



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 74

RIN: 2900-AP93

VA Veteran-Owned Small Business Verification Guidelines

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document implements a portion of the Veterans Benefits, Health Care, and Information Technology Act of 2006, which requires the Department of Veterans Affairs (VA) to verify ownership and control of veteran-owned small businesses (VOSBs), including service-disabled veteran-owned small businesses (SDVOSBs) in order for these firms to participate in VA acquisitions set-aside for SDVOSB/VOSBs. This rule contains a minor revision to require re-verification of SDVOSB/VOSB status once every three years rather than biennially. The purpose of this change is to reduce the administrative burden on SDVOSB/VOSBs regarding participation in VA acquisitions set asides for these types of firms.

DATES: Effective Date: [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Thomas McGrath, Director, Center for Verification and Evaluation (00VE), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC, 20420, phone (202) 461-4300.

SUPPLEMENTARY INFORMATION: On February 21, 2017, VA published in the Federal Register (82 FR 11154) an interim final rule to revise VA's rules regarding the length of the eligibility period for inclusion in the Vendor Information Pages database. Interested persons were invited to submit written comments on or before April 24, 2017. VA received numerous comments from members of the public.

In a final rule published in the Federal Register on February 8, 2010, (75 FR 6098), VA established 38 Code of Federal Regulations (CFR) part 74, which set forth a mechanism for verifying ownership and control of VOSBs and SDVOSBs. At that time, VA anticipated that annual examinations were necessary to ensure the integrity of the Verification Program and was deemed consistent with the annual Federal size and status recertification requirement in the Central Contractor Registry. In June of 2012, the eligibility period was extended to two years.

VA has determined that a biennial examination is not necessary to adequately maintain the integrity of the program and proposed a three year eligibility period. This change is appropriate because VA conducts a robust examination of personal and company documentation to verify ownership and control by Veterans of applicant businesses. In addition to verifying individual owners' service-disabled veteran status or veteran status, VA reviews the following documents in accordance with 38 CFR 74.12: an applicant's financial statements; Federal personal and business tax returns; personal history statements; articles of incorporation/organization; corporate by-laws or operating

agreements; organizational, annual, and board/member meeting records; stock ledgers and certificates; state-issued certificates of good standing; contract, lease, and loan agreements; payroll records; bank account signature cards; and licenses. Given the depth of this review, biennial re-verification examinations have become an unnecessary administrative burden on both participants and VA.

Moreover, VA is confident that the integrity of the verification program will not be compromised by establishing a three year eligibility period. This is evidenced by fiscal year 2016 data from VA's Center for Verification and Evaluation (CVE), which administers the verification program, which shows that from a total of 1,109 reverification applications, only 11 were denied. Therefore, only 0.9 percent of firms submitting re-verification applications were found to be ineligible after two years. Furthermore, other aspects of the verification program ensure that establishing a three year eligibility period will not undermine the integrity of the verification program. For example, 38 CFR 74.15(a) mandates that the participant, once verified, must maintain its eligibility during its tenure. Moreover, if ownership or control changes occur, the participant must inform VA's CVE of any changes that would adversely affect its eligibility. Additionally, in accordance with 38 CFR 74.20(a), VA has the right to conduct random, unannounced site examinations of participants or conduct a further examination upon receipt of specific and credible information that a participant is no longer eligible. Lastly, status protests provide VA contracting officers and SDVOSB/VOSBs alike an opportunity, where appropriate, to challenge the

SDVOSB/VOSB status of a verified firm in connection with SDVOSB/VOSB set-aside acquisitions.

Additionally, establishment of a longer, three year eligibility period is consistent with other Federal set-aside programs. With respect to the Historically Underutilized Business Zone (HUBZone) small business certification program, U.S. Small Business Administration (SBA) regulations at 13 CFR 126.500 require that any qualified HUBZone small business concern seeking to remain on the HUBZone approved list must recertify every three years with SBA. With regard to SBA's Section 8(a) Business Development program, SBA authorizes a program term of up to nine years in 13 CFR 124.2.

Furthermore, VA's determination that an eligibility period of three years is reasonable given the mandatory nature of VA's SDVOSB/VOSB set-aside authority. In accordance with 38 United States Code (U.S.C.) 8127 and VA Acquisition Regulation, 48 CFR Part 819, VA is required to set aside any open market procurement for SDVOSBs and VOSBs, if two or more such concerns are reasonably anticipated to submit offers at fair and reasonable pricing. Given the large volume of appropriated funds subject to these set-aside requirements, a three year eligibility period prior to re-examination is appropriate to balance the burden on SDVOSB/VOSBs and to protect the integrity of the program.

VA received comments requesting clarification as to whether currently verified SDVOSBs/VOSBs would be automatically extended. All firms that were verified and in the VIP database automatically had their eligibility term extended by one year.

Numerous commenters expressed support for the extension of the eligibility period, asserting that it allows veterans more time to focus on the success of their businesses, and reduces their administrative burden of gathering and submitting the required documentation. One such commenter supported the extension, but suggested that firms should be required to submit a certified statement stating that the firm's ownership stake has not changed, and based on the original certifying criteria that they are still eligible for their status at the two year mark. The comment continues to suggest that any firm unable to provide the statement would be required to re-verify at that time. However, VA's risk analysis on the extension has shown that risk of extending the period from two to three years is very low, and that requiring firms to submit a statement at the two year mark is an unnecessary administrative burden on both the firm and the government. Therefore, we will not make any changes to the rule based on this comment.

Another commenter asserted that VA should have issued this change as a proposed rule rather than an interim final rule because the determination of good cause that exempts this rule from the notice and comment procedures is incorrect; the notice and comment is not impracticable, unnecessary, or contrary to public interest. VA has determined that relieving the administrative burden on both program participants and verifying officials, and eliminating delays in verification caused by repetitive biennial reviews, is in the best interest of the public. Therefore, we will not make any changes to the rule based on this comment.

VA appreciates the comments submitted in response to the interim final rule. This final rule adopts the interim final rule as a final rule without change.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, applies to this final rule. This final rule is generally neutral in its effect on small businesses because it relates only to small businesses applying for verified status in VA's SDVOSB/VOSB verified database. The overall impact of the rule benefits small businesses owned by veterans or service-disabled veterans because it reduces the administrative burden associated with maintaining verified status by extending the period for re-verification from two years to three years. VA has estimated the cost to an individual business to be insignificant. Increasing the verification period will decrease the frequency of any costs associated with document submission. On this basis, the Secretary certifies that the adoption of this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Therefore, under 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule has no such effect on state, local, and tribal governments, or on the private sector.

### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

### Catalog of Federal Domestic Assistance

This final rule affects the verification guidelines of veteran-owned small businesses, for which there is no Catalog of Federal Domestic Assistance program number.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the

Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff,  
Department of Veterans Affairs, approved this document on July 5, 2017, for  
publication.

List of Subjects in 38 CFR Part 74

Administrative practice and procedures, Privacy, Reporting and  
recordkeeping requirements, Small business, Veteran, Veteran-owned small  
business, Verification.

Dated: July 7, 2017

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Michael Shores  
Director,  
Regulation Policy & Management  
Office of the Secretary  
Department of Veterans Affairs

**PART 74 – VETERANS SMALL BUSINESS REGULATIONS**

Accordingly, the interim rule amending 38 CFR part 74 which was  
published at 82 FR 11154 on February 21, 2017, is adopted as final without  
change.

[FR Doc. 2017-14600 Filed: 7/11/2017 8:45 am; Publication Date: 7/12/2017]