government

OFCCP estimates the annual cost to the Federal Government as follows:

- OFCCP staff will spend approximately 40 hours processing each FAAP agreement request. 40 hours x 5 new agreement requests = 200 hours.
- OFCCP staff will spend approximately 8 hours processing each FAAP modification. 8 hours x 64 agreements = 512 hours.
- OFCCP staff will spend 8 hours processing each FAAP certification. 8 hours x 14 agreements = 112 hours.

As there have been no FAAP agreement terminations by OFCCP in the past three years, this ICR does not claim a federal burden for terminations.

OFCCP estimates the total annual burden to the Federal Government related to the FAAP process at 824 hours.

Using the General Schedule (GS) scale, OFCCP estimates an average hourly rate of \$46.46 for the federal staff involved in the FAAP process.²¹ The cost is calculated as follows: \$46.46 x 824 hours = \$38,283.

¹⁹ Based on the average copying cost for 20 pages at major paper supply stores as of August 7, 2018.

²⁰ <https://www.usps.com/ship/mail-shipping-services.htm> (last accessed August 7, 2018)

²¹ See, "Salary Table 2018-DCB Incorporating The 1.4% General Schedule Increase And A Locality Payment Of 28.22% For The Locality Pay Area Of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA," available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/DCB_h.pdf (last accessed August 7, 2018). Estimate based on GS-13 grade, step one.

15. Program Changes or Burden Adjustments

OFCCP is requesting OMB approval of 862 burden hours and \$21.25 in costs. This is a decrease in burden hours and costs from the previous approval of this information collection of 1,297 hours and \$89. The table below outlines the specific changes to this ICR compared to its previous approval in April 2016.

Activity	Change	Explanation
Requesting a FAAP Agreement	Decreased by 216 hours	The burden per contractor decreased from 38 hours to 32.75 hours and the number of contractors requesting FAAP agreements decreased from 10 to 5.
Modifying a FAAP Agreement	Increased by 23 hours	The burden per contractor increased from 617 to 640 hours because modifying and updating a FAAP agreement were combined into one activity.
Certifying a FAAP Agreement	Decreased by 16 hours	The burden per contractor increased from 3.7 to 4 hours and the number of contractors certifying FAAP agreements decreased from 81 to 71.
Terminating a FAAP Agreement	Increased by 2 hours	Terminating a FAAP agreement was not accounted for in the previous ICR.
Annual Operations and Maintenance Costs	Decreased by \$67.75	More contractors are submitting requests and information via email, thus reducing costs.

16. Publication of Data for Statistical Use

OFCCP does not publish the data it collects under this information request clearance.

17. Approval Not to Display the Expiration Date

OFCCP is not seeking approval to not display the expiration date.

18. Exception to the Certification Statement

OFCCP is not seeking exemptions to the certification statement.

B. STATISTICAL METHODS

This information collection does not use statistical methods.